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(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT ON ALBANIA [1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Legal Affairs DG I

[1] Adopted by MONEYVAL at its 19th Plenary meeting (Strasbourg, 4-7 July 2006)

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PREFACE – INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF ALBANIA

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Albania was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[2]. The evaluation was based on the laws, regulations and other materials supplied by Albania, and information obtained by the evaluation team during its on-site visit to Albania from 12 to 17 September 2005, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant Albanian government agencies and the private sector, as well as representatives of self-regulatory organisations and non governmental organisations. A list of the bodies met is set out in Annex to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of MONEYVAL experts in criminal law, law enforcement and financial issues: Mr Frank CARUANA, Director of the Financial Intelligence Analysis Unit of Malta (responsible for the financial issues), Mrs Tatjana DJURASINOVIC, Head of International Co-operation Department of the Unit for the Prevention of Money Laundering of Serbia (responsible for the legal issues), Mr Theodoros STAVROU Police Officer, Member of the FIU of Cyprus (responsible for the law enforcement issues). They were assisted by a member of the Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Albania as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out levels of compliance with the FATF 40+9 Recommendations, and provides recommendations on how certain aspects of the system could be strengthened (for an overview, see the tables in annex).

[2] As updated in February 2005

EXECUTIVE SUMMARY

1. Albania was the seventh MONEYVAL member evaluated under the third evaluation round based on the new Methodology of 2004 taking into account anti-money laundering and anti-terrorist financing (AML/CFT) measures. The country received the visit of a MONEYVAL delegation from 12 to 17 September 2005.

2. Below is a summary of the findings of the report which was adopted by MONEYVAL at its 19th plenary meeting (Strasbourg, 4-7 July 2006).

1. Background Information

3. Until 1991, Albania had one of the longest-lasting (and allegedly the most totalitarian) Stalinist regimes in Europe. With a total population of 3,14 million citizens, Albania is a smaller European country. A significant proportion of the population is working/ living abroad. According to Albanian estimates, the informal economy represents 30% of the total economic activity. A vast majority of transactions are still made outside the banking system and/or below the real value (e.g. for real estate), and that investments and capital increases are generally not properly recorded for tax avoidance purposes.

4. Albania's rank in the most recent Corruption Perception Indexes published by Transparency International remains among the worst of all European countries. According to an opinion poll conducted in the period November 2003-March 2004 by the Citizen's Advocacy Office of Albania, the Customs, judges, deputies, police and prosecutors are perceived as particularly corrupt (out of 23 possible professions and on the basis of a broad definition of the concept of corruption which includes but is not limited to bribery and embezzlement).

5. As part of the anti-corruption efforts, measures have been taken to render those specialised bodies of the police, prosecution and judiciary dealing with organised crime and terrorist financing cases more resistant to corruption: better working conditions and salaries, screening procedures, protection measures etc. Despite the lack of Court rooms, efforts have also been made to make sure Penal trials take place in public court hearings rather than in the judge's office (which is still the cases for most civil cases). The profession of judges is now under better control of the High Council of Justice (which is in charge of the nomination and removal of magistrates). Codes of ethics have also been adopted for these professions and a general law on Rules of Ethics for Public Administration was introduced in 2003.

6. Several interlocutors from law enforcement, the judicial system and other bodies underlined that although the legal framework was not perfect, it was at least sufficient for them to do their work properly as long as there was no political interference (e.g. unnecessary movements of staff). According to representatives from the judicial authorities, it would now be easier to bring to court persons considered previously as "untouchables".

7. The characteristics of organised crime would have evolved in recent years. According to police representatives, criminal groups were using violence in the past, whereas at present, one has to deal with groups of a "higher level". They are still involved in drugs trafficking, arms trafficking, ammonia smuggling etc. The offences considered to be the most important sources of criminal proceeds are drug trafficking, robbery, customs and tax crimes, theft through abuse of office, corruption, fraud, counterfeiting of currencies. Exploitation of prostitution is also considered to remain one of the major sources of criminal profit, although the Albanian authorities underline that trafficking in human beings is now under control.

8. The Albanian authorities have not provided a consolidated overview of money laundering characteristics in the country. The most vulnerable sectors seem to be for a large part the least controlled ones, that is the non financial sector and in particular (according to the replies to the questionnaire): construction, investment in hotels, restaurants, new businesses, mode shops, tourist and travel agencies, the trading/purchase of luxurious cars, trading in electrical equipment.

9. During the discussions held on site, there was large unanimity among practitioners from different fields that the real estate/construction sector, which experiences a significant growth at the moment, was largely used for the investment of criminal monies. The Albanian authorities also explain that a considerable part of constructions have not been declared/legalised.

10. Some interlocutors acknowledged on site that "under the counter" operations in foreign exchange offices has been quite widespread (failure of the electronic recording equipment, tax evasion motivations etc.). According to the replies to the questionnaire, there might also be some problems connected with the profession of lawyers, who provide the full range of legal services, especially when they represent a client on the occasion of a purchase or sale of property, opening bank accounts and conducting transactions with a power of attorney, and the provision of company formation services. It was also alleged that the existence of cases of fictitious shipping insurance, for instance, are of sufficient scale to offer an opportunity for the laundering of proceeds from other crimes.

11. The informal currency exchange business taking place openly on certain streets and in certain areas of Tirana was a particular source of concern for the evaluators. The authorities explained that their efforts to limit that kind of business had failed so far and prohibiting it on the streets would just lead it to move underground. For the time being, the authorities have managed to remove them from the immediate vicinity of the Bank of Albania.

12. The Law on Prevention of Money Laundering (LPML) was amended in 2003, notably with a longer list of obliged businesses and professions. The text (see annex) has not changed since the second round. A general redrafting of the LPML is envisaged, to increase consistency with the FATF 40+9 Recommendations and with the other texts adopted in the AML/CFT field (see below).

13. On the issue of CFT, the Albanian authorities reacted promptly with the adoption on 15 November 2001 of the Council of Ministers' National Action Plan against Terrorism (see annex) providing for a series of measures for the verification, identification, freezing and seizure of bank accounts and assets possibly connected with persons involved in terrorist financing. Subsequently, Law N° 9258 of 15.07.2004 on Measures for the Suppression of Terrorism Financing (LMSTF) introduced detailed mechanisms for the administrative freezing and seizure of proceeds suspected to be linked with listed terrorists and organisations, and for the reporting of transactions possibly linked with terrorist financing, as well as suspicions of terrorist financing more generally (see annex). The efforts of the Albanian authorities to identify and freeze assets potentially linked with terrorists, their organisations or activities, have shown that there was such presences on Albanian soil (islamic foundations, and to a lesser extent, certain companies). Several freezing and seizure orders have been issued after 2001.

2. Legal Systems and Related Institutional Measures

14. Albania has criminalised money laundering through Article 287 of the Criminal Code of the Republic of Albania. The definition of the money laundering offence is largely in line with the UN Conventions. Albania has adopted the "all-crime" approach. Money laundering is punishable if committed intentionally. Negligent money laundering is also covered, as a result

of the provisions of the general part of the Penal Code (Art.14). It is now agreed that a conviction for the underlying offence is not needed anymore on the basis of jurisprudential developments and para. 3 of art. 287. it is still for the prosecution to prove that the proceeds are connected with a specific predicate offence. When the predicate crime is committed abroad by an Albanian citizen, money laundering in Albania is prosecutable domestically. Where the offender is a foreign citizen, money laundering in Albania is only prosecutable where it is committed against the interests of the Albanian State or an Albanian citizen. There is no unanimity as to whether self laundering is covered and it is not expressly stated that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. Nevertheless, the Albanian authorities advised that with the ratification of the Palermo Convention, Albania has accepted this principle. Albania has also introduced the concept of corporate criminal liability (art. 45) but the matter needs to be further regulated in a secondary piece of legislation (a draft has been prepared). Information on the exact number of cases and convictions for money laundering was difficult to obtain but there seem to have been 2 cases in which a total of 5 convictions have been pronounced. 5 further cases are in the hands of the prosecutors at the time the report was examined by MONEYVAL. The results appear to be modest, given the importance of criminal activities.

15. Article 230 of the Criminal Code criminalises terrorist acts. It was complemented in 2003 and 2004 by further provisions criminalising activities related to the financing of terrorism: articles 230/a deals with a general terrorist financing offence and 230/b with the hiding/concealing of funds and other wealth/goods that finance terrorism. Whilst these provisions are quite broad and allow in principle to address any terrorist financing situation, art. 234a criminalises the financing of terrorist organisations specifically. The lack of consistency raises certain interrogations as to whether the various elements of SRII are really covered. The jurisdiction of Albania over certain acts which have an international dimension also needs clarification. The figures on cases vary but the most recent ones indicate that there have been 10 indictments so far and 8 convictions for terrorist financing[3].

16. The general seizure and confiscation measures are provided for in the Criminal Procedure Code (art. 274-276) and criminal Code (art. 36) respectively. A special regime was introduced in 2004 by virtue of the Law "on preventing and striking at organised crime", which equally applies to terrorist financing. These special provisions have notably introduced the reversal of the burden of proof for the purpose of confiscation. The general measures have been applied moderately so far (there have been no confiscation orders applied despite the convictions obtained). These measures need to provide explicitly for the confiscation from third parties and the possibility to apply temporary measures with ex post approval of the court in case of urgency.

17. The LMSTF mentioned earlier is an important initiative in the field of the freezing of terrorist assets under SRIII. Procedures are still needed to deal with actions initiated by foreign jurisdictions, measures need to be refined to ensure that requests for legitimate payments from frozen terrorist assets can be dealt with. Guidance for the private sector is also needed.

18. The General Directorate for the Prevention of Money Laundering is acting since 2001 as the Albanian FIU. This administrative entity was given wide responsibilities (including inspection powers and overall responsibility for the implementation of the LPML). The GDPML has suffered from a lack of autonomy and means until recently. It now has its own premises, budget and a well staffed structure (new staff was recruited). The issue of the political independence of the GDPML needs to be reconsidered and a developed IT system to perform real analytical

[3]The number of convictions is still unclear since the Albanian authorities indicated that these cases are still under investigations.

work is needed. The first annual report (for 2005) was recently published. The issue of feedback needs to be considered though.

19. Despite the size of the country, Albania has managed to develop a high level of specialisation of law enforcement, prosecutorial and judicial bodies in the fields covered by the present report: the Police Directorate for Combating Organised Crime and Witness Protection (and its Division on the fight against money laundering and economic-financial crime), the Prosecutor's Office to the Serious Crime Court and the Office for economic crime, money laundering and terrorist financing (which is competent for all forms of money laundering, whether connected or not with another offence or a criminal structure), and the Serious Crimes Court (competent for TF, and for ML when the latter is committed in connection with a serious crime or by a criminal structure). The existence of a continuous chain of specialist bodies able to deal with greater expertise, means and powers with organised crime activities and terrorist cases, and sophisticated forms of crime is a major asset for the country. Clarification is needed as to the exact responsibilities for ML investigations. Equally, there is a need for studies on the ML phenomenon, trends and techniques, for increasing the level of expertise at the level of the judicial police and judges, for reviewing the staffing of the specialist bodies of the police and prosecutor's office. The legal framework on controlled deliveries also needs to be clarified. Overall, the work of the repressive authorities in the field of AML is difficult to assess due to missing information and statistics.

20. Albania has a system for the disclosure/declaration of cross border movements of funds and other values. The system needs to be completed to address under- or false declarations. Measures also need to be taken as regards the working culture needed from the point of view of AML/CFT.

3. Preventive Measures – Financial Institutions

21. A number of basic requirements regarding Customer Due Diligence are in place and the opening of anonymous and numbered accounts is prohibited. Albania needs to take several measures through primary or secondary legislation and other enforceable means to cover the detailed requirements of R5 for the entire financial sector and beyond. Currently, there is no general CDD approach as a duty, no general identification obligation when establishing a business relationship, no explicit CDD requirements in respect of FT, inadequate thresholds for identification etc.

22. The formalities for politically exposed persons, correspondent banking relationships, non-face-to-face situations and introduced business have yet to be addressed by the LPML. All third party transactions are conducted on the strength of an official and legal power of attorney. Third parties and introduced business are not known in Albania and financial institution secrecy or confidentiality does not seem to be an issue.

23. The record keeping requirements need to be reviewed and addressed in primary or secondary legislation so as to cover the various requirements of R10 and provisions need to be adopted in the field of wire transfers, a subject which is considered insufficiently covered at the moment. The issue of monitoring of transactions and relationships (R11 and 21) also need to be better regulated.

24. The transaction reporting regime adopted by Albania is ambitious as it takes into account suspicious transactions and those above a certain threshold (which is quite high – for most obliged institutions - in the context of Albania). Several inconsistencies between the LPML and other texts, and inaccurate legal provisions affect the smooth functioning of various mechanisms (attempted transactions are not explicitly covered, there are unjustified restrictions as to the categories of transactions to be reported by banks, the protection from civil and

criminal liability can be misinterpreted, the coverage of suspicions of terrorism is insufficient etc.). The statistical results of the reporting regime show that the reporting system is mainly based on the threshold reporting. Whilst the banking sector and certain authorities send significant numbers of reports to the GDPML, the non financial (private) sector is totally uncooperative.

25. As for internal controls, the basic requirements are provided for (internal AML procedures and rules, "money laundering reporting officer" and central reporting collection unit, audit function etc). The articulation between some mechanisms and their exact roles is not always fully clear. Internal procedures are not required to address CDD measures. Albanian financial institutions seldom have branches abroad.

26. On the issue of shell banks, the licensing conditions of the BoA require physical presence of the bank but there are no explicit provisions in the LPML on this issue, the establishment of correspondent banking relationships and the opening of accounts by shell banks.

27. Competent authorities for the regulation, supervision, guidance, monitoring and sanction of financial services are: the Bank of Albania for credit institutions and other non-bank financial institutions, the Insurance Supervisory Authority (ISA) for the insurance business and the Albanian Securities Commission (ASC) as the supervisory and licensing authority for the securities market. These authorities supervise and oversee their respective sectors against the applicable (sector specific) regulations and the LPML to some extent. This is explicit in the case of the BoA under its Regulation of 2004 *"On money laundering prevention"*. More generally, all supervisory authorities under art. 13 para.2 of the LPML are responsible for *"checking the implementation of the programs against money laundering and ensure that these programs are appropriate"*. However, it is unclear which programs are addressed by this provision. There are currently two potential self regulatory organisations, the bar association and the chamber of notaries. They have not been granted nor recognised any particular AML/CFT responsibility so far. They both consider that these professions are not subject(able) to the LPML due to their own professional privilege and statutory rules. Overall, it appears that the necessary legal and regulatory framework is in place and there is evidence that they are being applied at least by the banking supervision. The securities market has yet to start operating and the insurance supervision needs to be established on a more continuous basis. Whilst the supervision of banks is deemed to be satisfactory, in line with the plan developed with the assistance of the IMF and the World Bank, supervision for other non-bank licensees especially foreign exchange bureaux needs to be more aggressive in order to minimise the AML/CFT risks inherent with the under-the-counter transactions conducted by the bureaux. The Insurance Supervisory Authority and the Albania Securities Commission need to ensure that their supervision resources are adequate to be able to meet their respective obligations. Establishing a dialogue and cooperating with the GDPML would help in the drafting of guidelines and planning of training programmes on AML/CFT issues. The Regulation/Guidelines for banks are deemed to be adequate and comprehensive, similar Regulation/Guidelines have not been issued for the financial sector not licensed by the BoA This situation has created an imbalance in the financial industry whereby BoA license holders are obliged to implement measures which other licensees are not burdened with. Albanian supervisors altogether have made a moderate use of sanctions so far despite occasional serious problems and insufficiencies. Improvements are needed in this respect.

28. Informal money transfer services are not an issue in Albania. The two companies licensed to operate a money transfer service networks in Albania are controlled by the BoA but the latter is not in a position to conduct examinations on affiliates (which are not BoA licensees).

4. Preventive Measures – Designated Non-Financial Businesses and Professions

29. The list of natural and legal persons subject to the AML/CFT obligations under the LPML includes various types of entities which fall under the category of designated non-financial businesses and professions (DNFBP) contemplated in Recommendation 12. The full list of obliged entities is detailed in Article 3.1 of the LPML. Accordingly:

- casinos: are listed (the first licence for operating a casino has just been delivered);
- real estate Agents: are not listed as such; art. 3.1 covers every natural and legal person the business of which is related to the evaluation of real estate and construction: this could cover real estate agents in some cases. Other categories of listed entities, due to the broad wording, could also be considered as covering real estate agents (e.g. "offices that evidence the conveyances or alienation of property"); in any event, the concept of real estate agent which acts as intermediary in real estate transactions needs to be included explicitly;
- dealers in precious metals and stones: are listed;
- lawyers, notaries, other independent legal professionals and accountants: are listed (the LPML covers certified public accountants, financial advisors, auditors, attorneys, notaries and representatives with a power of attorney);
- trusts and company service providers: are not listed; whilst trust services are offered by banks (and are thus covered in practice), providing company services is not an activity carried out in Albania.

30. The AML obligations have been extended to other businesses and professions not listed in the FATF 40 Recommendations nor the second EU Directive. These are: gambling clubs, financial advisors; transportation business including forwarding (shipping) activities; the trading of precious and antique things; the administration of third party property; travel agencies; the construction industry.

31. From a general point of view, it is important to underline that the LPML requirements for DNFBP are almost the same as for financial institutions. There are only very minor variations (e.g. thresholds for identification and reporting). The weaknesses identified in the previous Section also apply to this one. For the time being, it is acknowledged that there have been no particular measures taken to make DNFBP (and other businesses) comply with the LPML requirements. There is a general discussion going on as to how this situation needs to be addressed and adequate control mechanisms put in place.

32. It must be underlined that at the moment, the law does not exempt accountants, notaries, lawyers and other independent legal professions from the AML/CFT obligations when receiving or obtaining information in the course of ascertaining the legal position of their client or performing their responsibility of defending or representing their client in judicial proceedings. The examiners were also sometimes advised that their duties under the LPML (notably reporting) was totally incompatible with their professional statutory secrecy. Albania clearly needs to take important measures on the issue of DNFBP and other businesses.

5. Legal Persons and Arrangements & Non-Profit Organisations

33. The registration of legal persons (including companies, political parties and non-profit organisations in their various forms) was, in the past, under the responsibility of the various first instance courts and not centralised in Tirana. Since the recent creation of central registers in the capital (kept by the 1st Instance Court of Tirana), it can be said that there are over 30,000 companies and 1,000 NPOs registered. The Ministry of Labour and Social Affairs has its own register which comprises about 700 non-profit, non governmental organisations. Access to the register is open to the public. It is possible, also for obliged entities, to check information

(including participations or investments) in legal persons but since the registers are not computerised, retrieving data remains a difficult task. Another difficulty is to keep the information up-to-date and to exert controls at the time of registration. Another characteristic of businesses and companies in Albania is that the practice of parallel balance sheets is very common. This could be due notably to the limited number of audit requirements (e.g. insurance companies have been subject to financial auditing only since 2005). There are no measure sin place at the creation/registration stage to prevent the unlawful use of legal persons in relation to ML/FT. Albania clearly needs to take measures on those issues. The Albanian authorities also need to improve the situation as regards the NPO sector. Just like in company formation, for establishing an NPO/NGO there is no requirement to provide a certificate proving that founders or managers of an NPO have no previous convictions. There is no requirement nor policy to check whether they have been designated on terrorist lists.

34. As for legal arrangements, three banks have received a license authorising them to carry out certain additional services, in particular to provide trust services, including – without limitation – the investment and administration of funds received in trust. There is no information available at the moment on the importance of this sector or clientele, or on any other trusts or legal arrangements operating in Albania, although it has been said on one occasion that foreign trusts had tried to establish businesses in the country. Albanian interlocutors explained the little information available by the fact that this was not part of the Albanian tradition. The examiners understood that the three banks apply the same identification, CDD and other requirements in the case of trusts. The issue deserves further clarification and should be addressed in the LPML and other relevant texts as appropriate. For the time being, trust services are not dealt with at all.

6. National and International Co-operation

35. The national efforts in the field of AML are coordinated by the National Committee on Coordinating the Fight Against Money Laundering, the existence and responsibilities of which are provided for in Article 8 para. 1 of the AML Law. This committee, which was created in 2003, is directed by the Prime Minister. It has responsibility for the overall state policy for preventing and fighting money laundering on the basis of the half-yearly reports prepared by the GDPML and reports and documents prepared by international institutions in the field of AML. It also discusses any important matter and cases submitted to it. Besides, an Inter-Institutional Technical Working Group for the prevention of money laundering has been set up, with representatives from all the institutions involved in this field. This working group, which is involved in the overall decision-making and also technical implementation processes is led by the General Director of the GDPML. Monthly meetings are organised as a minimum. Concrete issues are also dealt with in small groups. These coordination structures have resulted in the adoption of a Programme on money laundering prevention (with a focus on the elimination of cash economy and illegal foreign exchange activity), a series of recommendations concerning cross border movements of assets, and the initiation of a project to draft a national strategy and action plan in this area (notably to import the declaration system at the level of the Customs). Memoranda of understanding have also been concluded between some of these entities (including the GDPML). However, as far as the effectiveness of these coordination mechanisms is concerned, it seemed to the evaluators that there is much room for improvement since there is no concerted view or assessment of money laundering problems, no consistent sharing of information on the results of AML efforts (no consistent information or no information available at all), debatable success as far as black market foreign exchange business is concerned.

36. Albania has ratified (in 2002) the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the UN 1988 Convention (in 2000) against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention)

and the UN 1999 Convention on Transnational Organised Crime (the Palermo Convention) (in 2002), and the 1999 UN Convention on the suppression of financing of terrorism (in 2002). Various measures have been taken to implement also the UN Security Council Resolutions (adoption of a national list, procedures for listing/delisting and freezing/de-freezing etc. Some adjustments are needed to fully implement the various international instruments.

37. Albania is able, in principle, to cooperate internationally for the purpose of mutual assistance in the area of AML/CFT. Direct contacts as opposed to diplomatic channels are progressively used. It would seem that, for the time being, the provisions in place are little used for AML/CFT purposes. In any event, there is a need to make provision on certain issues (direct exchanges of rogatory letters, execution/recognition of foreign decisions on seizure and confiscation, sharing of assets). As regards the field of extradition, there seem to be no major problem, apart from the high discretionary powers of the Minister of Justice. Statistics need to be kept on an ongoing basis. In general, the ability of Albania to cooperate rapidly and effectively can be undermined by practical factors (incomplete information systems and central databases).

7. Other Issues

38. The evaluators felt that general efforts should be done to improve the drafting and consistency of legal texts. They were also concerned by the importance of money laundering vulnerabilities in the real estate sector (combined with the total uncooperative attitude of all non financial obliged entities.

MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Albania

1. Until 1991, Albania had one of the longest-lasting (and allegedly the most totalitarian) Stalinist regimes in Europe. Under the constitution, Albania is a Parliamentary Republic and the form of government is unitary. With 28 748sq km and a total population of 3,14 million citizens, Albania is one of the smaller European country. A significant proportion of the population is working/ living abroad. Although Albania's economy continues to grow, the country is still one of the poorest in Europe, hampered by insufficient energy, transportation and other infrastructures, and a large informal economy. According to Albanian estimates, the informal sector represents 30% of the total economic activity. The vast majority of transactions is made outside the banking system, a situation which has not very much improved since 2003. The evaluators were repeatedly told on site that most transactions are done below the real value (e.g. for real estate) and that investments and capital increases are generally not properly recorded for tax avoidance purposes. Mentalities would slowly begin to evolve as a result of the progressive increase in insurance policy subscriptions.

2. The Albanian currency is the Leke (ALL); 1 Euro = approx. ALL 120 (121.41 at the time of the visit). Some amounts are mentioned in this report in both ALL and USD.

3. Albania became a member of the Council of Europe in 1995. Since then, many measures have been taken to reform the legal, political and institutional system of the country and to ensure the predominance of democratic principles, the rule of law, good governance etc. Albania continues to receive from the international community significant advisory, financial and material support.

4. Albania's rank in the most recent Corruption Perception Indexes published by Transparency International remains among the worst of all European countries. According to an opinion poll conducted in the period November 2003-March 2004 by the Citizen's Advocacy Office of Albania, the Customs, judges, deputies, police and prosecutors are perceived as particularly corrupt (out of 23 possible professions and on the basis of a broad definition of the concept of corruption which includes but is not limited to bribery and embezzlement).

5. Albania has ratified the Council of Europe 1999 Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. The fight against corruption became a top priority in 2000-2001 with the creation of an Interministerial Committee on anti-corruption issues, an Anti-Corruption Monitoring Group and an Anti-Corruption Unit which were at different levels responsible for the elaboration and implementation of an ambitious Action Plan involving most ministries and authorities but also civil society, the media etc. In recent years, the newspapers have thus often reported about corruption-related issues. There have also been occasional allegations of officials having links with organised criminal activities.

6. There are also certain factors which can contribute to the occasional over-mediatisation of such kind of issues, including for political purposes. For instance, despite the size of the country and population, there are around 78 radio and TV channels (only 3 TV channels do country-wide broadcasting) and dozens of newspapers. According to the representative of a NGO, many of these media are owned or controlled by political figures, and allegedly also by criminals sometimes, an opinion with which the Albanian authorities fully disagree.

7. At the same time, the financing of political parties is considered to be a serious issue at the moment, since public funding would represent only 1% of the parties' and candidates' financing. The rest would come from various sources, in cash, and as the evaluators were told on site, political parties are not willing to increase the transparency of their finances. They argue that despite the constitutional duty to publish political funding, implementing legislation is missing. Also, according to one interlocutor, the law on State Audit would have been amended so as to restrict control over the public financing of political parties and the latter would have opposed since then the drafting of a law on the financing of political parties.

8. As part of the anti-corruption efforts, measures have been taken to render those specialised bodies of the police, prosecution and judiciary dealing with organised crime and terrorist financing cases more resistant to corruption: better working conditions and salaries, screening procedures, protection measures etc. Despite the lack of Court rooms, efforts have also been made to make sure Penal trials take place in public court hearings rather than in the judge's office (which is still the cases for most civil cases). The profession of judges and prosecutors is now under better control of the High Council of Justice (which is in charge of the nomination and removal of magistrates). Codes of ethics have also been adopted for these professions and a general law on Rules of Ethics for Public Administration was introduced in 2003.

9. Several interlocutors from law enforcement, the judicial system and other bodies underlined that although the legal framework was not perfect, it was at least sufficient for them to do their work properly as long as there was no political interference (e.g. unnecessary movements of staff). According to representatives from the judicial authorities, it would now be easier to bring to court persons considered previously as "untouchables".

10. In the 2005 general elections (shortly before the on site visit) the Democratic Party and its allies won on pledges of reducing crime and corruption, promoting economic growth, and decreasing the size of government. A new anti-corruption strategy has been prepared and many of the practitioners met on site shared with the team their high expectations in terms of increased transparency and integrity in the public sector.

11. As far as the AML/CFT culture is concerned, the first main initiatives date back to the year 2000 when the Law on the Prevention of Money Laundering was adopted (LPML), with the subsequent establishment of an FIU in 2001. Several texts have then been adopted in the field of AML/CFT which reflect the recent and current priorities of the authorities (see below, Section 1.5).

12. The provisions on criminalisation of money laundering and terrorist financing have been tested successfully (although there is little awareness about those cases other than

in the prosecution and judicial bodies). Case law has now confirmed the autonomy of the money laundering offence.

13. It was noted by the evaluation team that the GDPML was not aware of the outcome of the cases forwarded to the Prosecutor's office and could not say with certainty whether there had been convictions for money laundering so far (whether or not these cases had been generated by the reporting system). The replies to the questionnaire remained silent on this and according to the representatives of the Ministry of Justice, there had never been money laundering convictions so far, whereas according to the prosecutor's office, there were at least two convictions (in the period 2002-2003). The lack of consistent information on such crucial issues raised interrogations in the examiners' mind as to the effectiveness of coordination in respect of information exchange.

14. It also appeared that there is little shared knowledge and recognised information on the phenomenon of money laundering. Most authorities have their own views, and these are often assumptions.

15. Coordination between the authorities and the private sector is at an early stage. Several professions or businesses do not cooperate yet and some do consider their AML/CFT obligations incompatible with their own statutory rules (lawyers, notaries).

16. To a large extent, basic mechanisms are totally unknown (feedback between the FIU and the private sector) and it seems that there is frequent tendency to make the formal drafting of regulations - or a restrictive interpretation - prevail over the spirit of AML/CFT mechanisms, be it on the side of the state authorities or the industry. The following are a few examples:

    - media have been used to inform a customer that his transaction was reported to the FIU (a case that happened shortly before the on-site visit was mentioned)
    - a bank representative advised the examiners that he had been told by the GDPML that an operation with a cheque would not be a transaction[4],
    - Art 300 CC on the criminalisation of failure to report a crime – which provides for a large exemption ("persons obliged to keep secrecy because of their capacity or profession, are excluded from the obligation to report") – would be contradictory with the reporting duty under the LPML and other similar texts,
    - Art. 305 CC which criminalises false reporting of a crime is sometimes perceived as a deterring factor which would hinder individuals from reporting suspicions of ML/FT in certain cases
    - legal persons are obliged to pay invoices above ALL 300,000 through the banking system, but any purchase of real estate (for instance) can be made in cash since such a payment is considered (this was at least the view of the banking association) as the payment of a contract, not an invoice.

17. This could be due to the insufficient clarity, accuracy, and overall quality of the texts applicable in the AML/CFT field (the LPML in particular). Secondary texts do not necessarily bring the clarification needed (e.g. the "guideline-regulations" of 2004) and they happen to contradict the LPML sometimes.

[4]The Albanian authorities advised after the visit that this is an incorrect interpretation of the LPML; in any case, cheques are rarely used and only in inter-bank relations.

1.2 General Situation of Money Laundering and Financing of Terrorism

18. The characteristics of organised crime would have evolved in recent years. According to police representatives, criminal groups were using violence in the past, whereas at present, one has to deal with groups of a "higher level". They are still involved in drugs trafficking, arms trafficking, ammonia smuggling etc.

19. The offences considered to be the most important sources of criminal proceeds are drug trafficking, robbery, customs and tax crimes, theft through abuse of office, corruption, fraud, counterfeiting of currencies. Exploitation of prostitution is also considered to remain one of the major sources of criminal profit, although the Albanian authorities underline that trafficking in human beings is now under control.

20. The table below gives an overview of the importance of these criminal offences (the figures relating to 2005 cover the first half of 2005), except trafficking in human beings and/or exploitation of prostitution.

Type of crime	Year	Registered crime	Concluded investigations	Persons charged
Drug related crimes	2001	324	290	353
	2002	249	230	318
	2003	220		293
	2004	363		395
	2005	64		105
Robbery	2001	255	194	355
	2002	215	166	303
	2003	208		263
	2004	227		327
	2005	49		62
Customs and tax crimes	2001	103	102	183
	2002	137	136	225
	2003	108		154
	2004	229		295
	2005	65		95
Theft through abuse of office	2001	23	23	44
	2002	44	42	76
	2003	62		90
	2004	74		105
	2005	10		10
Fraud	2001	14	14	15
	2002	0	0	0
	2003	74		87
	2004	109		126
	2005	23		26
Circulating falsified currency	2001	0	0	0
	2002	25	24	41
	2003	44		51
	2004	27		31

21. The Albanian authorities can hardly provide a summary of information on the most common ways used for money laundering. Bearing in mind the importance of cash transactions and the grey economy, it would seem that the easiest money laundering method is to invest criminal assets in business activities.

22. The most vulnerable sectors seem to be for a large part the least controlled ones, that is the non financial sector and in particular (according to the replies to the questionnaire): construction, investment in hotels, restaurants, new businesses, mode shops, tourist and travel agencies, the trading/purchase of luxurious cars, trading in electrical equipment.

23. According to the Customs service, the import/export business is generally at risk: "Criminal elements and their organizations are constantly attempting to launder their illegal proceeds by smuggling bulk cash into and out of Albania. These criminal enterprises are known to covertly use international trade and fraudulent practices against Albanian Customs in their attempts to launder their illicit profits through import/export businesses".

24. During the discussions held on site, there was large unanimity among practitioners from different fields that the real estate/construction sector, which experiences a significant growth at the moment, was largely used for the investment of criminal monies. This is a particularly serious problem since transactions take place in cash (and there are no or insignificant limits for cash transactions – see also above). Transactions are registered below their real value, and as explained later in the report, the registry of real estate property is not centralised nor computerised/updated. Notaries are not involved in AML/CFT efforts and refuse to do so for reasons of incompatibility of their own regulations with the AML/CFT legislation. The entire sector which deals with real estate appears to be uncooperative (there seem to have been no reports from a notary, construction company or promoter which all are covered by the LPML). The Albanian authorities also explain that a considerable part of constructions have not been declared/legalised.

25. Some interlocutors acknowledged on site that "under the counter" operations in foreign exchange offices have been quite widespread (failure of the electronic recording equipment, tax evasion motivations etc.). According to the replies to the questionnaire, there might also be some problems connected with the profession of lawyers, who provide the full range of legal services, especially when they represent a client on the occasion of a purchase or sale of property, opening bank accounts and conducting transactions with a power of attorney, and the provision of company formation services.

26. The replies to the questionnaire from/concerning the insurance sector indicated that there are also some reinsurance companies operating in Albania (whereas according to the interview conducted on site, this type of business was only provided from abroad) and that there could be some opportunities for money launderers in this field. It is also alleged that the existence of various forms of insurance fraud, for instance cases of fictitious shipping insurance, are of sufficient scale to offer an opportunity for the laundering of proceeds from other crimes.

27. The informal currency exchange business taking place openly on certain streets and in certain areas of Tirana was a particular source of concern for the evaluators. The

authorities explained that their efforts to limit that kind of business had failed so far and prohibiting it on the streets would just lead it to move underground. For the time being, the authorities have managed to remove them from the immediate vicinity of the Bank of Albania.

28. It is arguable that this business is only the visible part of a well organised activity since the street "agents" did not seem afraid of offering their services with large batches of banknotes in their hands. As the evaluators were told, there are sometimes connections between this underground business and smuggling activities.

29. As far as terrorist financing is concerned, the efforts of the Albanian authorities to identify and freeze assets potentially linked with terrorists, their organisations or activities, have shown that there was such presences on Albanian soil (islamic foundations, and to a lesser extent, certain companies). Several freezing and seizure orders have been issued after 2001.

30. Since 1994, some foundations and private organisations had been registered with a social, educational and humanitarian aim to the benefit of vulnerable parts of the population and the younger generation in particular. Investigations revealed that among these, two Arab foundations appeared to be on the lists of financers of terrorism. Within a short period of time, these private organisations had extended their activity in many cities of the country and opened bank accounts in many second level banks in the name of their administrators. On the occasion of some transfers within the country and abroad, they managed not to divulge the origin of the funds nor the final beneficiary and destination and use of these funds. These entities turned out to be involved in the selection and training of mujahidins in Bosnia, Chechnya, Kosovo etc, and providing support to the Al Qaida network, especially for international trafficking in weapons.

1.3 Overview of the Financial Sector and DNFBP

Financial sector

31. The "banking" sector - covered by the banking regulations and supervision of the Bank of Albania (BoA) - comprises 16 banks, 7 non-bank financial institutions (2 of which operate money transfer services affiliated to Western union and Moneygram) and 55 foreign exchange companies. All are licensed by the BoA. The regulations include:

    - Law N° 8269 of 1997 "On the Bank of Albania"
    - Law N° 8365 of 1998 "Banking Law of the Republic of Albania"
    - Regulation of April 1999 "On the granting of licence for the conduct of financial activity by non-bank subjects in the Republic of Albania"
    - Regulation of 2002 "For the Granting of a licence to conduct banking activity on the Republic of Albania"
    - Regulation of 2004 "On money laundering prevention"

32. **Banks** are entitled to perform the following functions, according to the banking law of 1998 (art. 26):

    - Receiving deposits

- Extending credit
- Borrowing funds and buying and selling on its account or on account of customers, for:
  (i) money market instruments ;
  (ii) debt securities;
  (iii) futures and options relating to debt securities or interest rates; or
  (iv) interest rate instruments ;
- Providing payment and collection services;
- Issuing and administering means of payment;
- Money (including foreign currency) broker;
- Financial leasing;
- Providing safe cases services;
- Providing bank guarantee transactions;
- Providing services as a financial agent or consultant (not including receiving deposits and extending credit), and
- Such other financial activities related to the business of banking or incidental thereto as the Bank of Albania shall determine by regulation ;
- Dealing in foreign currencies, including future contracts for the sale of foreign exchange currencies.

33. Banks may also, in accordance with their license, carry out the following additional services:

- Provision of trust services, including, without limitation, the investment and administration of funds received in trust;
- Provision of services as an investment portfolio manager or investment adviser;
- underwriting and distribution of debt and equity securities and, dealing in equity securities subject to the limits established under Article 33, trade on its account and on account of customers in equity securities.

34. **Non-bank financial institutions,** according to Regulation of April 1999 "On the granting of licence for the conduct of financial activity by non-bank subjects in the Republic of Albania" (Art. 1.4), may perform the following activities:

- granting credit;
- offering payment services
- issuing, accepting and administering certain payment instruments
- mediating in the conduct of monetary transactions (including in foreign currency)
- providing financial leasing;
- offering safe deposit services;
- offering other guarantees;
- acting as financial agent or advisor (excluding credit and deposit services)

35. The **Securities sector** is at an early stage of development. It is regulated and supervised by the Albanian Securities Commission (ASC). The ASC has granted 10 licenses to market participants so far, including to the Albanian Stock Exchange (which established and received the licence in 2003 - renewable every two years) and the Central State Register. The stock exchange is inactive for the time being. The 8 remaining licensees are dealers, 6 of which are banks (the last two brokers are also joint

stock companies). The licence is delivered to the market participants for a variable period of time. The Register is dealing with approximately 60 companies. All the transactions have taken place so far outside the market, directly between buyers and sellers.

36. There seem to be no investment funds as yet in Albania.

37. The **Insurance sector** is not very developed. Companies have not been required to computerise their management. The sector comprises 11 insurance companies, all Albanian (before August 2004, there were only 5); 2 or 3 companies also operate abroad (Kosovo, "the former Yugoslav Republic of Macedonia"). Many have relations with re-insurance companies located abroad. Out of the 10 companies, 7 offer non-life insurance services, 2 offer life insurance services and 1 offers both.

38. An insufficient culture regarding life assurance products which leads to difficulties in market penetration together with the existence of a low-level of disposable income of the population have kept the Life assurance market at a low level. Life assurance business amounts to only 3% of the whole insurance market comprising nearly 19,000 contracts with a total premium of US$ 1.1 million out of a total of US$ 40.4 million premium collected in 2004. Car insurances alone represent 80% of the total activity.

39. Insurance companies must be established as joint stock companies and they are subject to law N° 7638 of 19.11.1992 "On commercial companies". Two new regulations apply since 29.07.2004:

    - Law N° 9267 "On the insurance, reinsurance and brokering activity on insurance and reinsurance activity"
    - Law N° 9268 "On the organisation and functioning of the Insurance Supervisory Authority".

40. All the above financial activities are covered by the LPML. The latter also refers to a general category of "postal services, other intermediates involved in payment services as well as every physical or juridical person involved in money exchange or funds transferring or allocation of credit". This paragraph complements/overlaps with Art. 3(1)a which covers banks and other financial institutions licensed by the BoA (which includes foreign exchange bureaus, non bank financial institutions dealing with credit and payment services, money transfer services). The exact status of the Albanian Post remained unclear to the evaluators.

<u>DNFBP and other entities</u>

41. The list of professions and businesses mentioned in the LPML and falling under the FATF category of DNFBP – and other entities - is quite broad. The presence of many – compared to other countries, unusual – businesses corroborates the information available in Albania about sectors used or vulnerable to money laundering. There was very little information available before the visit and representatives from all DNFBP could not be met on site. The list includes:

    - The National Agency of Privatization and any other institution or legal person involved in the judicial action of alienation and distribution for use the state

property, or that is in charge of evidencing, transferring or alienating of property. The National Agency of Privatization has branches in the districts. These branches carry out only privatizations for small amounts that do not exceed the defined limits for reporting to the LPML, the rest being carried out only at the headquarters of the National Agency for Privatization.

- gambling clubs or casinos: one company licensed to open a casino (not yet operational); the Albanian authorities advised that there are 50 licensed subjects in the sector of gambling halls.
- certified public accountants; financial advisors and approved auditors; according to information provided, there are around 120 financial advisors in Albania, licensed by the Institute of Financial Advisers.
- every natural and legal person whose business is related to:

  - the trading of means of transport; in this sector, 10 licensed companies for trading cars operate, which, according to the statistics of the General Directory of taxed, have sold in 2005 around 2100 new vehicles. Tax authorities have also registered dozen physical persons who import used vehicles for sale on the domestic market.

  - transport and forwarding (shipping) activities; this activity is divided in three sectors: land transport (7040 physical and legal persons registered, out of which almost 90% develop their activity with their own means and the remaining ones are companies offering transport services), shipping (104 subjects registered by Tax authorities) and airway transport (25 subjects registered by the tax authorities).

  - the trading of precious and antique things (no analytical data is available regarding this sector, the information provided indicates that there seems to be a limited number of subjects dealing with trading of precious and antique things, including shops registered as small businesses).

  - the evaluation of real estate; (no analytical data is available regarding this sector, the information provided indicates that but there seems to be a limited number of subjects in this sector, including physical persons registered as small businesses).

  - the administration of a third party property;

  - the trading activity with the precious metals or stones; around 160 subjects were registered by Tax authorities.

  - travel agencies; (there are 232 subjects offering booking services).

  - construction (the construction sector is one of the most important sectors of the Albanian economy, around 3650 subjects are registered as legal persons or construction companies operating in this sector)

- attorneys, notaries and representatives with power of attorney: there are about 2000 licensed lawyers (1100 operate in practice) and 350 notaries (115 in Tirana)
- non-profit organisations (over 1000 registered);
- affiliates, branches, agencies or representative offices of a foreign company in and out of the territory of the Republic of Albania;
- offices that evidence the conveyances or alienation of the property.
- travel agencies (see above)

42. Subject to the translation being reliable, there are several redundancies in this list as well, which has not changed since the second round (the seventh bullet point – which is extraordinarily broad – overlaps with the 4th bullet point, and travel agencies are addressed twice).

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

43. There are about 30,000 companies and 1,000 non profit organisations registered in Albania in the recently created central registers kept by the 1st Instance Court of Tirana. When the central registers were created, all legal persons had to re-register. For companies, registration is of a constitutive nature, those that did not re-register were no longer considered as legal persons. All these legal entities can own property. The phenomenon of dormant companies is observed in Albania.

44. The law makes a distinction between different types of NPOs (political parties, trade unions, associations, foundations, centres etc.). They are regulated by different laws but it was said that the provisions are basically the same and NPOs are subjected to taxation like companies which raises certain problems.

45. As far as companies are concerned, the main types are joint stock companies, companies with limited liability, limited partnership companies and general partnership companies. Limited liability companies account for 95% of all registered companies. There are about 60 joint stock companies according to the activity recorded by the Central Register of Shares. Founders and owners of companies can be domestic and foreign individuals or legal entities.

46. Although three banks have received a license authorising them to carry out certain additional services, in particular the provision of trust services (including investment and administration of funds received in trust), these mechanisms do not seem to be used for the time being according to the interviews held on site and there is no information available as to the policy applied in practice.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

47. The national efforts in the field of AML are coordinated by the National Committee on Coordinating the Fight Against Money Laundering which was created in 2003, and by an Inter-Institutional Technical Working Group for the prevention of money laundering which was established subsequently. They have drafted:

- a Programme on money laundering prevention (with a focus on the elimination of cash economy and illegal foreign exchange activity[5]),
- a series of recommendations concerning cross border movements of assets, and the initiation of a project to draft a national strategy and action plan in this area (notably to implement FATF SR. IX and to improve the declaration system at the level of the Customs).

[5] It was not always clear which programmes/strategies/plans were already in place and which ones were already adopted and being implemented (or to be implemented); there were some contradictions during the discussions and between the information contained in the replies and the information provided on site (e.g. elimination of illegal foreign exchange activities)

48. The examiners were also advised that another programme to strengthen the supervision over the implementation of the LPML was under consideration.

49. The LPML was amended in 2003, notably with a longer list of obliged businesses and professions. The text (see annex) has not changed since the second round. A general redrafting of the LPML is envisaged, to increase consistency with the FATF 40+9 Recommendations and with the other texts adopted in the AML/CFT field (see below).

50. On the issue of CFT, the Albanian authorities reacted promptly with the adoption on 15 November 2001 of the Council of Ministers' National Action Plan against Terrorism (see annex) providing for a series of measures for the verification, identification, freezing and seizure of bank accounts and assets possibly connected with persons involved in terrorist financing. Subsequently, Law N° 9258 of 15.07.2004 on Measures for the Suppression of Terrorism Financing (LMSTF) introduced detailed mechanisms for the administrative freezing and seizure of proceeds suspected to be linked with listed terrorists and organisations, and for the reporting of transactions possibly linked with terrorist financing, as well as suspicions of terrorist financing more generally (see annex).

51. Apart from the two basic laws, the LPML last amended in 2003 which deals with money laundering prevention, and the LMSTF of 15 July 2004 which deals with terrorist financing prevention, the Minister of Finance adopted two other texts in 2004 which have been prepared by the GDPML:

- a "Guideline-Regulation N°5 on implementation of money laundering prevention and the combating of the financing of terrorism" (3 June 2004; see annex); this text introduced new reporting forms for transactions suspected to be linked with ML and FT

- a "Guideline-Regulation N° 8 on implementation of money laundering prevention and the combating of the financing of terrorism" (28 July 2004); this text deals in more precise terms with the reporting to the FIU by the Department of Taxation concerning (suspicious) transactions of tax payers, the format for the reports; it also contains indicators for suspicions to be applied by the tax administration (see annex).

52. The Albanian authorities acknowledge that a lot still needs to be done on the preventive and supervisory side. They still are seeking ways to ensure better cooperation by DNFBP, which have not reported so far any transaction. For the time being, training provided by the GDPML has only focused on the banking sector.

53. Albania is also looking for ways to ensure the effective application of AML/CFT requirements by all the obliged entities. The GDPML has now in principle the power, according to art. 8 of the "Guideline-Regulation" N°5 of 2004, to check compliance with the LPML by all obliged entities. But this is not reflected in the LPML version of 2003, nor in the structure of the GDPML at the time of the on-site visit. It is reflected in some by-laws though and 4 persons out of the 10 in place at the time of the visit were said to be involved in inspection work.

54. Given the importance of cash and the informal economy, it is likely that a considerable amount of transactions possibly linked with criminal activities and money laundering or terrorist financing remain unnoticed, and therefore unreported to the FIU. The latter is probably not in a position, in the absence of a computerised analysis system, to exploit efficiently information received under the cash- or threshold- transactions reporting.

55. On the basis of the importance of certain problems such as the cash economy, persisting underground foreign exchange activities, uncooperative sectors, modest (and sometimes unclear) results of the repressive side in terms of ML cases concluded with a conviction, it is hard to say that Albania is reaching its overall objectives. Given the challenge, many efforts are still needed and various institutions show a clear commitment to that end. Issues such as institutional stability, adequate resourcing and political will are particularly important in the context of Albania.

b. The institutional framework for combating money laundering and terrorist financing

56. The General Directorate for the Prevention of Money Laundering (GDPML) is acting as the Albanian FIU. The GDPML was initially established in 2000. It was formally given overall inspection powers in 2004 (art. 8 of the "Guideline-Regulation" N°5 of 2004; the LPML is silent on this issue) and reorganised as a General Directorate in 2005. It remains under the authority of the Minister of Finance but new measures have been taken to avoid interference in its work, in particular by providing it with its own new premises and the means to secure information in its possession and more generally the confidentiality of its work. Additional means have also been granted to enable it to develop its structure. Its staff, which still consisted of 10 persons at the time of the on site visit will progressively be increased to 31. The GDPML has not yet prepared any report on its activities.

57. The Court system has been subject to a major change with the introduction in September 2004, with some amendments to the Criminal Procedure Code (not to the Criminal Code), of a new legal category of "serious crimes" to be tried by the (newly created) Serious Crime Court. Special measures have been taken to ensure a high standard of work and integrity (careful selection and screening of judges, better salaries and working conditions etc.).

58. The Court has jurisdiction (and appellate jurisdiction) for the entire Albanian territory for offences falling under Articles 73, 74, 75, 79, letter "c", and "ç", 109, 109/b, 110/a, 111, 114/b, 128/b, 219, 220, 221, 230, 230/a, 230/b, 231, 232, 233, 234, 234/a, 234/b, 278/a, 282/a, 283/a, 284/a, 287/a, 333, 333/a and 334 of the Criminal Code. These include such crimes as crimes against humanity, kidnapping and taking of hostages, trafficking in human beings, hijacking of aircrafts and ships, assassination, rioting, conspiracy, terrorist acts and terrorist financing, the creation and participation in armed gangs and terrorist organisations, trafficking in weapons and narcotics (but not their illegal manufacturing and selling), the opening of anonymous accounts (but not money laundering), the creation and participation in organised crime and structured criminal groups, as well as the commission of crimes in such forms.

59. Money laundering can be dealt with by this Court in connection with the main criminal offence or when involving an organised or structured group. Normal money laundering cases are dealt with by the regular first instance courts.

60. The above change is mirrored to some extent at the level of the Prosecutor's Office, where there is now a Department or Office to the Serious Crime Court (it was already in place before 2004 but was dealing more generally with crimes punishable by 15 years imprisonment or more). The Department, like the Court, also has overall national jurisdiction. There is also a new Department, the Office for economic crime, money laundering and terrorist financing, which is competent for all forms of money laundering, whether connected or not with another offence or a criminal structure. It comprises 6 prosecutors and 7 judicial police investigators specialised in financial and economic matters.

61. The Office for economic crime, money laundering and terrorist financing is working in relation with the FIU and one of the prosecutors has been appointed as contact person.

62. On the law enforcement side, the Ministry of Public Order was renamed "Ministry of the Interior"). The police, which is under its umbrella, is undergoing a constant reform process. It was reorganised in March 2003, shortly before the second evaluation visit. At that time, the Directorate of Criminal Police was the main responsible for money laundering investigations, through its newly created Department on Organised Crime. It had 12 regional branches throughout Albania and apart from the central Department was composed also of 6 different sections: Analysis Section, Investigative Section, Operational Support Section, Anti-Trafficking Section, Financial Crime Section, Central Anti-Drug Service. Money laundering cases were being dealt with by either the central Department on Organised Crime or the Financial Crime Section, depending on whether the case can be characterised as organised crime or not.

63. In 2004, the Department was renamed as "Directorate for Combating Organised Crime and Witness Protection". Its internal structure is almost the same as at the time of the second round. The major changes concern the creation of a Division for the protection of witnesses and collaborators of justice (following the adoption of a Law on witness protection - which is applicable in ML and FT cases), and the extension of the competences of the Financial Crimes Section, which has become the Division on the fight against money laundering and economic-financial crime.

64. This Division is now the sole responsible for money laundering investigations. It counts 4 staff in the central office and 12 in each of the 12 regional branches or districts.

65. The Bank of Albania performs the functions of a central bank by virtue of Act 8269 *"On the Bank of Albania"*. The objectives of the Bank are:

- to achieve and maintain price stability
- to formulate, adopt and execute monetary policy and the exchange arrangement and rate policy
- to licence, revoke and supervise banks
- to hold and manage official foreign reserves
- to act as banker and adviser to the Government
- to promote the operation of payment systems.

66. The Bank of Albania is responsible for the licensing, supervision and monitoring of banks and non-bank financial institutions (foreign exchange offices, entities providing

financial services such as money transfers, payment facilities, credit-savings associations and unions) and to achieve this end has the authority to issue rules and regulations as deemed necessary. The BoA has adopted AML-specific texts for its sector. There have been no major changes since the second round.

67. The Albanian Securities Commission. The Albanian Securities Commission is established under the Law on securities dated 1996, as amended subsequently. The Commission's functions include the licensing, supervision and monitoring of the activities of:

    - the securities market and the providers of services for the clearing and settlement of securities transactions and depositaries and
    - licensed dealers, investment advisers and their respective representatives, licensed investment managers and licensed investment funds.

68. There have been no major changes since the second round and as indicated earlier, the stock exchange is not yet operational.

69. The Ministry of Finance (MoF) The MoF has leading responsibility for AML/CFT issues through the GDPML (see above) and other bodies which are tasked with supervisory responsibilities for their respective sectors (e.g. the Insurance Supervisory Authority, the Directorate of Gaming and Casinos).

70. The MoF is directly responsible for the implementation of Law N° 9258 of 15 July 2004 "On measures for the suppression of terrorism financing", which was adopted in application of the UN Security Council Resolutions for combating terrorist financing.

71. Under the MoF, the Customs have responsibility notably in the area of cross-border movements of monies and other values and financial instruments. The Customs are undergoing a continuous reform and modernisation process characterised by an almost completed computerisation process.

72. Other Ministries are responsible for the regulation and control of specific sectors (e.g. the Ministry of Post and Telecommunications for Postal agencies). Self Regulatory organisations (e.g. bar association, association of notaries) have not taken or been given any responsibility in AML/CFT questions as yet.

c. Approach concerning risk

73. Albanian authorities are aware of risks in connection with both the financial and non financial sector, even though there is not always a concerted approach and unanimous recognition of the risk picture. The list of DNFBP is broad and catches many businesses operating domestically or which have business relations with Albania. It is also interesting to note that risks are also recognised at the level of non profit organisations which are also obliged entities.

74. It remained unclear how, in the absence of a proper and systematic analysis of the phenomenon of money laundering, the risk factor is/can be taken into account. It seems that for the time being, Albania is following a catch-all approach.

75. The risk component does not form an integral part of the regulatory framework either. Enhanced or reduced due diligence because of higher or lower risks is not present in the LPML and other regulations or by-laws and guidance documents. "Guideline-Regulation N°5 on implementation of money laundering prevention and the combating of the financing of terrorism" of 3 June 2004 which is supposedly providing more detailed provisions on the LPML does not address the issue at all.

76. There are thus not special provisions about due diligence for higher risk categories of customer, business relationship or transaction. As a result of the negligible importance of risk-based exceptions, there are no arrangements foreseen to monitor the continuing suitability of those exceptions.

d. Progress since the last mutual evaluation

77. The replies to the questionnaire simply referred to developments which had taken place since the last evaluation, without indicating which recommendation(s) of the second round they addressed. The information below is a compendium based on the various sections of the report.

- *"to amend article 287 of the Criminal Code so as to cover indirect proceeds".*

78. Art. 287 was amended in 2004, but the clarification recommended was not introduced.

* * *

- *"to consider whether it might be appropriate to make it more explicit, that also "own proceeds" laundering is covered by article 287."*

79. There is still no explicit wording criminalising self laundering and there was no unanimity among the judicial practitioners met on site as to whether art. 287 covers it.

* * *

- *"To make it possible to punish in Albania the offender for money laundering. where a foreign citizen commits the predicate crime abroad and launders the proceeds in Albania, but where the interests of the Albanian State or an Albanian citizen are not harmed"*

80. This is still not covered.

* * *

- *"To clarify the evidentiary requirements areas and to amend them to make it clear, that a prior conviction for the predicate offence should not be required for a money laundering indictment.*"

81. Although it would have been accepted by jurisprudence that a preliminary conviction is not needed (but there is still no unanimity on this issue), the evidentiary requirements have not been clarified in the Criminal Code.

* * *

- *"to consider the appropriateness of reversing the burden of proof of certain parts of the confiscation regime. The evaluators believe that for example where the crime is of a significantly proceeds-generating nature (drug crimes and some economic crimes) and/or carrying a severe penalty, it could be beneficial to reverse the burden of proof post conviction in establishing the unlawful origin of proceeds."*

82. The law "On Preventing and Striking at Organized Crime", adopted in 2004, provides for new, non criminal measures to deal with proceeds from crime, in particular the confiscation of proceeds on non criminal standards of evidence. The law is applicable to a series of offences considered as the most serious.

* * *

- *"to make sure that Albania can provide the necessary legal assistance both on seizure and confiscation. To that end, amendments to article 517 of the Criminal Procedure Code could be considered, so that it explicitly encompasses preventive attachment in accordance with the principle of article 274 of the Criminal Procedure Code."*

83. Article 517 now refers to the general preventive measures.

* * *

- *"as recommended in the first round evaluation report, to clarify in legislation that international assistance can be provided in money laundering matters where a requesting state has a wider definition in respect of the money laundering offence than Albania."*

84. This has not been clarified in legislation but there seem to be unanimity, at present, that international assistance can be provided in such cases.

* * *

- *"to continue to take all necessary measures to promote the development of modern and secure techniques of money payment and management in line with FATF Recommendation 24 as a means of encouraging the replacement of cash transfers. Progress on this issue is critical to the success of the Albanian anti-money laundering effort and should be monitored and reviewed regularly."*

85. There was progress since the previous evaluation although there is still heavy reliance on cash payments.

* * *

- *"as recommended in the first round evaluation report, to provide that general client identification requirements should apply when establishing business relations (which would cover account opening) in accordance with the requirements of FATF Recommendation 10."*

86. There is still no general requirement of that kind. The LPML requires identification of clients only when they perform certain transactions.

* * *

- *"The Albanian authorities should therefore consider prohibiting anonymous accounts explicitly in Law no. 8610 or in relevant secondary legislation."*

87. The LPML does not allow obliged entities to perform financial operations under anonymity or a false identity and obliges them to report it to the GDPML (art. 6). They are also prohibited from opening "bank accounts with forged and untrue names" (art. 7). As already indicated in the second round report, the Bank of Albania, shortly after the previous evaluation visit, adopted in February 2004 the Regulation "On money laundering prevention" which explicitly prohibits anonymous, numbered accounts and accounts under fictitious names (art. 4.7). A prohibition also exists in the Criminal Code (art. 287/a).

* * *

- *"to consider establishing special rules regarding electronic banking or to make sure that banks offering electronic banking facilities comply with the usual identification requirements of the Law on the Prevention of Money Laundering."*

88. In the second round report, a footnote to that Recommendation indicated that "Subsequent to the evaluation visit the Albanian authorities informed the evaluators, that the Regulation of February 2004 from the Bank of Albania contains as article 4.8 the following provision: "In case of opening a bank account to be operated by electronic means (e-bank), by correspondence or by any other means which would not involve face-to-face contact with the customer, the banks are required to demand the physical presence of the person at the moment when the account is opened and to pay particular attention to continuously checking the transactions carried out through it."

* * *

- *"To harmonise the reporting obligation in the Banking Law with that of the Law on the Prevention of Money Laundering, so that both laws apply the standard of information or suspicion rather than evidence."*

89. The new Regulation of the Bank of Albania "On Money Laundering Prevention" adopts a suspicion based approach. As the examiners found out on site, it can happen that Art. 305 of the Criminal Code (on criminal liability for false reporting of a criminal offence) is considered to take precedence over the LPML and is occasionally perceived as discouraging reports of suspicions.

* * *

- *"as a matter of the highest priority, to revisit the reporting obligation for banks to make sure, that banks report to the FIU in any case where a suspicion arises, and not only when it is related to certain banking activities."*

90. The categories of transactions subject to reporting in article 11 of the LPML are still in place. Only certain categories of transactions/activities are subject to reporting by the banks.

* * *

- *"to issue further guidelines and generally to enhance the awareness with respect to the reporting duties of the subjects of the Law."*

91. The GDPML has now adopted all the reporting forms, applicable to all obliged entities. From the discussions held on site, there have not been significant changes in respect of existing guidelines. There are no exceptions in practice as to the reporting duty and banks, especially,

complain about the need to report unnecessary operations such as the payment of commodity services, legitimate payments made on a regular basis which exceed, once amalgamated, the reporting threshold etc.

* * *

- *"To ensure that the supervisory authorities enjoy the same legal protection as subjects of the Law and can be subject to sanctions if they fail to make reports."*

92. This is still not explicitly covered generally in the LPML. Some sector specific provisions do exist though.

* * *

- [article 10/1 of the Law on the Prevention of Money Laundering imposes an obligation on the tax authorities to report to the FIU information or suspicions of money laundering, but only in certain designated areas.] "*The evaluators recommend the Albanian authorities to ensure that the tax authorities report to the FIU any information or suspicion of money laundering, regardless from where the information or suspicion arises."*

93. The LPML has not been amended since the second evaluation round. The provisions of Art. 10/1 remain the same.

* * *

- "According to Article 5, Paragraph 4 of the Preventive Law, the subjects of the law have to report immediately to the FIU, but no later than 72 hours after the transaction has taken place. The examiners consider that this provision is not wholly in line with Article 7 of Directive 2001/7/97/EC, which requires generally that (member) states ensure obliged institutions and persons refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities. *Article 5.(4) should be revisited in the light of Article 7 of the EC Directive."*

94. The LPML has not been amended since the second evaluation round. The provisions of Art. 5.4 remain the same.

* * *

- [The FIU as well as at least banks and insurance companies have put staff training programmes in place. Nevertheless, this is not the case for all the subjects of the Law.] "*Therefore the evaluators recommend that adequate training programmes based on clear guidance should be put in place for all the subjects of the Law."*

95. The situation has not changed.

* * *

- *"Again, the various supervisory bodies should implement supervision programmes to ensure that subjects comply with the requirements of the Law on the Prevention of Money Laundering, and that they should have power to sanction."*

96. Mainly the Bank of Albania has so far implemented supervision programmes dealing with AML[6].

* * *

- *"Again, to review the situation to determine the most effective method for ensuring that all subjects are identified and made aware of their obligations under the Law, including practical issues regarding submission of reports to the FIU, and that they comply with their legal obligations. In this process the Albanian authorities should consider what, if any, new supervisory structures are required."*

97. The "Guideline-Regulation" N°5 of 2004 (art. 8) clearly states that the GDPML (which is the Albanian FIU) "shall evaluate how each Reporting Subject implements the LPML and this Regulation." The new draft LPML grants a general supervisory and inspection power to the GDPML.

* * *

- *"the Securities Commission should make sure that an adequate licensing regime be in place as well as that a supervision system with respect to anti-money laundering be established."*

98. The stock exchange has not started operating yet. No specific AML measures have been taken so far for the sector by the Securities Commission, apart from a basic licensing regime.

* * *

- *"Again, to ensure that there are effective means for the elimination of illegal foreign exchange operations and that action in practice is taken against persons offering this kind of illegal exchange."*

99. The Albanian authorities have managed to remove black market foreign exchange from the vicinity of the Bank of Albania. But this kind of activity is still very common, at least in the capital. The authorities are facing a dilemma and believe that the imposition of strict measures would just lead to that kind of activities happening underground.

* * *

- [During the first round evaluation it was recommended that controls on company formation should be in place to guard against criminal infiltration in the private sector, especially with respect to the National Privatisation Agency. The evaluators were told that the absence of a criminal record is still not required to start a company. In the view of the evaluators the procedures in this regard need re-examination.] "*The evaluators therefore recommend that a review is undertaken to ensure that necessary controls on company formation are in place to guard against criminal infiltration in the private sector."*

100. There have been no significant measures taken in this respect. Criminal backgrounds are not checked during company formation. They are only checked during the licensing process.

* * *

[6]Information was provided at the time of discussion of the report that similar programmes have been implemented later by the Insurance Supervisory Authority.

- *For the FIU "to consider how more appropriate feedback can be given to the reporting institutions and person."*

101. There is still no policy or practice on feedback. The concept of feedback itself is unknown.

* * *

- *"To clarify the division of responsibilities for supervisory purposes and thereafter to review the full resource needs of the FIU in relation to this aspect of the work and that sufficient resources should be provided"*

102. The GDPML has now in principle the power, according to art. 8 of the "Guideline-Regulation" N°5 of 2004 to check compliance with the LPML by all obliged entities. But this is not reflected in the LPML version of 2003 (although it is mentioned in some by-laws).

* * *

- *"to re-address the question of securing efficient access for the police to financial information. It should be considered whether the police should be able to ask the FIU to provide the information."*

103. There are still restrictions for the police to access financial information at the preliminary investigation stage, in particular banking information. Both the Police and the GDPML admit that the former can obtain that kind of information through the latter. They have done so for 2 or 3 cases so far.

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- *"To set up a central police database as a matter of urgency. It would also be beneficial, if the police, especially the Department on Organised Crime and the Financial Crime Section obtains easier access to relevant information held by other agencies, for example the General Directorate of Customs and the General Tax Directorate."*

104. The creation of a central police database is under way. The project is running over the period 2004-2007, with the support of the EU and United States (total cost: € 20 million). The project is run by the Directorate of technology and managing information, set up in October 2004. The system will interconnect all police directorates and all border-crossing points (8 of which were covered at the time of the visit). The Customs are also about to complete their IT networking process.

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- *"It is therefore recommended, that the law enforcement authorities in Albania should consider a more proactive use of special investigative means in the detection and investigation of money laundering cases."*

105. Since the second evaluation round, Albania has developed its legal framework in the Criminal Procedure Code for the use of special investigative means. The examiners were advised that mainly interception of communications are used in the

course of investigations of serious crimes (in 2005, interceptions have been used on 181 occasions and controlled deliveries on 13 occasions).

* * *

- *"again, to lower the threshold of 1 million leke applicable to the declaration of cross border movements of funds"*

106. The threshold is still the same (equivalent to €8300).

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- *for the Customs authorities "to take a more proactive and dedicated role in money laundering investigations, e.g. more systematically expanding their own investigations into the economic dimension of crimes within their competence and by detecting illegal proceeds in relation to money laundering. Also training and overall awareness-raising in respect of anti money laundering issues within the Customs´ personnel should be considered."*

107. The information provided on site indicated that the Customs mostly forward their money laundering suspicions to the GDPML. Several initiatives have been taken to train Customs officer in ML but it is acknowledged that efforts need to be continued.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

2.1.1 Description and Analysis

108. Albania has criminalised money laundering through Article 287 of the Criminal Code of the Republic of Albania (Law No. 7895 dated 27.01.1995 amended by Law No. 9275 dated 16.09.2004):

Article 287. Laundering of proceeds of crime.

1. Laundering of proceeds of crime committed through:

- *a. the conversion of transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person involved in the commission of the offence to evade the legal consequences of his/her action related to the commission of the offence;*
- *b. the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property derived from criminal activity;*
- *c. performance of financial activities and fragmented/structured transactions to avoid reporting according to the money laundering law*
- *cc. the acquirement, possession or use of property knowing that it has derived from criminal activity;*
- *d. advise, encouragement, or public call for the commission of any of the offences described above*
- *dh. the use and investment in economic or financial activities of money or means that derive from a criminal offence*

is punishable by three to ten years of imprisonment and a fine from 500 thousand to 5 million lek.

2. If the same offence is committed during the exercise of a professional activity, in collaboration or more than once, it is punishable by five to fifteen years of imprisonment and a fine from 800 thousand to 8 million lekë. If the same offence has brought grave consequences, it is punishable by no less than fifteen years of imprisonment and a fine from 3 million to 10 million lekë.

3. Provisions of this article apply even in the case when a person that has committed the offence from which derive the proceeds of crime, cannot be a defendant, cannot be convicted, or there is a cause that wipes out the offence or one of the conditions for the criminal proceeding of such an offence is lacking."

109. The definition of the money laundering offence is largely in line with the UN Conventions. Para 1c) and dh) are somewhat unusual but certainly useful.

110. Albania has adopted the "all-crime" approach: any offence of the Criminal Code which could have generated criminal proceeds is a predicate offence to the money laundering offence. The Albanian authorities confirmed that the FATF designated categories of offences are all included in the Criminal Code, with the exception of market manipulation which is not explicitly criminalised.

111. Money laundering is punishable if committed intentionally. Negligent money laundering is also covered, as a result of the provisions of the general part of the Criminal Code. Art.14 on the definition of guilt states that "A person is guilty if he commits the criminal act intentionally or because of negligence", the latter being defined in art. 16[7].

112. There are some differences in terminology and both the wording "proceeds of crime" and "property derived from criminal activity" are used. The Albanian authorities informed the evaluators that the wording "property derived from criminal activity" is not restricted to property which derives directly from criminal activity but also to the property that indirectly constitutes the proceeds of crime.

113. Unlike the second round of evaluation, when the dominant position was that a conviction for the predicate offence was needed in order to press charges/obtain a conviction for money laundering, the attitude has changed and it is now agreed that a conviction for the underlying offence is not needed anymore on the basis of jurisprudential developments and para. 3 of art. 287. However, one prosecutor advised that it is still for the prosecution to prove that the proceeds are connected with a specific predicate offence.

114. When the predicate crime is committed abroad by an Albanian citizen, money laundering in Albania is prosecutable domestically (art. 6 of the Criminal Code). Where the offender is a foreign citizen, money laundering in Albania is only prosecutable where it is committed against the interests of the Albanian State or an Albanian citizen (Article 7 of the Criminal Code). In the situation where a foreign citizen commits the predicate crime abroad and launders the proceeds in Albania leaving the interests of the Albanian state or an Albanian citizen unharmed, there seem no possibility – according to legislation - to initiate a prosecution of the offender for money laundering. Several practitioners met on site (including from the Ministry of justice) insisted on the contrary and referred to concrete practice, indicating also that there might have been a misunderstanding due to translation problems at the time of the second round. The issue needs further clarification.

115. According to the prosecutors, self-laundering is covered by provisions of article 287 of the Criminal Code and by the provisions related to concurrence of criminal acts (article 55 of the Criminal Code). There is no unanimity, though, on this issue (the

[7] Article 16 **Negligence** : "A criminal act is committed because of negligence when the person, although he does not want its consequences, foresees the possibility of their occurrence and with light mindedness attempts to avoid them, or when he does not foresee the consequences, but according to the circumstances, he should and could have foreseen them."

interpretation of the representative of the Serious Crime Court is that self-laundering is not covered whatsoever).

116. These conflicting interpretations, especially since they involve specialised bodies responsible for money laundering cases, need to be clarified as well.

117. The general provisions on attempt, collusion and collaborating, which are dealt with in the general part of the Criminal Code, are in principle applicable to the money laundering offence. This being said, art. 287 para 1d) covers "*advise, encouragement, or public call"* and para 1a) covers "*helping"*. Ancillary offences appear to be appropriate but for the sake of consistency and better compatibility with the UN Conventions, it is advisable to have the provision on "helping" provided for also in art. 287 para 1d) which deals with the various ancillary offences specific to art. 287 to make sure assistance is also punishable in relation with the offences described under para 1 b, c and cc. For the same reason, it would also be better to move sub-para 1d) at the end (after sub-para 1dh)).

118. The Law does not expressly state that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. Nevertheless, the Albanian authorities advised that with the ratification of the Palermo Convention, Albania has accepted this principle. It would provide useful guidance to domestic practitioners if it was stated in the Albanian Criminal Code as well.

119. Article 14 of the Law on Prevention of Money Laundering provides for the principle of corporate liability when legal entities do not comply with this Law. Non-compliance of the subjects with the LPML constitutes an administrative offence punishable by a fine from ALL 50,000 to ALL 10 million (approx € 4200 to 83,000).

120. Apart from that, and in case of money laundering, only the Criminal Code is applicable. The criminal offence of money laundering is punishable by imprisonment from three to fifteen years and a fine from (also) 500 000 to 10 million ALL. A set of aggravating circumstances call for higher penalties. The range of sanctions seems appropriate and it leaves a good margin of decision on the penalty, depending of the circumstances and seriousness of each individual case.

121. Albania has also introduced the concept of corporate criminal liability in art. 45.

Article 45
The Application of the criminal law on legal persons/entities

The legal persons, with the exception of the state, are criminally responsible for crimes performed by their agencies or representatives on behalf of or for the benefit of them.

The bodies of local government are criminally responsible only for the actions performed during the exercise of their activity that may be exercised by the delegation of public services.

The criminal responsibility of the legal persons does not exclude that of the physical persons that have committed crimes or are collaborators for the commission of the same crimes.

The criminal offences and the sanctioning measures taken against the judicial entities, as well as the procedures for the approval and application of these measures are regulated by a special law.

122. As indicated in the last para. of this article, the matter is regulated in a secondary piece of legislation. The examiners were advised that it needs to be passed and that a draft was in Parliament at the time of the on site visit. The Ministry of Justice did not expect difficulties concerning its final approval.

123. The exact number of convictions for money laundering remains unclear. The replies to the questionnaire provided no figures. On site, practitioners from the prosecutor's office indicated that two convictions had been obtained so far (in the period 2002-2003). The Ministry of Justice indicated that there had never been any conviction for money laundering, and the GDPML had no information at all. Additional figures provided after the visit (see below) indicated 5 convictions for money laundering.

Investigations: 12	Indictments: 5	Convictions: 5

124. It was thus difficult to obtain information on these various cases and to discuss the application of art. 287 in the light of concrete experience and against the background of certain predicate offences. It also remained unclear how these cases had been generated (by the preventive regime involving the FIU or by the police and prosecution). In any case, the results appear to be modest, given the importance of criminal activities[8].

125. The examiners are fully conscious of the difficulty to keep appropriate statistics in the absence of computerised data and information network systems. But it is surprising that there are so many difficulties to provide consistent data on the number of court cases concerning money laundering despite the specialist bodies in place, including an FIU which has also overall responsibility. The team were concerned that neither the Ministry of Justice nor the GDPML knew of no money laundering convictions and that this issue is taken up below under domestic cooperation (Section 6.1).

2.1.2 Recommendations and Comments

126. Although the legal provisions on criminalisation appear to be sound, it would certainly be improved if certain issues were put beyond doubt with more explicit provisions and if the drafting was more consistent. For the time being, there is no mechanism in place to hold legal persons responsible for a money laundering offence. The LPML is limited to penalties for non compliance with certain of its requirements, and the Criminal Code – which now covers corporate liability - needs to be complemented with the secondary legislation. It is also a matter of urgency for the Albanian authorities to keep reliable figures on the use of art. 287 and to analyse whether full use is made of this provision.

127. **It is recommended :**

- **to make it clear preferably in the Criminal Code that Albania has jurisdiction over money laundering offences when the predicate offence was committed abroad by a foreign citizen,**

[8] 5 further money laundering cases have been sent to prosecution after the visit of the evaluation team.

- **to specify that self-laundering is covered (bearing in mind that Albania has accepted this principle),**
- **to specify that knowledge, intent or purpose can be inferred from objective factual circumstances**
- **to make sure (through guidance documents, general instructions or otherwise) that the standard of evidence for establishing the link between the illegal origin of assets laundered and the money laundering offence does not require a separate court decision as art. 287 para.3 seems to suggest**
- **to adopt the secondary legislation needed for the implementation of the Criminal Code provisions on corporate criminal liability**
- **to review the order of the sub-paragraphs of art. 287 1) and to insert the ancillary offence of «helping» or assisting also in sub-para 1d) (and to move this sub-para at the end of sub-para. 1))**
- **to examine whether greater use should be made of the provisions criminalising money laundering when investigating all major proceeds-generating offences.**

2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating[9]
R.1	**PC**	Certain issues need to be clarified (that Albania has jurisdiction when predicate offence was committed abroad by a foreign citizen, that self laundering is covered, that a separate court decision is not needed to establish the link between the money laundering offence and a specific underlying criminal act); the structure of art. 287 needs to be reviewed and the text be made consistent; effectiveness issue: few cases in the context of Albania
R.2	**LC**	Secondary legislation on corporate criminal liability is missing; objective factual circumstances as standard of proof not explicitly provided
R.32	**PC**	lack of accurate, reliable and consistent statistics; leading authorities unaware of the real situation

2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

2.2.1 Description and Analysis

128. Albania has ratified in 2002 the 1999 UN Convention for the suppression of the financing of terrorism.

129. Article 230 of the Criminal Code criminalises terrorist acts. It was complemented in 2003 and 2004 by further provisions criminalising activities related to the financing of terrorism: articles 230/a (inserted in 2003), 230/b, 230/c and 230/ç (inserted in 2004). Article 234 a/ on terrorist organisations, apart from dealing with the creation and participation in such structures, also deals with their financing. The

[9] These factors are only required to be set out when the rating is less than Compliant.

examiners were furthermore advised that the provisions on armed gangs may also be applied in a terrorism case.

Article 230 Terrorist acts

Committing violent acts against the life, health of people, personal freedom through kidnapping of people or hijacking public transportation, with the intent to seriously disturb public order and instilling fear and uncertainty in the public is punishable by no less than fifteen years of imprisonment or to life imprisonment.

Article 230/a Financing of terrorism

Financing of terrorism or its support of any kind is punished by imprisonment not less than fifteen years or with life imprisonment and with fine from 5 million leke up to 10 million leke.

Article 230/b The hiding/concealing of funds and other wealth/goods that finance terrorism

The transfer the conversion, the concealing, the movement or the change of property of the funds and of other goods, which are put under measures against terrorism financing, in order to avoid the discovery and their location, is sentenced with imprisonment from 4 to 12 years and with a fine from 600,000 to 6 million Leke.

When this crime is committed during the exercise of a professional activity in cooperation or more than one time, it is sentenced to imprisonment from 7 to 15 years and with a fine from 1 million to 8 million Leke, whereas when it causes serious consequences, it is sentenced with imprisonment for no less than 15 years and with a fine of 5 million to 10 million Leke.

Article 230/c Giving information from persons that carry public functions or persons on duty or in exercise of the profession

Getting acquainted identified persons or of other persons with data regarding the verification or the investigation of funds and other goods towards which are applied measures against terrorism financing, from persons exercising public functions or in exercise of their duty or profession, is sentenced with imprisonment from 5 to 10 years and with a fine from one million to five million Leke.

Article 230/ç The performance of the services and actions with identified persons

The giving of funds and of other wealth the performance of financial services as well as of other transactions with identified persons towards whom are applied measures against terrorism financing, is sentenced with imprisonment from four to 10 years and with a fine from 400,000 to five Million Leke.

Article 234/a Terrorist organizations

The establishment, the organization, the leading and the financing of the terrorist organizations is sentenced with imprisonment of no less than 15 years.

The participation in terrorist organizations is sentenced to imprisonment from 7 to 15 years.

130. Article 230/a alone, which was added in 2003, is extraordinarily broad and could cover most of the requirements of SR.II.

131. One could wonder why art. 230 b/, c/ and ç/ were added in 2004. In fact, the Criminal Code addresses two different types of situations:

- a general criminalisation of terrorist financing

- a special regime which covers in addition, in 230/b, 230/c and 230/ç, the concealment/disguise of funds and other assets/property subject to special CFT measures; tipping off and breach of official secret relating to measures applied against terrorism financing and engaging in any business operations with identified persons subject to CFT measures. This is to be put in relation with special measures taken by virtue of the UN Security Council Resolutions. This regime complements to a large extent the administrative seizure and freezing mechanism of the Law on Measures for the Suppression of Terrorism Financing, No. 9258 (Date 15. 07. 2004) (see also Section 2.4 later on in this report).

132. As far as the general regime is concerned, art. 230/a is a "catch-all" provision. The question remains open as to what extent it is applicable in practice and whether it offers a sufficient degree of legal security for both the accusation and the defendant.

133. Interestingly, Article 3 paragraph 6 of the Law on Measures for the Suppression of Terrorism Financing, No. 9258 (Date 15. 07. 2004) defines a *Person who finances terrorism* as "*everyone who provides or collects, by any means, directly or indirectly, funds and other assets that could be used, in whole or in part, to facilitate the commission of terrorist acts, or to any persons acting for or on behalf of, or at the direction of such persons. This category includes those who provide or collect funds and other assets with the intention that they will be used or in the knowledge that they are to be used in order to carry terrorist acts."*

134. Funds and other assets are defined in the same Law as "*financial property, and assets of any kind, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such funds or assets. These funds and assets include, but are not limited to, bank credits, travellers' checks, bank checks, money orders, shares, securities, bonds, drafts, letters of credit, and any interest, dividend, or other income collected or generated by such funds and assets*."

135. The above definitions match more closely and precisely the various requirements of SR. II and the 1999 UN Convention on the suppression of the Financing of Terrorism, with a few exceptions. The definition of terrorist financing covers only terrorist acts, but not terrorist organisations and individual terrorists, and the definition of *funds and other assets* omits to specify a reference to tangible and intangible assets.

136. Notwithstanding these considerations, it is doubtful whether these definitions could provide any form of guidance for the purpose of interpreting art. 230/a since Law No. 9258 provides for an administrative mechanism and the definitions are thus part of the administrative legal order. In particular, the Albanian authorities clearly agree that the collection or raising of funds is not covered by the existing penal provisions and that this needs to be addressed.

137. Another possible reading of article 230/a of the Criminal Code is that it could be limited by the definition provided for in Article 230 which only covers terrorist acts (although it does not use the same wording – terrorism as opposed to terrorist acts). The representative of the Serious Crime Court confirmed this interpretation. It could be justified further by the presence of article 234/a which addresses specifically the financing of terrorist organisations. One of the immediate consequences of this situation is that the scope of criminalisation of terrorist financing is too narrow and does not cover, for instance, the financing of individual terrorists and terrorist activities (e.g. training) not necessarily connected with a specific terrorist act.

138. The provisions of the Criminal Code on terrorist financing need to be reviewed to ensure that:

(a) they extend to any person who wilfully provides or collects 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:

(i) to carry out a terrorist act(s);
(ii) by a terrorist organisation; or
(iii) by an individual terrorist.

(b) they extend to any *funds* as that term is defined in the terrorist financing Convention. This includes funds whether from a legitimate or illegitimate source.

(c) Terrorist financing offences should not require that the funds: (i) were actually used to carry out or attempt a terrorist act(s); or (ii) be linked to a specific terrorist act(s).

139. Attempt to commit the offence of terrorist financing is criminalised by the general part of the Criminal Code (Chapter III - articles 22 and 23 which deal with attempts to commit criminal offences).

140. The types of conduct set out in Article 2(5) of the Terrorist Financing Convention are covered by Articles 26, 27 and 28 of the Criminal Code, which deals with collaborators (organisers, executors, instigators and abettors) and their responsibility, as well as provisions on armed gangs and criminal organisations. Collaborators bear the same responsibility as executors of the criminal act. Members of an armed gang or a criminal organization bear responsibility for all criminal acts committed by the gang or the organisation if they have acted either as organisers, executors, instigators or abettors. Chapter XI of the Criminal Code contains provisions on penalties for organising the group and committing criminal acts by the group. Articles 26, 27, 28 and chapter XI of the Criminal Code are general rules, applied to all criminal offences, thus applied also to terrorist financing, as it was mentioned earlier.

141. Since Albania has opted for the "all-crime approach" as regards the predicate offences for money laundering, terrorist financing - as provided for in art. 230/b of the Criminal Code - is one of these.

142. From the wording of Article 230/a and subsequent articles, it seems that the possibility is not explicitly foreseen to apply terrorist financing offences regardless of whether the person alleged to have committed the offences is in the same country or a

different country from the one in which the terrorist(s)/terrorist organisation(s) is located or where the terrorist acts occurred/will occur. Albanian interlocutors advised the evaluators that it was possible to apply the criminal offence also in these circumstances, but no concrete case confirming this possibility was mentioned.

143. As it was the case for the money laundering offence, the law does not expressly state that the intention can be inferred from objective factual circumstances.

144. The penalties for terrorist financing appear to be adequate. As indicated under the previous Section on the criminalisation of money laundering, there is no mechanism in force as yet to impose sanctions on legal persons due to missing secondary legislation implementing art. 45 of the Criminal Code which deals with the liability of legal persons. In any case, unlike the criminal law provisions on money laundering, the liability of legal persons is not explicitly contemplated under the provisions criminalising terrorist financing. This issue needs clarification.

145. The evaluators were informed on site that in total, 6 convictions for the criminal offence of financing of terrorism had been pronounced so far (the examiners understood that these were mostly connected with the cases described under Section 2.4). The judge of the Serious Crime Court indicated that "one case on TF had been brought to court so far but before the creation of the Serious Crime Court". Due to the inconsistency, more detailed statistics were requested, and provided after the visit, indicating the following:

Investigations: 26	Indictments: 10	Convictions: 8

2.2.2 Recommendations and Comments

146. Albania has put in place provisions which allow its authorities to potentially apprehend any terrorist financing situation[10]. This being said, for the sake of legal security, it would certainly be better to refine the provisions so as to cover the various international requirements. These should also make it clear that it does not matter where the terrorist act or beneficiaries were located, and that legal persons can be held liable. **It is thus recommended**:

- **to review the current Criminal Code provisions criminalising the financing of terrorism to make them more consistent and ensure they explicitly cover the various elements (terrorist acts, terrorist organisations, individual terrorists) and the collection of funds, along the lines of the UN Convention and FATF Special Recommendation II.**

- **to explicitly provide for the applicability of terrorist financing provisions regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist organisation is located or the terrorist act occurred**

[10] A legal package is currently under discussions in Parliament; which includes the secondary legislation needed on the penal liability of legal persons and several amendments to the Criminal Code concerning the financing of terrorism.

- **to specify that knowledge, intent or purpose can be inferred from objective factual circumstances**

- **to provide explicitly for the applicability to legal persons of sanctions for terrorist financing.**

2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**PC**	**The Criminal Code needs to be amended to cover all elements of SRII, to explicitly provide for the applicability of provisions regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist organisation is located or the terrorist act occurred, to specify that knowledge, intent or purpose can be inferred from objective factual circumstances, to provide explicitly for the applicability to legal persons of sanctions for terrorist financing**
R.32	**LC**	**Figures are inconsistent**

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

2.3.1 Description and Analysis

Confiscation

147. Articles 30 and 36 of Criminal Code contain relevant provisions for confiscation. Article 30, referring to "confiscation of criminal offence committal means and criminal offence proceeds", concerns the use of confiscation as an additional penalty both for "offences and criminal contraventions" (which are the two categories of offences contemplated by the Criminal Code). For less serious criminal offences, punishable by a maximum penalty of three years imprisonment, it is possible not to apply confiscation.

148. Article 36 of Criminal Code provides for a general framework concerning confiscation:

Article 36
Confiscation of the instruments and proceeds of the criminal offence

1. The confiscation is mandatory issued by the court and means obtaining and transferring in favour of the state:
a) items that have served or are assigned as instruments for committing the criminal offence;
b) proceeds of the criminal offence, which includes any kind of property and also the legal documents or instruments that prove titles or other interests in the property that derives

or earned directly or indirectly from committing the criminal offence;
c) rewards whether given or promised, for committing a criminal offence;
ç) any other property the value of which corresponds to that of the proceeds of the criminal offence;
d) items, the production, use, possession or disposal of which constitute a criminal offence, even where there is no decision of conviction.

2. If the proceeds of crime are transformed or converted, wholly or in part, into other properties, the latter is subject to confiscation.

3. If proceeds of crime are mixed with other property lawfully gained, the latter are confiscated to the value of the proceeds of crime.

4. Income or other benefits from proceeds of crime, property which is the outcome of transformed or converted proceeds of crime or property which is mixed with these proceeds, are subject of confiscation in the same amount and manner as proceeds of crime.

149. Confiscation covers confiscation of proceeds, of corresponding value of the proceeds and of instrumentalities. The provision applies to converted or indirect proceeds, to intermingled proceeds and to income and benefits of proceeds. It allows for the confiscation of the equivalent value when proceeds have been converted, as well as for the confiscation *in rem* (without conviction, which is useful when the owner has died or disappeared).

150. It is clear from para. 1 that Confiscation is mandatory.

151. Art. 36 does not provide explicitly for the confiscation from third parties (when proceeds have been transferred to the ownership of relatives or straw-persons). This aspect is seen by Albanian practitioners as a loophole, since on other occasions, this is envisaged for temporary measures (see below art. 210 of the Criminal Procedure Code dealing with proceeds kept by banks).

Temporary measures

152. As for temporary measures, there are basically two regimes: one dealing with the seizure of items which are of probative value (Articles 208-220 of the Criminal Procedure Code), and one dealing with the seizure of instruments of crime and criminal assets (Articles 274-276).

153. The situation has not changed since the previous evaluation round and temporary measures under the Criminal Procedure Code can only be applied once a formal investigation has been opened. The Police, when in charge of the preliminary investigations, cannot perform or ask for such measures.

154. As in the case of confiscation, temporary measures require in principle a court decision following a proposal from the prosecutor. The examiners understood that the measure is applied *ex parte*, without prior notice to the suspect.

155. Some exceptions where the prosecutor can decide himself to apply temporary measures are only contemplated under the regime of seizure of evidence.

156. Although it is mainly the second regime that is worth considering for the purpose of the present report, one can underline that Art. 210 – under the regime of seizure of evidence - provides for the seizure of bank documents but also assets held by banks: "*The court may order the seizure of bank documents, negotiable instruments, sums deposited in current accounts and any other thing, even if they are in safety vaults, when there are reasonable grounds to think that they are connected to the criminal offence, even though they do not belong to the defendant or are not under his name. In urgent cases this decision may be taken by the prosecutor*." It should also be underlined that the seizure of bank documents can be a useful tool in tracking proceeds of crime, but as already indicated, this is only possible when a formal investigation has been opened.

157. Concerning the second regime, on seizure of instrumentalities and proceeds of crime, the provisions of the Criminal Procedure Code are as follows:

Article 274 Object of preventive seizure

1. When there is a danger that free possession of an item connected to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences, the competent court, on the application of the prosecutor, orders its seizure by reasoned decision.

2. Seizure may also be ordered against items, proceeds of the criminal offence and against any other kind of property that is permitted to be seized conform Article 36 of the Criminal Code.

3. When the application conditions alter, the court, on the application of the prosecutor or interested person, cancels the seizure.

Article 275 Cessation of seizure

1. The court or prosecutor with the decision of acquittal or dismissal of the case, orders the return of items seized to the one they belong, unless they must be confiscated because they have served or were assigned to commit a criminal offence or because they are product or profit of the criminal offence.
2. When a decision of conviction has been issued, the effects of seizure continue if the confiscation of the items seized has been ordered.
3. The items seized are not returned if the court decides to maintain the seizure to guarantee the credits.

Article 276 The appeal against the decision

1. Whoever has an interest may appeal against the issue or rejection of seizure order.
2. The appeal may be filed within ten days from the issuing of the decision or from the day the interested person received knowledge of the seizure.
3. The appeal is filed with the secretariat of the court which issued the decision.
4. The appeal does not suspend the execution of the order.

5. The court of appeal rules on the appeal within fifteen days from receiving the documents.
6. The court may decide, as the case warrants, the overruling, amending or approval of the decision appealed.
7. When the decision is not announced or executed within the specified time, the decision of seizure ceases to have any effects.

158. Art 274 paragraph 2 states explicitly that proceeds from crime and any other property that is confiscatable can be seized. Temporary measures remain applicable until the final judgement and their confiscation. There is thus no time constraint – as it can be observed in other countries - deriving from certain time limits for the application of temporary measures. Furthermore, although the description of seizable assets is not very detailed, the reference to all assets that are confiscatable makes it clear for instance that indirect proceeds, proceeds which have been intermingled etc. are also covered. The reference to Article 36 also helps ensure consistency regarding the wording used to designate the proceeds.

159. It is worth underlining that even in case of acquittal of the suspect or dismissal of the case, assets which are instrumentalities and proceeds of crime remain subject to temporary measures and eventually, confiscation (art. 275 para.1).

160. Art. 276 deals with appeals against temporary measures. Interestingly, in case the court does not make a decision within 15 days about the appeal, the initial court order imposing provisional measures is automatically invalidated. It remained unclear to the evaluation team whether the current workload of Albanian courts could lead in practice to such occurrences. None of the police or prosecutorial representatives met on site complained about this, but it is important that the Albanian authorities consider this matter.

161. Law No 9284 dated 30 September 2004 "On Preventing and Striking at Organized Crime" provides for seizure and confiscation of proceeds from crime related to organised crime, but also to terrorist assets. Art. 7 of this Law prescribes that property subject to confiscation can be seized by court on proposal of the prosecutor when there is a real and particular danger of the loss, misappropriation or alienation of the stated property.

162. Art. 9 of this Law provides for temporary suspension of the administration and control of the assets used for the performance of economic activities which are suspected to be under influence of criminal organizations. Law on Preventing and Striking at Organized Crime provides for the seizure of assets that belong to persons against whom a reasonable suspicion exists that they have connections with organised crime groups, as well as persons connected to them (art. 3), when it is established that the assets are out of all proportion to the income declared or the economic activity conducted by those persons; or there are well-grounded reasons to believe that the items are proceeds of crime or their investment.

163. The court orders this seizure on the prosecutor's request. Further on, the court may compel the person against whom investigation is being conducted to justify the lawfulness of origin of assets (art 13). Prosecutor is entitled to request the confiscation of the assets whose lawful provenance is not verified (Art. 24 and 25).

164. The investigations and trials according to this law are supported by the civil and administrative rules in force (Art. 4) Thus, this law allows for civil forfeiture of the property that belongs to criminal organisations and burden of proof in relation to lawful origin of this property is on the defendant.

165. Under Articles 5 and 6, the prosecutor himself or through judicial police performs actions for the investigation concerning the financial assets, properties, economic activities, life style and sources of income. To that end, the prosecutor is entitled to obtain information from any state body, legal or natural person.

166. Still, the requirement to open a formal investigation remains.

167. The Provisions of Law N° 9284 give Albanian authorities broad powers in relation to confiscation of property related to criminal organisations and terrorism. Still, the evaluation team was not provided with significant statistical data on seized and confiscated assets using these powerful tools.

168. In "ordinary" cases (those not related to organised crime), civil forfeiture is not allowed.

169. As underlined in the previous Section, and as far as terrorist financing is concerned, Law N° 9284 uses the same definition as the Criminal Code, which lacks accuracy and which is not clearly enough in line with the international requirements. Like the definition of the Criminal Code, it needs to be amended, in line with the former.

170. Rights of injured parties are protected by Art. 58 to 68 of the Criminal Procedure Code, allowing them to intervene during the process. Since confiscation from third parties is not possible, the law does not provide for the protection of rights of bona fide third parties.

171. The Albanian authorities have provided information indicating that they do make use of the above provisions on freezing, seizure and confiscation.

In the context of money laundering cases

172. There have only been temporary measures applied so far, which are reflected in the tables below concerning the measures applied by the GDPML as a result of the reporting regime, and measures known of by the Ministry of Justice. It was confirmed to the examiners after the visit, that there had never been confiscation orders issued in a money laundering case.

173. This is somewhat disappointing since there have been convictions applied for money laundering, and Albania has adopted the all-crime approach and mandatory confiscation. There is also the fact that Art 36 is drafted in broad terms, in particular para. 2 and 3 which are clear on the issue of mandatory confiscation of proceeds which have been transformed, converted or mixed with other property. This situation is probably to be examined in the context of uncertainties concerning the exact number of money laundering convictions pronounced so far (see above, Section 2.1). It could also

well be that the convictions for money laundering obtained so far were "supported" by other convictions for the underlying offences.

Assets frozen by the Albanian FIU as a result of suspended transactions						
Type of assets	**year 2001**	**year 2002**	**year 2003**	**year 2004**	**First quarter year 2005**	**Progressive**
In 000/thousand Albanian Lek	**-**	**-**	**556**	**-**	**-**	**556**
In 000/Thousand USD	**-**	**-**	**1 500**	**1,5**	**-**	**1 501,5**
In 000/Thousand EURO		**-**	**-**	**1 966**	**-**	**1 966**
Land-Bank m2		**-**	**-**	**17 066**	**-**	**18 166**
Building m2	**-**	**-**	**-**	**-**	**-**	**2 407**

Freezing/seizure orders in money laundering cases Data from the Ministry of Justice
2 freezing orders concerning two bank accounts – 158 million leke or approximately 158.000,00 USD

In the context of organised crime and other criminal cases

174. In January 2005, a group of 2 prosecutors was created in the Prosecution Office for Serious Crimes to deal specifically with the application of the requirements of the Law no. 9284 "For the prevention and the fight against organized crime". Since its creation (and at the time of the visit), there have been two cases in which temporary measures were applied by virtue of the new provisions. These concern a car (value: ALL 900,000), a store (46m^2), an apartment (48.5 m^2) and a truck.

175. As far as confiscation orders are concerned, the information was provided, after the visit, by the Prosecution Office for Serious Crimes for the period of 2004-2005. Such orders have been applied in respect of 46 cars of recent make, 8 lories, 2 ships, 7 containers, 1 store-room (magazine), 2 hotels, 1 two storey villa, 1 five storey building, 2 apartments of 48 meter square and ALL 20 million.

Management of seized and confiscated assets

176. Another major innovation of the Law No 9284 dated 30 September 2004 on Preventing and Striking at Organized Crime is the creation of an "Agency for Administration of Sequestrated and Confiscated Assets". The examiners were advised on site that this body would facilitate a lot the application of measures targeting

proceeds from crime since for the time being, a number of logistical issues in this respect have not been solved or are dealt with on a case by case basis. The agency in question is not yet in place due to missing secondary legislation[11].

2.3.2 Recommendations and Comments

177. The evaluation team welcomes the many modern improvements introduced by Law no. 9284, dated 30.09.2004 "For the prevention and the fight against organised crime". No doubt, the Albanian authorities are now provided with effective tools to deal with the criminal assets and money laundering schemes of organised criminal groups.

178. This being said, the normal framework of the Criminal Procedure Code still suffers from some drawbacks which need to be addressed in order to enable the police and prosecutorial authorities to cope with the proceeds of all forms of serious crimes (including for instance corruption). The quality of the Criminal Procedure Code provisions may also impact on the ability of Albania to cooperate internationally in these fields. In due course, it might be worth considering to enlarge the scope of offences subject to the provisions of Law N° 9284 (which - in the immediate – needs amendment as regards the terrorist financing definition(s)).

179. **It is therefore recommended:**

- **to provide explicitly for confiscation from third parties along with the legal protection for bona fide third parties**
- **to consider reviewing the legal framework so as to allow for the application of provisional measures before opening a formal investigation**
- **to allow for the application of provisional measures under Articles 274-276 directly by the prosecutor in case of urgency (with *ex post* approval by the judge).**
- **to analyse the reasons for the moderate use of temporary and final measures in money laundering cases and to take measures to encourage their use (e.g. training, internal circulars etc.)**
- **to examine the functioning in practice of the automatic cessation of temporary measures under Art. 276 (when the court does not render a decision within 15 days of the application) to make sure that measures applied against criminal proceeds are not revoked for undue reasons (court overload, insufficient file management etc.)**
- **to review in the Law No. 9284, the definition of terrorism financing, in line with the similar recommendation already made concerning the Criminal Code**

2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**PC**	lack of explicit confiscation from third parties; formal investigation needed to apply provisional measures and impossibility for prosecutors to apply directly urgent temporary measures; definition of TF in Law N°

[11] The decree was adopted and the agency established (under the Ministry of Finance) shortly after the visit. The agency comprises three staff members.

		9284 is not clear and broad enough; effectiveness issue as regards confiscations
R.32	**PC**	no detailed statistics systematically kept; statistics difficult to obtain (partly due to incomplete computerisation)

2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

2.4.1 Description and Analysis

180. After September 11, the Albanian authorities reacted promptly with the adoption on 15 November 2001 of the Council of Ministers' National Action Plan against Terrorism providing for a series of measures for the verification, identification, freezing and seizure of bank accounts and assets possibly connected with persons involved in terrorist financing.

181. Following the UN Resolutions (notably 1267 and 1373), Albania adopted an important piece of legislation, namely Law N° 9258 of 15.07.2004 on Measures for the Suppression of Terrorism Financing – hereinafter LMSTF (see annex).

182. This law introduces several measures for the detection, reporting and freezing of funds suspected to be related to terrorism. The drafting (or at least the English translation which was provided to the evaluators) sometimes lack accuracy but there are basically two mechanisms: a list based administrative detection and freezing mechanism, and a general reporting mechanism, based partially on the Law on Prevention of Money Laundering. The LMSTF also provides for other important provisions.

Listing and temporary measures

183. The LMSTF of 2004 provides for the elaboration of a list by the Council of Ministers (Art. 5) and empowers the latter to update this list in the light of those of the UN Security Council and other international organisations or other agreements. The list of the United States would also have been used as some interlocutors advised on site. The list was compiled by the Ministry of Finance and approved by the Council of ministers by Resolution N° 718 of 20.10.2004.

184. On the basis of the LMSTF and this list, the Minister of Finance is entitled (Art. 6) to issue an order for freezing, seizing and/or prohibiting dealings with funds and other assets of the persons and organisations appearing on the list ("designated persons"). The Minister of Finance is entitled to issue this order even before the decision of the Council of Ministers to include the person on the list, if this is necessary to take urgent measures to avoid the dissipation of assets. The measures are applicable immediately (without prior notification of the target person), for a period of no more than 30 working days (the time needed to decide on listing the person).

185. As for assets and funds that are to be frozen or seized, it is clear from the definitions given by the LMSTF (article 3, paragraph 3) that any kind of property can be seized, including indirect proceeds (property generated from property owned or controlled by designated persons). The scope of the LMSTF seems limited to assets of

designated persons (in articles 6 and 16). However, Art. 15 para 4, 5 and 6 make clear that it applies to any funds connected with the designated persons, whatever the "ownership rights, control rights, or other rights and interests", no matter "who owns or uses the funds and assets" etc. It also applies to "interests and benefits from funds and other assets". This important clarification is globally in line with SR.III.

186. The decision concerning the adoption and subsequent decisions on additions to, or removals from the list of designated persons made by the Council of Ministers (following proposals from the Minister of Finance) are published in the Official Gazette. Therefore, financial institutions are in principle informed of the list and its current status.

187. Whilst some administrations and business entities confirmed on site that the list had also been communicated to them by mail or other means, it remained unclear to the examiners if it has been systematically communicated to the public in general and to all relevant public and private bodies and entities (e.g. all obliged persons, registers of legal persons, register of shares etc.), with the appropriate explanations or some guidelines.

188. It is the Council of Ministers who decides on delisting designated persons upon a proposal from the Minister of Finance. This can also be done (within 15 days) as a result of the complaint mechanism, whereby a designated person can appeal against him/her appearing on the list. After the submission of the proposal or complaint, the decision to modify the list or to revoke the decision affecting designated persons enters into force on the seventh day after the decision is published in the Official Gazette. The LMSTF (article 26) makes no distinction between the delisting of names listed by virtue of Resolution 1267 (the universal list for which only the UN Security Council is competent) and those listed on the basis of Resolution 1373 (for which national authorities are themselves competent): in both cases, delisting can only take place in consultation with the UN Security Council and other international bodies.

Temporary and confiscation measures under Law N° 9284 of 2004 "On Preventing and Striking at Organized Crime"

189. The Law 9284 has introduced several interesting changes and new powers to target the proceeds of crime. The law applies explicitly to all offences under Chapter VII of the Criminal Code on "Terrorist acts". As underlined in the previous section, the law provides for extensive temporary and confiscation measures, including a confiscation mechanism based on the civil standard of proof. The strengths and weaknesses of this piece of legislation, as well as of the general penal law provisions have already been underlined. Law No. 9284 also contains mechanisms to challenge the measures so as to have them reviewed by a court.

190. Once assets have been frozen by virtue of the administrative mechanism introduced by the LMSTF, the confiscation is applied in principle on the basis of Law No. 9284. It should be underlined that this law has a retro-active effect as it is "*also applicable to unlawful assets of suspected persons* [resulting from crimes] *committed before the entry into force of this law*".

191. Albania has thus the means to deal effectively with TF cases and assets outside the scope of SR. III and for cases which have been generated before the LMSTF and the UN Resolutions were adopted.

Reporting

192. The LMSTF provides also for a general reporting mechanism. Article 10 contains an obligation for any person who knows that funds are aimed at terrorist financing to notify immediately the Minister of Finance, the GDPML (the FIU) or the authorities responsible for dealing with criminal offences. Article 10 para. 2 provides that information and suspicions of terrorist financing are to be reported by obliged entities to the GDPML, under the anti-money laundering law, with the accompanying information (data on the funds, information on ownership and related interests, an explanation of the reasons which have given raise to the suspicion).

193. Notifications and reports under art. 10 must be done immediately when the facts are known or the suspicion arises. The Minister of Finance can then decide to immediately suspend an operation or transaction for a period of 7 working days. When doing so, the Prosecutor's office must also be informed immediately and given the file with a view to possible criminal proceedings.

Other arrangements

194. Both the decisions of the Council of Ministers as regards the listing, and those of the Minister of Finance as regards the application of temporary measures can be challenged in court.

195. Article 17 of the LMSTF provides for a system of judicial appeals by any interested person (the person directly concerned or a third party) against the temporary freezing:

Article 17

Appeal against the temporary freezing

1. The interested person may file a special compliant with the court against the Minister of Finance's order to temporarily freeze funds and other assets pursuant to article 16, point 1 to the Tirana District Court.

2. The Court examines the case within 10 days, implementing provisions for administrative cases. In any case, the complaint does not suspend immediate execution of the Minister of Finance's order.

3. The interested person shall be obliged to prove to the Court that he/she:

   a) has a legitimate right in the funds and other assets of the designated person;
   b) has legal resources for the rights and interests in the funds and assets; and that
   c) the funds and assets being regarded by the Court are not related to terrorists, terrorist entities, persons financing terrorism or other persons related to

them.

4. The interested person is considered notified from the date of being in the knowledge of the issuance of the order. In any case, the case is examined within the deadline set forth in paragraph 2 above, if the Minister or his designee presents sufficient data for the failure to find the address, location of the interested person or his/her presence within the legal deadline for trying the case.

5. In the case of freezing real estate, a copy of the freeze order and the court's decision shall be sent to the respective real estate office. The latter is obligated to take measures for enforcing them immediately.

196. The system in place thus allows not only to challenge the decision but also to protect the rights of *bona fide* third parties.

197. It is worth underlining that by virtue of para. 3, the complainant must prove not only the legitimate destination of the proceeds, but also their legitimate origin, in order to have those assets released.

198. The examiners also noted that art. 21 (on "*permitted expenses from funds and other assets*") allows for the payment of expenditures linked with "*medical, familiar or personal needs of a designated person, for debts/liabilities to the government, or debts deriving from executed performance or obligatory insurances*" (to be authorised by the Minister of Finance within 72 hours from submission of the request). The Minister of Finance is entitled to establish detailed rules and procedures on allowed expenses taking into consideration the criteria set forth in the UN Resolutions. However, the evaluating team was not informed of a by-law or other regulation that provides for these procedures. It is also unclear whether a request emanating from a person listed by virtue of Resolution 1267 would be forwarded to the UN Security Council (as it should be). This Albanian authorities need to ensure that these issues have been addressed.

199. Administrative sanctions are provided for in Art. 24 of the LMSTF in case of non compliance with this law and its requirements. The LPML and the "Guideline-Regulation" N°5 of 2004 (art.8) also provide for sanctions but there are some inconsistencies and contradictions (for the details, see Section 3.10).

200. Article 8(3) sets out a general rule according to which the Minister of Finance is in charge of international cooperation in the field of investigation, exchange of data and other measures against terrorism financing. However, the Law does not provide for elaborated procedures on the handling of and follow up to actions initiated by other jurisdictions.

Results

201. The system in place has produced results.

202. By virtue of the list compiled by the Ministry of Finance and approved by the Council of Ministers by Resolution N° 718 of 20.10.2004, 7 freezing/seizure orders were issued and published in the official journal:

- Order nr.2 dated 24.12.2004 ‘’For sequestration of Arab citizen's assets, Yasin Kadi, and company joining him announced in October 2001’’
- Order nr.5 dated 10.03.2005 "For sequestration of assets of Nabil Abdul Sayadi, announced on 22 January 2003”,
- Order nr.6 dated 10.03.2005 ‘’For sequestration of assets of Patricia Rosa Vinck announced on 22 January 2003”,
- Order nr.7 dated 10 .03.2005 ‘’For sequestration of assets of "Global Relief Foundation (GRF) foundation” announced on 22 October 2002,
- Order nr.8 date 10 .03.2005 "For sequestration of assets of “Ringjallja e Trashëgimisë Islame” foundation, known as “Revival Of Islamic Heritage Society", RIHS; announced on 22 January 2003,
- Order nr.9 dated 10.03.2005, "For sequestration of assets of “Taibah of Islamic" foundation, known as "Shoqata Ndërkombëtare e Ndihmave’’,
- Order nr. 10, dated 10.03.2005 "For sequestration of assets of "Al Haramania" foundation, announced on 06 June 2004.

203. Temporary measures were applied against the following assets (during the period 2001-1st quarter 2005):

- 52 bank accounts (representing a total value of 2 136 226 Euro, 313 161 USD and 3 560 169 lek.
- Several buildings and apartments, where the persons listed owned 33% of the ownership on this property; these consisted in 23 apartments representing a total surface of about 2429 m2.

204. As a result of the reporting on FT information and suspicions, the GDPML has received some reports. The exact number and their origin remains unknown and it is hard to assess what impact the list and the reporting duty has had in the various sectors in which obliged entities (notably) operate.

205. These reports have generated, in 6 cases, reports from the GDPML to the Prosecutor General’s Office. For some of these, it turned out that the information was grounded. These cases involved:

- 3 individuals and 11 companies,
- 2 Islamic foundations,
- 1 company.

2.4.2 Recommendations and Comments

206. With the LPML, the LMSTF and Law N°9284 of 2004, Albania has an impressive legal machinery in place to deal with terrorist financing. Globally, the existing system complies with the various international requirements and SR. III in particular.

207. This being said, the system lacks clear provision on the follow up to actions initiated by other jurisdictions under the UN Security Council Resolutions. From the discussions held on site, it was also clear that the reporting entities, especially those of the private sector need further guidance, especially those which already do not report on money laundering. The GDPML and/or supervisors need to check that these lists are known and complied with. The absence of figures on the reporting of suspicions in relation with TF and their lack of awareness of those issues on site does not allow to conclude that sufficient attention was paid to them.

208. Further issues which could impact to a variable extent on the overall functioning of the machinery have been addressed in other parts of the report (definition and consistency of definitions of terrorist financing, sanctions for non compliance, investigations, international cooperation etc.).

209. **It is recommended:**

- **to develop legal procedures for actions initiated by other jurisdictions (including the designation of an authority to deal with these)**
- **to ensure secondary provisions and a mechanism are in place to adequately deal with requests for payments (of subsistence and other expenditures) from listed persons, and that those involving persons listed by virtue of Resolution 1267 are decided upon by the Security Council**
- **to develop guidance for the private sector in the field of reporting suspicions and information in relation with TF and to make sure they are checking their clientele against the Albanian list of persons elaborated by virtue of the Security Council Resolutions**
- **to keep figures on the origin of FT information and suspicion reports in order to assess the effectiveness of cooperation of the industry and other sectors**

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**LC**	No explicit procedures for actions initiated by other jurisdictions; further guidance needed for the private sector and making sure the lists are taken into account; not clear what the rules are to deal with authorised expenditures
R.32	**PC**	No information on confiscation measures applied to FT; number of FT reports and information sent to the GDPML is unknown which makes assessment of effectiveness difficult

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1 Description and Analysis

General information, structure and means of the FIU

210. The FIU, originally the Directorate for coordination of the Fight against Money Laundering, is a relatively young institution. It was established in August 2001 under the Ministry of Finance. This administrative type FIU became a member of the Egmont Group in July 2003. In February 2005, following a decision of the Council of Ministers, it was upgraded to a General Directorate and became the General Directorate for the Prevention of Money Laundering (GDPML).

211. The aim of this change was to enhance the existing structure and to provide it with operational independence, including a separate budget.

212. Shortly before the evaluation, the Head of the FIU was replaced (he remained in the FIU though) by a General Director appointed on 2 August, 2005.

213. The new Head was appointed following an open competition organised by the Department of Public Administration. He acknowledged himself that he was new in the AML/CFT field and the team understood that he enjoys a good managerial reputation which would be useful in the context of the development of the GDPML to obtain further means and support.

214. During the discussions held on site, it was acknowledged that the position of the General Director is not fully satisfactory yet. The General Director is "bound" to the Portfolio of the Minister and it would be preferable if the post holder enjoyed greater independence, for instance by providing that he/she is appointed for a fixed term.

215. The GDPML moved shortly before the visit to separate new premises which have been renovated with the support of EU funds. The premises are not yet equipped and furnished. This was a crucial improvement as in the absence of dedicated premises until then, the FIU had to move several times in the last few years. In the building of the Ministry of Finance where it was last located until 1 August 2005, there was only one single room available for the whole staff, with unsecured access. Other shortcomings included the loss of the connection to the Egmont Group network due to the IT firewalls of the Ministry of Finance.

216. The new premises have been designed to accommodate up to 31 officials. At the time of the visit, all the positions had not been filled. The GDPML comprised 10 staff (of which 3 work for the Analysis Department and 4 for the Inspection Department). Further recruitments are envisaged on the basis of new criteria and specific job descriptions aimed at ensuring adequate qualifications and an irreproachable reputation of the new recruits. These recruitments will take place under the responsibility of the General Director of the GDPML and the Department of Public Administration. This recruitment process is expected to be finalised by the end of 2005. This will be crucial since the GDPML will also be in charge of the general supervision and has already inspection powers (although not explicitly mentioned in the LPML) to ensure the adequate implementation of the LPML by all obliged entities. Albanian authorities should be aware that this kind of work is extremely time consuming.

217. The GDPML also receives the permanent support of a resident expert from the US Treasury Department.

218. New requirements have been introduced recently to become a member of the FIU: not being a member of an ethnic-based organisation, clean criminal record (also for relatives), to declare assets and all risks of conflicts of interests (on a voluntary basis).

219. The GDPML does not possess a dedicated IT system for the on-line collection of transaction reports and their processing. The current IT system in place can only be used for basic work. Reports are sent by fax or courier by the reporting entities. The analytical work is done manually, without the assistance of software. The lack of an IT structure within the GDPML does not allow for direct access to databases such as those of the police, customs, internal revenue, Bank of Albania etc. Its representatives are conscious of this gap and it is envisaged to introduce a modern IT system with appropriate software in the near future, with the support of EU and other funding.

220. The GDPML was also very much interested in foreign experience when it comes to the design of such a system for the automated recording and pre-analysis of transaction reports.

Functions and powers

221. It is important to note that the LPML, which also addresses to some extent the financing of terrorism (but not always in a consistent manner – see Section 7 of this report: the GDPML is not explicitly competent for CFT issues when it comes to international cooperation) entrusts the GDPML in Article 7/1 with general AML and CFT responsibilities. The GDPML is the "Responsible Authority" referred to in the LPML.

222. Article 8 is a compendium of the "Duties and rights of the responsible authority":

- To collect data and reports from the entities and bodies subjected to the LPML
- the GDPML has access to data held by state institutions and from all public registers
- to analyse the reports and other information received from obliged entities and other law enforcement bodies to identify the clients, the final "receiver" and the source of financial transaction;
- to gather additional information from the entities listed in article 3 of the LPML in order to identify the clients and their representatives, individuals in the name of whom bank accounts are opened or who are the beneficiaries of transactions, as well as the source of those revenues
- to cooperate with financial intelligence units and appropriate law enforcement authorities both domestically and from abroad for the purpose of exchanging information to identify, detect, postpone and freeze transactions and sequestrate proceeds from penal acts
- to develop cooperation and procedures with foreign FIUs and other authorities, for the purpose of exchanging information and documents needed for the disclosure and detection of illegal money laundering operations

- to disclose information and reports to other competent authorities in order to investigate, inquire and take action against individuals in suspected cases of money laundering
- based upon a reasonable belief of the existence of money laundering, to issue temporary blocking and freezing orders for any financial transaction for a period of up to 72 hours
- to send to the Prosecutor's Office a copy of the act on temporary blocking and freezing of a financial transaction
- to present the case to the Prosecutor's Office when the GDPML believes that sufficient evidence exists to establish the penal act of money laundering.
- to consult with the Prosecutor's Office on the issue of money laundering
- to preserve, manage and keep the data and other legal documentation of financial operations for a period of 10 years
- to organise and participate in training programs for government and financial institutions regarding money laundering and terrorist financing.

223. Regarding the main task of the GDPML, it is worth underlining that the 10th bullet above (subject to reliability of the translation) is somewhat questionable. Although in principle the GDPML – as an FIU – should do analytical work on the basis of reports received from obliged entities and should try to confirm the suspicion (or generate new suspicions based on the global data collected, especially those above a threshold), the 10th bullet point seems to require from the GDPML to prepare the case for the court. Discussions with representatives of the judicial police and prosecutors indicated that this interpretation probably prevails at the moment (see Section 2.6 beneath), whereas – in the examiners' mind - the work of an FIU should not be to establish the guilt. The function of the FIU thus needs clarification.

224. The GDPML receives suspicious transaction reports and reports concerning transactions in cash or transfers of funds in excess of ALL 20,000,000 (USD 150,000), as well as reports connected with suspicions of terrorist financing. An overview is provided below (see Section 3.7 for further information) :

Reports based on suspicious transactions					
2001	**2002**	**2003**	**2004**	**First quarter 2005**	**Totally**
2	**28**	**37**	**53**	**13**	**133**

Reports based on cash and transfers exceeding the threshold					
2001	**2002**	**2003**	**2004**	**First quarter 2005**	**Totally**
58	**354**	**880**	**27 709**	**8 556**	**37 557**

225. The number of cases forwarded to the prosecutor's office are shown below:

2001	2002	2003	2004	First quarter 2005	Total
2	**4**	**3**	**8**	**1**	**18**

226. The information centralised by the GDPML, by virtue of the reporting regime of the LPML and the LMSTF emanates from different sources (see also Section 3.7 further down). 80% of reports are sent by the banking sector.

227. Regarding the status of the information and data collected by the GDPML, it remained unclear whether it is subject to appropriate safeguards to ensure its confidentiality. The LPML is silent on this issue for the time being but as indicated in art. 5(h) of the new draft LPML, the GDPML shall put in place "*independent systems of information technology and take measures to protect and secure and not to allow the access of unauthorized persons*".. It is a positive step that the GDPML can easily and freely share information with other institutions such as the police and Customs. The Customs representatives for instance, indicated that they can obtain information from the GDPML, including on bank transactions. But it remained unclear to the examiners whether this was only for AML/CFT purposes and restricted to authorities dealing with these issues. The examiners believe that this needs to be clarified as it would also contribute to strengthen the protection and independence of the GDPML.

228. The GDPML has the overall responsibility for international cooperation and coordination in the field of AML (and CFT, subject to certain clarifications – see Section 6.5) on the basis of the various international instruments to which Albania is a Party, and the standards recognised by the country in this field (FATF Recommendations, Egmont Group statement of purposes etc.). The Albanian FIU is entitled to sign and participate in agreements with foreign bodies (art. 15(6) LPML). The examiners were advised that information can be exchanged with any type of FIU and even without a memorandum of understanding, which is in line with the Egmont principles.

229. Due to the absence of adequate network connection (the GDPML has lost access to the Egmont secured network due to the IT firewalls of the Ministry of Finance), it takes about 10 days to provide information to a foreign counterpart FIU in hard copy.

230. According to Article 8, and as indicated above, the GDPML has the power to issue orders requiring from obliged entities to freeze/postpone a transaction for up to 72 hours. It does not need to apply to the prosecutor to do so (only a copy of the order is sent for information).

231. As regards additional access to information held by reporting entities, the LPML is granting a general access to the GDPML and its representatives met on site did not raise any particular problems in this respect to the attention of the examiners. The major problems seem to be connected with the apparent conflict between the LPML and statutory provisions applicable to certain independent professions (e.g. lawyers, notaries) but since there has been no case so far initiated by these professions and DNFBP in general, it is unclear whether the professional secrecy privilege would be an obstacle in practice.

232. Since its creation and up to the first quarter of 2005, 17 postponement/freezing orders have been issued, as shown in the table and breakdown below. The examiners found that the GDPML has made a rather moderate use of this faculty, bearing in mind the number of reports received, as well as the level of computerisation (within the GDPML and Albania as a whole) which would logically suppose that some time is

needed to obtain information from external sources to check the whereabouts of a transaction.

Postponement/freezing orders issued by the GDPML					
2001	**2002**	**2003**	**2004**	**First quarter 2005**	**Total**
-	**4**	**2**	**5**	**6**	**17**

233. The table below also provides an overview of cases sent to police for further inquiry/information.

Cases sent to police for further inquiry/information/investigation					
2001	**2002**	**2003**	**2004**	**Quarter 2005**	**Totally**
3	**18**	**21**	**27**	**7**	**76**

234. The GDPML is responsible for the elaboration of reporting forms and providing guidance for their use and in general as regards the implementation of the LPML. These forms appear as appendices to the Guideline-Regulations N°5 and 8 of 2004 (form for reporting of a suspicious activity, form for the reporting of currency and value transactions, form for the reporting by tax authorities and the Customs etc.).

235. The GDPML has also organised some training seminars on a non regular basis for money laundering compliance officers from the banks and the law enforcement agencies. This training was not expanded to all the other sectors and /or professions, even the non -, or under-reporting ones. In the opinion of the examiners, the problem at the moment is that the least regulated and the least informed sectors are particularly vulnerable to ML/FT.

236. According to article 17/1 paragraph 4.b.of the anti money laundering law, the GDPML has access to all kind of information held by state institutions and available in public registers (but not directly or on-line for the time being). In addition, the GDPML can request information from all entities that according to the LPML are subject to the reporting duty.

Periodic reports

237. According to Criterion 26.8 of the methodology, an FIU "should publicly release periodic reports, and such reports should include statistics, typologies and trends as well as information regarding its activities."

238. In principle, the GDPML is required to produce such a periodic report. However, the provisions do not state that the report should be public and there is an apparent lack of consistency as regards the intervals of publication. For instance Art 5 (g) of Decision N°108 of February 2005 on the organisation and functioning of the GDPML states that the latter prepares an annual report on its activities that is presented to the National Committee on Coordinating the Fight Against Money Laundering and other institutions that have similar functions or that are involved in AML/CFT.

According to Art. 8/1 para. 3 of the LPML, the GDPML presents a report every 6 month to the National Committee.

239. For the time being, despite these regulatory requirements, there has been no report on its activities published by the GDPML. It was explained on site that the size of staff did not allow to carry out that kind of synthesising work.

240. In the new draft LPML, it is envisaged that the GDPML will both publish an annual report and present a report every six months to the National Committee. However, the new Art. 8/1 para l dealing with this matter[12] does not fully reflect the requirements of criteria 26.8 of the methodology as it does not contemplate the presentation of typologies and trends. This issue is important given the current absence of any analytical work on the phenomenon and characteristics of money laundering in Albania. On the other hand, since the duty to report to the National Committee and to the public are now covered in the same text suggests that there will be two types of reports published, restricted operational ones, and a more general version for the public.

241. The drafting of a report would help the GDPML and the National anti-money laundering coordination Committee to identify possible weaknesses in the AML/CFT system of the country in order to take corrective measures.

Statistics

242. The GDPML has provided the examiners with statistics illustrating its activities (reports received, cases forwarded, number of postponed transactions, international cooperation etc.) but it is not always clear whether these are kept on an on-going basis and with a sufficient degree of precision regarding the origin of reports received from obliged entities. As it was also indicated earlier (see Section 2.4), there are no figures available as to the number of reports received in relation with suspicions of terrorist financing.

243. Also, the GDPML has no information concerning the outcome of cases once they have been passed to the prosecutor. The examiners wondered how it can assess its own work and added value under such circumstances.

2.5.2 Recommendations and Comments

244. The recent improvement of the GDPML's working conditions and means are a positive development addressing concerns and recommendations expressed during the second round.

245. The examiners were concerned about the problems that have affected the independence and autonomy of the GDPML and it is to be hoped that with the last changes, some of these problems belong now definitely to the past. As regards the political independence, the position of the Head of the GDPML does not yet appear to be satisfactory.

[12] it shall issue a public annual report, including a description of its activities, relevant statistics and plans, by [March 31] of each year;

246. Further efforts will also be needed to specify the role and improve the transparency of the GDPML's work, and to regulate the status of the information kept. Also, with the development of supervision and inspection functions, the introduction of an automated information and analysis system, and the recruitment of new staff, training will need to be provided.

247. **It is recommended:**

- **to take any further measures that are deemed necessary to ensure definitely the autonomy and independence of the GDPML (e.g. a fixed term for the post of General Director, statutory independence *vis a vis* instructions etc.)**
- **to provide for clear rules guaranteeing the confidentiality and regulating the use/sharing of information centralised by the GDPML so that it is used only for AML/CFT purposes**
- **to provide the GDPML with an adequate budget and equipment to make it less dependent on foreign assistance**
- **to clarify the role of the GDPML as an analytical, administrative body instead of a body in charge of investigations and finding hard evidence on ML/FT offences (which should remain the police and prosecutorial bodies' responsibility)**
- **to ensure the increase of staff takes place as planned so that the GDPML can deal with its analytical work and can start implement its new supervisory and inspection function, and to put in place a training programme for the GDPML staff**
- **to produce and publish a periodic report by the GDPML and to provide for consistent requirements on this matter**
- **to establish as soon as possible a computerised information system to receive on-line, process and store rapidly the data transferred by obliged entities and to help the GDPML improve access to information, the quality of its analytical work and its ability to cooperate domestically and internationally**
- **to introduce a training scheme taking into account the newly recruited staff, the development of supervisory/inspection functions, and the introduction of an IT system (an analytical software)**
- **to keep on an ongoing basis more detailed statistics on the origin of reports received and the outcome of cases forwarded to the prosecutor.**

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	**The GDPML needs to be strengthened in various respects (independence and autonomy, protection and status of information, production of a report etc.).**
R.30	**PC**	**Insufficient means (equipment, IT and analytical facilities/capacities, staff etc.);heavy reliance on foreign assistance**
R.32	**LC**	**Insufficient breakdown of the origin of transactions and no information on outcome of cases forwarded to the prosecutor's office; not clear if information is kept on an ongoing basis**

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

2.6.1 Description and Analysis

248. Despite the size of the country, Albania has managed to develop a high level of specialisation of law enforcement, prosecutorial and judicial bodies in the fields covered by the present report: the Police Directorate for Combating Organised Crime and Witness Protection (and its Division on the fight against money laundering and economic-financial crime), the Prosecutor's Office to the Serious Crime Court and the Office for economic crime, money laundering and terrorist financing (which is competent for all forms of money laundering, whether connected or not with another offence or a criminal structure), and the Serious Crimes Court (competent for TF, and for ML when the latter is committed in connection with a serious crime or by a criminal structure).

249. The existence of a continuous chain of specialist bodies able to deal with greater expertise, means and powers with organised crime activities and terrorist cases, and sophisticated forms of crime is a major asset for the country.

250. As already indicated in earlier parts of this report, special measures have been taken to make these specialised entities more resistant to corruption.

251. According to law, all state agencies must – in principle - report criminal acts to the Prosecutor's Office. But nothing prevents them also from communicating the facts to the judicial police. Therefore, in principle, the GDPML forwards its files stemming from the analysis of reports from obliged entities to the Prosecutor's Office (for economic crime, money laundering and terrorist financing) via a prosecutor acting as contact person. The Office decides whether the case deserves an investigation and deals with it or delegates the investigation to the judicial police. As a general practice, most cases are sent to the police.

252. Sometimes, the GDPML sends the case to the police when additional information or steps are required.

253. The respective roles are not yet fully agreed upon, as it seems. The police and prosecutors underlined that the GDPML was not in a position to do any investigative work that would be sufficient to press charges immediately (and send the case to the court) and that most cases are just forwarded by the GDPML to the Prosecutor's Office without any analysis. Representatives from the GDPML underlined themselves that in principle, although a suspicion of their behalf was enough to send a case to the prosecution service, if there was enough evidence, the case would be sent to the Prosecutor's Office to present it to the court. Police representatives underlined that although they had "offered information to the GDPML on 47 occasions", the latter had never generated a money laundering case. In the light of the above, it is therefore clear that the GDPML needs to conduct more in-depth analytical work.

254. The Judicial police, under the lead of the Prosecutor's office, can initiate a money laundering or terrorism financing investigation during the investigation of a

predicate offence or when they have reasons to suspect that a person (legal or physical) is engaged in such activities. Although the police representatives underlined that a financial investigation is usually initiated when a case deals with a major proceeds generating offence (it is delegated as such by the prosecutor), they added that no money laundering investigation had been concluded so far. The representatives of the prosecutor's office seemed to have no broader picture apart from the cases generated by the reporting system and forwarded to them by the GDPML (one case sent to court and two convictions during 2002-2003).

255. It was also acknowledged that judicial proceedings are slow, and that efforts need to be made to speed up cases dealing with money laundering and major proceeds generating offences. It was acknowledged that the level of expertise of judges dealing with money laundering cases in general (the cases not handled by the Serious Crime Court) was not sufficient and that additional training on financial and economic/business issues would be useful.

256. Finally, it remained unclear if all terrorist financing cases, whether or not they had been initiated on the basis of the LMSTF and the UN Resolutions, have been concluded by court decisions so far. Although the results appear to be adequate so far, in relation to the freezing of assets under UN Security Council Resolutions (see the 7 orders under Section 2.4.1), the Albanian authorities should ensure that action is always followed by appropriate criminal investigations.

Powers, means, working methods

257. The judicial police and prosecutors, acting under court control, have several investigative powers at their disposal. These are regulated in the Criminal Procedure Code and in the Law of September 2004 "On Preventing and Striking at Organised Crime" (which is dealing, for the scope of offences contemplated by this law, mainly with access to information and temporary and final measures). The later has given new and powerful tools to law enforcement and prosecution (see Section 2.3).

258. Documents which are useful for ML and FT investigations can be obtained through search and seizure warrants and court orders. As indicated already in the second round report, the Police do not have the power to ask and obtain directly bank documents. These documents can be obtained through the GDPML (the police representatives from the Division on the fight against money laundering and economic-financial crime indicated they had done so on two or three occasions) or when the General Prosecutor's Office applies to the court for a disclosure order, that is when a formal investigation has been opened. The representatives of the police did not complain about this situation, indicating that the current system was preferable to avoid certain abuses.

259. All the information collected under the procedures provided for in the Criminal Procedure Code can be used as evidence in court. The Code regulates in a detailed way the use of witness statements in the course of investigations and prosecutions, as well as during court proceedings. Various measures have been introduced to encourage witnesses to testify (witness protection measures, measures on collaborators of justice etc.). Such measures can be applied in a money laundering or terrorist financing case.

260. Investigative powers are basically regulated in the Criminal Procedure Code which notably deals with searches (Art. 202-206), seizure of documents and access to information (Art. 208-220), surveillance methods – including interceptions of communications, electronic surveillance, bugging, telecommunication traffic surveillance etc.- (Art. 221-226), staging of offences ("simulated actions" – Art. 294/a) and infiltration (Art. 294/b). Interception of communications and secret surveillance (Art. 221/1 and 221/2) are applicable during judicial investigations in case of intentional crimes punishable by more than 2 or 7 years imprisonment. This covers ML and FT in most cases. The staging of offences and infiltration are applicable during the preliminary investigation (the provisions appear under Title VI on preliminary investigations). Whilst the former is applicable during the investigation of any crime, the latter can be used in cases of serious crimes only (those which fall under the jurisdiction of the Serious Crime Court).

261. Although the practitioners met on site indicated that they can apply all investigative techniques, it remained unclear under which provisions controlled deliveries are provided for (or would be applied). [13] The same goes for the requirements under criteria 27.2 of the Methodology concerning the ability to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in ML/TF or for evidence gathering. Clear provisions may be needed. These would also enable Albania to cooperate internationally in this field.

262. The examiners were advised that mainly interception of communications are used in Albania and that these had also been applied on a few occasions during an investigation dealing with ML and TF.

263. The Police and Prosecution can establish special investigative groups involving experts chosen by the police (they are delegated and remain paid by their institution) and officers from different Departments. The Criminal Procedure Code also provides for coordinated prosecutorial action (territorial transfer of a case, cooperation between different territorial offices and adjunction of a case), which is particularly useful to handle organised crime cases and investigating complex offences.

264. Judicial Police officers dealing with ML and TF are ordinary police academy graduates with no special academic and/or professional experience in financial issues. These officers receive additional training "in house". Some training programs have also been put in place that are financed by the international community or the Albanian Government. The representatives of the police recognised the need for further training especially on Terrorism Financing issues. Prosecutors did not raise any particular concern as far as their level of expertise is concerned.

265. Other issues were brought to the attention of the examiners. These concern the staffing of the central departments of the Police Directorate for Combating Organised Crime and Witness Protection and the Prosecutor's Office for economic crime, money laundering and terrorist financing, which are considered to be insufficient at the

[13]The Albanian authorities advised later that there are specific provisions on controlled deliveries under the Law on combating trafficking in drugs of 2001. For controlled deliveries in other criminal activities, it was said that art. 294/a (on simulated actions) and 294/b (on infiltrated police personnel) of the CPC are used.

moment given the complexity of cases they are dealing with. The police suggested that some staff could be transferred from the districts to the central department of the Division on the fight against money laundering and economic-financial crime (each of the 12 district divisions has 12 staff, whereas the central division has only 4).

266. As for the study of ML and FT methods, trends and techniques, none of the authorities met on site mentioned the existence of work on those issues. As underlined in sections 2.5 and 6.1, the different actors involved in AML/CFT each have their individual views, which are based on assumptions. This situation was reflected in the replies to the questionnaire where different bits of information were provided under different parts of the replies. Efforts need to be done by the police, the prosecutors, the GDPML and others, to produce studies of that kind, and as underlined in Section 6.1 of this report, these efforts should ultimately lead to a concerted approach.

2.6.2 Recommendations and Comments

267. It was difficult for the examiners to get a precise picture of the impact of the work done in the AML field and to evaluate whether at the level of the police and prosecution, there is a culture of targeting the proceeds of crime which takes into account laundering of criminal proceeds. The difficulties to obtain accurate and consistent statistical information did not help understand the current situation (see Section 2.1). The figures available, whatever the reality is, are not impressive given the relatively important criminal activity affecting Albania. One should also bear in mind the various allegations concerning money laundering problems in different sectors. It is thus hard to conclude that ML is properly investigated.

268. Overall, given the strength of the legislative framework, the range of investigative powers available, the chain of specialists to deal with AML/CFT issues, the small number of investigations and convictions for ML is disappointing. Whilst resource issues and evidential requirements are perceived as difficulties, the examiners believe that these provide only for part of the explanation for the modest results obtained so far regarding money laundering.

269. If the police in general increase the level of awareness on, and expertise to deal with money laundering, it is likely that further money laundering investigations could be initiated also at their level.

270. **It is recommended :**

- **to clarify the respective responsibilities of the GDPML on the one hand and the police and prosecutorial bodies on the other hand; the former should in principle be an analytical body generating possible ML and FT cases, whilst the latter should initiate their own cases, in addition to investigating and prosecuting cases generated by the GDPML**
- **to produce studies on ML, including its trends and techniques**
- **to increase the level of expertise at the level of judicial police (further training and guidance in all police departments that deal with the investigation of ML and financial crimes more generally, recruitment of experts with academic background etc.)**

- **to review the adequacy of the staffing of the Police Directorate for Combating Organised Crime and Witness Protection (especially its central Division on the fight against money laundering and economic-financial crime) and of the Prosecutor's Office for economic crime, money laundering and terrorist financing, and increase it as necessary with transfers from district agencies**
- **to provide further training to judges on ML and financial crimes more generally**
- **to clarify the legal basis for controlled deliveries and the possibility to waive the arrest of a suspect for the purpose of ML/FT investigations**

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	**Unclear distribution of tasks; little attention paid to ML by the police and prosecution bodies during criminal cases initiated at their level; no clear provision on the ability to waive arrest warrants and controlled deliveries[14]; no research on ML (and FT) trends and techniques**
R.28	**C**	
R.30	**LC**	**More resources, awareness raising initiatives and training are needed at the level of police, prosecution and judges on money laundering issues and financial crimes more generally**
R.32	**PC**	**No accurate and consistent statistics available on the impact of the work done by the police and prosecution concerning ML**

2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

2.7.1 Description and Analysis

271. By virtue of the LPML (art. 10), Albania has a declaration system according to which individuals, resident or non-resident, when entering or leaving the territory of Albania, are obliged to declare the cash, travel checks, precious stones/metals and other antiquaries they carry, starting from ALL 1,000,000 or equivalent of this amount in hard currencies. This corresponds to about € 8300, which is in line with the threshold contemplated in SR. IX (€ or USD 15,000). As it has been underlined in previous reports, this threshold might be high in the context of Albania but the authorities find it appropriate.

272. The data collected is, in principle, sent to the GDPML on a daily basis.

273. Art 179/a criminalises failure to declare cross-border movements of monies and other valuables. The sanction is a fine or up to two years imprisonment.

[14] ibid

Article 179/a
The non-declaration of money and of valuable objects

The non-declaration, in entrance or exit of the territory of the Republic of Albania of amounts of money, of any type of bank check, of metals or precious stones, as well as of other valuable objects, beyond the value provided by law, constitutes penal contravention and is punished by fine or imprisonment up to two years.

274. The sanctions above are the only ones. Art 179/a was recently amended so as to include also fines. A draft amendment to Chapter 8 of the Customs Code has been prepared to include sanctions for non declaration also in the Customs regulations. It is still unclear whether false declarations or partially undeclared amounts will be sanctioned. For the time being, the Criminal Code only addresses the absence of declarations. The Customs representatives acknowledged that in case of false or partial declaration, there is room for discretionary decision, although in principle, the undeclared part of funds would normally be seized.

275. As a result of information campaigns about the duty to declare cross-border movements of cash and negotiable instruments, the number of such declarations would have increased during the first half of 2005.

276. According to Article 10 of the AML Law the Customs authorities are obliged within 72 hours to identify any person and report to the GDPML any suspicion of ML. Article 4 paragraph 2 describes what information should be submitted to the GDPML.

277. Upon discovery of a false declaration or failure to declare, Customs have the authority to obtain and request further information from the carrier with regard to the origin of the monies or values and their intended use.

278. Customs have the authority to stop or retain currency or bearer negotiable instruments in order to ascertain whether evidence of ML or FT may be found when there is a suspicious of ML or FT or when there is a false declaration.

279. When there is a declaration which exceeds the prescribed threshold or when there is a false declaration or when there is a suspicion of ML or FT, the customs have the power to retain information on the amount of currency or bearer negotiable instruments declared or otherwise detected and the identification data of the bearer.

280. The Customs have investigative powers and every case is investigated by the Customs investigators in their own field of competence.

281. If the preliminary investigation reveals possible elements of ML or FT, the case is reported to the GDPML (under art. 10 of the LPML) for evaluation. According to the figures kept by the GDPML for the period 2001-2005, the Customs authorities have filed 16 ML suspicion reports to the GDPML (4 or 5 cases, according to the information provided during the discussions by the Customs). The Customs admit that it is difficult for them to identify possible money laundering schemes and that additional training is needed. As it was indicated in the replies to the questionnaire:

"*Criminal elements and their organizations are constantly attempting to launder their illegal proceeds by smuggling bulk cash into and out of Albania. These criminal enterprises are known to covertly use international trade and fraudulent practices against Albanian Customs in their attempts to launder their illicit profits through import/export businesses*". The contribution of the Customs to the AML/CFT efforts therefore appears to be modest.

282. Although there is always room for improvement, it is believed that the co-ordination among customs, immigration and other related authorities on ML and FT issues are at a good level.

283. Customs are co-operating with other counties, especially with neighbouring ones, on Custom offences. 5 cases of business with stolen cars from abroad were detected in 2005. Investigations were under way in 4 of them whilst in one case connected with Austria, one person was convicted.

284. The Customs have signed inter- ministerial documents and instruments with various Ministries and the business community, including :

- MoU on Anti Drugs Co-operation with the Anti-Drugs Directorate
- National Action Plan "On the co-operation between customs and police territorial units" (2002)
- Agreement with Ministry of Defence "On the implementation of importing and storage rules for pyrotechnic and explosive items"
- Agreement with Ministry of Defence "On the prevention of maritime smuggling" (2003)
- Prime Minister's Instruction 47 "On the Establishment of the Joint Information Exchange Centre" (2004)
- MoU with the business community "On the facilitation of customs procedures"
- Agreement with the private transport operators at airports and ports

285. The Customs have also signed MoUs with the following countries: "the former Yugoslav Republic of Macedonia", Greece, Italy, Turkey, Slovenia, Romania, Bulgaria, Moldova, Croatia, Cyprus, Montenegro, Hungary; as well as with UNMIK Kosovo. Other agreements are being prepared with Serbia, the Russian Federation, Ukraine, Bosnia and Herzegovina, China, Poland.

286. In the case that Albanian Customs discover an unusual cross-border movement of gold, precious metals or precious stones, they are authorised to notify the appropriate competent authorities of the countries of origin or destination, in order to jointly decide about the appropriate steps to take. This being said, the examiners were advised that the policy was to apply seizure and confiscation measures immediately. The postponement of actions for the purpose of a covert investigation would need to be initiated and decided first by the Prosecutor's Office.

287. The IT system was recently completed and all border crossing points will soon be interconnected. Apart from that, the Customs maintain different computerised and secured databases and analytical software. Data protection mechanism are in place against unauthorised access. The examiners were provided with comprehensive figures showing the results of the work accomplished by the Customs.

288. The Customs acknowledge that the issue of corruption is still important for this institution. A number of measures are now in place to limit the phenomenon (increase of salaries, bonuses based on cases detected and fines applied, Code of ethics, redistribution to staff of a percentage of revenues from confiscated assets, improvement of working conditions, clear job descriptions etc.). As a result, there have only been 10 corruption investigations in 2005. Political influence still impacts on the stability of staff.

289. Training is provided on AML/CFT issues and several specific measures have been taken on those issues: risk indicators have been elaborated for the identification of persons involved in ML and FT, case profiles are elaborated thanks to the available databases, the Albanian CFT list of persons was circulated to all Customs points (as a result, the central departments received reports concerning 3 persons). Efforts in these fields need to be intensified.

2.7.2 Recommendations and Comments

290. The Customs are under a constant improvement process and there are many encouraging developments. Motivation seems to be there as well. Initiatives taken so far in the ML/FT field have produced some results, especially for the identification of persons (suspected to be) involved in terrorist activities. Efforts should be pursued given the importance of cross-border criminal activities. There are certain weaknesses that the Customs are already aware off and which need to be addressed. It is therefore recommended:

- **to adopt the draft amending Chapter 8 of the Customs Code (on sanctions), making sure they provide for adequate sanctions in case of under or false declaration**
- **to review the current policy which consists in applying immediate seizure and confiscation measures so as to allow, in certain cases, for the gathering of further information and evidence on criminal activities and persons involved and to initiate more cross-border covert operations since organised criminal activities remain an important issue (stolen cars trafficking, smuggling etc.)**
- **to intensify training on AML/CFT issues for Customs employees, including on the detection and recognition of serious criminal activities (human beings trafficking, arms trafficking, drugs trafficking, smuggling of different goods) and movements of funds possibly related with ML/FT**

2.7.3 Compliance with Special Recommendation IX & Recommendation 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	**Sanctions are inadequate; working culture is focused on immediate seizure/confiscation; effectiveness issue due to lack of familiarity with ML/FT and due to corruption (but situation is improving)**
R.32	**C**	

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

General observations

291. The Law "On the Prevention of Money Laundering" (hereinafter LPML) of 2000 was amended in 2003 and the version in force at the time of the on site visit is the same as at the time of the second round evaluation. The various deficiencies identified at that time on the financial issues therefore remain. It should be noted that the LPML suffers from a lack of accuracy and consistency. The new draft LPML, which is under preparation, should, up to a certain extent, improve things in this respect.

292. The LPML makes references to the guidelines of the Bank of Albania (BoA) for the prevention of money laundering in a way that it makes it mandatory for all obliged financial institutions, whether or not they are subject to the regulatory and supervisory authority of the BoA, to follow the regulations of the BoA. A provision of Art 4 of the LMPL states that "*For the purpose of this law, all financial institutions are subject to identification and reporting guidelines established by the Bank of Albania, for Prevention of Money Laundering."* Although such a positive mechanism can be very valid in a transitory period during which an AML preventive system is being established, from the discussions held on site it was clear that the provisions of the BoA guidelines are not taken into account except by those institutions which are under the BoA's responsibility. The interlocutors representing the other sectors referred to other general Government regulations and their own sector-specific and general regulatory framework.

293. The LPML provides for administrative sanctions in case of non compliance. These are to be applied by the GDPML (FIU).

294. The second most important general document regulating preventive measures is the Guideline-Regulation N°5 of 3 June 2004 *"On implementation of money laundering prevention and the combating of the financing of terrorism"* issued by the Minister of Finance. The legal nature of this text (like a few other guideline – regulations) is not totally clear. But it is enforceable and sanctionable under the responsibility of the GDPML (art.8). It should be underlined here that a number of its requirements are not directly enforceable. They constitute requirements to be implemented through the obliged entities' internal procedures.

295. Apart from these general texts, the only sector-specific provisions dealing with ML and FT are those of the Bank of Albania, in particular Regulation "On money laundering prevention" dated 25.02.2004. This regulation abrogated the previous Guideline issued by the Supervisory Council in December 2001. This text is enforceable and sanctionable under the responsibility of the GDPML and the BoA (art. 14).

296. The issue of consistency of enforcement measures and sanctions is described under Section 3.10 below.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

297. Efforts to address the risk of money laundering and terrorist financing were initiated relatively late (in 2000) and these first efforts focused more on a reporting obligation. Several improvements to the law were subsequently introduced which mainly addressed supervisory and monitoring aspects. This resulted in an apparent lack of a coherent and holistic assessment of the risk in the country's effort to fight money laundering or the financing of terrorism.

298. A marked improvement should be expected with the introduction of the new anti-money laundering law which is being drafted with the assistance of the IMF and which is modelled on a wider perspective of current internationally-accepted AML/CFT preventive measures.

299. The measures put in place to reduce the use of cash have not been as successful as anticipated and therefore financial activity still remains extensively cash-based, with a vast majority of transactions passing through the financial system. It is estimated that 30% of the economy is still informal which is still considered as being high. Despite efforts to curb the informal economy, the black foreign exchange activity which is co-related to the illegal cross-border cash export or smuggling activities is still conducted openly in the streets. According to the banking association, there is a need to de-regulate the banking sector in order to make it more attractive and to reduce the importance of cash transactions. The question remains open as to whether this would mean that a certain level of flexibility when implementing domestic and international AML/CFT standards is required.

300. Black market foreign exchange activities continue openly to take place on the streets apparently in such a safe environment that give rise to a suspicion that the black foreign exchange market could be used by criminal organisations. This situation facilitates cash transactions connected with smuggling and other illegal activities. The issue is dealt with under Section 6.1.

301. The financial services industry is geared to satisfy basic fundamental needs. The Stock Exchange and the Securities Commission are not yet fully operating as well as other more sophisticated financial investment activities.

302. The insurance business does not play a prominent role in financial services with non-life compulsory car insurance and other non-life voluntary insurance (over 400,000 polices) covering 97% of the insurance premiums collected. Life assurance polices are minimal accounting for nearly 19,000 contracts carrying a total premium of US$ 1.1 million out of a total of US$ 40.4 million premium collected in 2004.

303. The main active contributors of financial services are the banks. Almost all banks have established relationships with Western European institutions and through these relationships they have adopted operational systems including those for preventing money laundering and the financing of terrorism.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

304. It is interesting to note that according to Art. 6 para. 2 of the LPML, obliged entities (those listed under art.3) should not "*perform financial operations if (...) there is evidence to believe that the transaction is related to money laundering, as defined in Article 2.1 of this Law [or the] identification of the beneficiary is not obtained* [or the] *source of the property is not declared*", and should inform the GDPML thereof. This is in line with the requirement of art. 7 of the second EU Directive.

Recommendation 5

Criterion 5.1

305. The LPML (art. 7) requires from all obliged entities *"to prevent the opening of bank accounts with forged and untrue names"*. Whilst this obligation could be understood as applying also to numbered accounts, it seems that the way the requirement is drafted, it is more a matter of internal policy in view that art. 7 deals with the preventive measures of obliged entities.

306. As underlined in the second round evaluation report, a clear prohibition is provided for in other texts:

- in the Criminal Code: according to Article 287/a on the Opening of anonymous accounts, "Opening of deposits or anonymous bank accounts or with unreal names, is punished by imprisonment up to three years and with fine from 200 thousand leke up to 2 million leke."

- in the regulations of the BoA, that is – at the time of the present on site visit, the Regulation "on Money Laundering Prevention", approved by decision of the BoA N°10 dated 25.02.2004 (see text in annex): *"The bank is not allowed to open anonymous accounts, numbered accounts or accounts with fictitious names of the customers"* (art. 4.7)

307. Although the prohibition in the Criminal Code is of a general legal nature, it remains unclear whether the concept is broad enough to encompass all forms of financial business (and other non-financial business) relationships, and not only those of the banks. It would be preferable, as it was also underlined in the second round report, to have such a prohibition clearly stated in the LPML for the sake of better visibility and awareness of the obliged entities, making sure that it would apply to a large variety of relationships and not only the banking sector. The draft new LPML will address this concern since it makes it a separate and broader requirement *("subjects are prohibited to open or maintain anonymous business relationships*").

308. The evaluators were assured on site that, in principle, there are no such accounts at the moment, although it can happen occasionally (according to the Ministry of Justice two

criminal cases were initiated in 2004 against banks which had opened anonymous accounts).

309. This being said, there was some concern about bearer certificates of deposit which have been offered recently by two banks in Albania. The depositor is identified when making the deposit and when the deposit is withdrawn. Despite its non nominative nature, the instrument is not freely transferable according to the Albanian authorities. It was explained during and after the on site visit that this new product did not achieve any real success. It was also indicated that it is not offered anymore and certificates issued so far are in the process of being withdrawn.

310. There was no information available as to other instruments mentioned in certain texts (and whether these could refer to bearer negotiable instruments). For instance, art. 4 of Guideline-Regulation N°8 of 28 July 2004 "*On implementation of money laundering prevention and the combating of the financing of terrorism"* (which is meant to assist the reporting of transactions by the Department of Taxation to the GDPML) refers to the *"purchase, sale, transfer etc. of stocks, bonds, assets and debts"*. The list of indicators for suspicious transactions appended to this Guideline-Regulation also mentions bearer securities and bearer bonds. Likewise, Guideline-Regulation N° 9 of 24 December 2004 (similar to the above but issued for the Customs authorities) contains several references to suspicious operations with negotiable securities, including government securities. The LPML itself (art. 11 a)ii) refers to bond transactions. Certain banking representatives met on site knew of traveller cheques but could not give a firm answer as to the existence of other bearer instruments. The examiners concluded that the issue thus needs further clarification by the Albanian authorities to the industry.

311. Finally, there are no numbered accounts in Albania.

Criterion 5.2

312. The LPML addresses customer due diligence (CDD) principles in art. 4 without referring *expressis verbis* to this concept.

313. It does not provide for a general identification duty when establishing a business relationship. Currently, the Guideline-Regulation N°5, with its implementing measures, foresees that internal policies and procedures of obliged entities should include such identification *"when opening an account or starting a new business"* but the regulation, as drafted, is not accurate (or broad) enough. There is also a similar requirement in the Regulation of the BoA of 2004 (point 4.2) for the opening of bank accounts, although the requirement refers more generally also to the duty to carry out identification procedures in accordance with the LPML. These consistency issues should be addressed by Albania, making sure that the regulation will be broad enough (e.g. identification when establishing a business relationship).

314. The identification duty – which is not the same for all categories of businesses considered as "financial institutions" according to the FATF terminology - applies in the following cases:

a) for banks, subjects licensed by the BoA, foreign exchange offices, stock exchange, brokers, investment funds (and in general all other obliged entities with the exception of those under b) below):
   - when the financial operation exceeds ALL 2 million (USD 15,000) or the equivalent in other currencies
   - transactions where the identity of the client and/or beneficiary cannot be obtained or is false or the source of funds is not declared or there is a suspicion of money laundering have to be reported and cannot be performed unless under the instructions of the GDPML, the Albanian FIU

b) for insurance companies (as well as gambling clubs and casinos, and travel agencies): when the operation exceeds ALL 200,000 or the equivalent in other currencies

315. Concerning the above amounts, these raise certain perplexities. The equivalent amounts in USD mentioned in the LPML might have been correct at the time they were inserted. But at the time of the evaluation, ALL 2 million was equivalent to approx € 16,000 and USD 19,000, which is above the limit considered by FATF Recommendation 5 (USD/€ 15,000). The new draft LPML, under preparation, contemplates a new threshold of ALL 1,5 million, which would bring it just below the FATF limit..

316. In principle, the identification and other CDD measures should apply in case of fragmented transactions which altogether exceed the threshold (art. 5.3 para dh).

317. The LPML utilises indifferently the words "*operations*" and "*transactions*", which could create some confusion. Furthermore, there is no definition of either of these concepts. Neither is there a definition envisaged in the new draft LPML. The examiners were advised on site that the Association of Banks, because of the lack of definition, had to consult with the FIU to learn how to deal with cheques.

318. According to the Association, the response of the GDPML would have been that the concept of transactions does not include cheques. This interpretation is too restrictive and there is a clear need to provide for a definition of the concept, which would include also cheques. The Albanian authorities advised after the visit that this is an incorrect interpretation of the LPML; in any case, cheques are rarely used and only in inter-bank relations.

319. The combination of Art. 4 and 5 of the LPML also covers in principle occasional transactions. In this respect, however, the concept of "*customer*" raises some doubts. (See below, criterion 5.3).

320. CDD measures are also required in any case, when there is a suspicion of money laundering. There is no similar explicit requirement for terrorist financing suspicions in the LPML although when reporting a terrorist financing suspicion to the GDPML (art. 5.3/1), it is understood that the usual CDD-related information needs to be forwarded as well (and therefore collected for that purpose). For the sake of clarity, art. 4 of the LPML should be consistent and address in parallel CDD measures in case of ML and FT.

321. The measures in place do not make a distinction between wire transfers and other transactions, as far as the identification requirements are concerned. As indicated under Section 3.5, there are no specific requirements for wire transfers, an issue which needs to be addressed particularly since Albania has a *de minimis* threshold which is far above the FATF limit (except for insurance businesses, gambling clubs and casinos, and travel agencies), at least in the LPML.

322. There is no explicit requirement to undertake CDD measures when the financial institution has doubts about the veracity and adequacy of previously obtained customer identification data. This being said, article 4.2 requires from obliged entities, as part of the identification process, to check and register any changes in the information submitted earlier regarding customer identification (see below). The BoA Regulation of 2004 is more accurate on these issues (point 4.10) as it states that it should be a matter of internal policy for banks to regularly update customer identification data.

Criterion 5.3

323. Verification of identification is effected against original documents valid within the terms of their legal validity. The identification data required to be collected is contained in Article 4. 2 of the LPML, according to which "*financial institutions and designated non-financial business institutions and professions (...) shall identify customers/clients by registering, recording and maintaining the following information in a special file*":

> *"a) For the natural non business person (individuals):*
> *name, surname, date of birth, place of birth, his temporary and permanent address, as well as type and number of the official ID card and the issuing organization, as well as all changes made up to the moment of performing the transaction.*
>
> *b) For the natural business person :*
> *name, surname, number and date of the Court decision to perform his or her business activity, tax identification number and the issuance date by the taxation authorities for performing the activity as well as all changes made, up to the moment of performing the transaction.*
>
> *c) For the juridical person:*
> *name, number and date of the Court decision with respect to its registration as a legal person, tax identification number issued by the taxation authorities for performing the activity, temporary and permanent head office, nature of the business and the purpose, type, date, amount and the currency of the transaction, as well as all changes made, up to the moment of performing the transaction.*
>
> *e) For the legal representative of the customer/client shall provide:*
> *name, surname, date and place of birth, official ID number and the issuance institution, proof of power of attorney granted to him to act on behalf of the customer as well as all changes made, up to the moment of performing the transaction."*

324. Art. 4 para 3 further requires that the identification documentation presented shall be the original, valid document only.

325. The examiners were informed that whilst some identification documents never expire thereby creating difficulties in the identification process, others are only valid for a very short period so that the identification process has to be repeated ever so often The examiners were informed that the implementation of a law to introduce a unique national identity card has been postponed several times. The current situation is putting an unnecessary burden on obliged entities, especially credit and financial institutions, when performing their identification obligations when opening an account and processing a transaction.

326. The BoA Regulation of 2004 (point 4.11) contains more detailed identification requirements in the case of legal persons. It includes information required in respect of the legal person itself (court registration act and the statute of the legal entity) as well as in respect of the various persons holding significant interests, the directors, the persons operating the accounts etc.

327. Whilst the LPML (art.2) defines the *"*customer*"* or *"*client*"* as *"a natural (business or non–business individual) and/or legal person, resident or non resident, Albanian or foreigner, private or public"*, Guideline-Regulation N°5 of 3 June 2004 *"On implementation of money laundering prevention and the combating of the financing of terrorism"* (art.2) provides a different definition: *"Customer is all natural persons or legal entities that have performed at least one transaction with a Reporting Subject"*. Although point 4.3 of the BoA Regulation is clear on the fact that occasional customers also need to be identified according to the usual rules (when the transaction exceeds ALL 2,000,000), art.2 contains a similar misleading definition.

328. Subject to the correctness of the English translation, the evaluators were concerned that these definitions could be interpreted as excluding from the scope of the LPML several transactions (those performed without a contractual relationship, non repeated one-off transactions etc.). Looking at the new draft LPML, the definition of "Client" seems to confirm such an interpretation: *"client means a natural (business or non-business) person or a legal person, resident or non-resident, Albanian or foreign, public or private persons, which is a contractual partner of a subject referred to in Article 3"*.

329. This issue needs clarification since – generally speaking - many transactions are not necessarily concluded on the basis of a contractual relationship. FATF Recommendation 5 requires the application of CDD measures for both permanent and occasional customers and transactions.

Criterion 5.4

330. From art. 4.2 para. e) of LPML, it is clear that the person acting on behalf of the customer is checked as regards both his/her identity and the existence of a power of attorney, which is the major way in Albania to perform transactions on behalf of others (since there are apparently no trust funds or particular legal arrangements operating in Albania). Para. c broadly covers the requirements of criterion 5.4b concerning the presentation of evidence of the legal person's establishment and existence. The BoA

Regulation (item 4.9) contains similar provisions. It also specifies that an account cannot be opened without the physical presence of the account holder.

Criterion 5.5

331. The LPML does not provide clearly for a general identification duty regarding beneficial ownership.

332. The LPML (art. 6.2 and 4.4) deals incidentally with the identification of beneficiaries in the context of the reporting duty (although the drafting is not fully clear) and the declaration of the beneficial owner by customers. Guideline-Regulation N°5 of 3 June 2004 *"On implementation of money laundering prevention and the combating of the financing of terrorism"* (art.4) requires that internal policies and procedures should include *"Identification of customers when opening an account or starting a new business, their sources of funds and beneficiaries of their transactions"*.

333. The existing provisions do not require that reliable sources of information are used and the system in place relies very much on information to be provided primarily by the customers themselves: under the LPML (art. 4 para.4), customers must declare the ultimate beneficiary when the transactions exceed the thresholds provided for in the LPML, and under Regulation N°5, the information is to be provided by the customer him or herself and obliged entities have the right (but not the duty) to ask about clarifications concerning the beneficiary of transactions. The responsibility lies essentially with the customer. The BoA regulation (point 4.3) requires enhanced verification measures for new customers (e.g. additional verifications, double checks involving other bank documents, pass books, driving licence etc.).

334. There is no general requirement in the LPML nor Guideline-Regulation N°5 to take reasonable measures to understand the ownership and control structure of legal persons or arrangements, and to determine who are the natural persons that ultimately own or control the customer. As far as the BoA Regulation is concerned, it limits itself to imposing a set of minimum requirements such as the identification of persons holding significant ownership interests or control over the legal entity (point 4.11) when the business relation is established.

335. As it is also stated in the Guideline-Regulation N°5 of 2004, obliged entities are entitled to require clarifications about any transaction in order to understand the source of those funds or values and the beneficiaries of the transaction. Again, this kind of provision is not meant to be a hard, enforceable requirement such as those contemplated by Recommendation 5.

336. In any event, the concept of beneficiary or "final beneficiary" as defined in the Guideline-regulation N°4, article 2, is narrow *("the final party to whom a transaction is directed"*), when compared to the definition of beneficial owner of the FATF.

Criteria 5.6 - 5.12

337. There are no express requirements for financial (and other) institutions to obtain information on the purpose and intended nature of the business relationship, nor to conduct ongoing due diligence on the business relationship.

338. For the time being, only the BoA Regulation (point 4.1) requires the adoption of internal procedures based on the "know your customer" principle aimed at understanding the client's activity. A similar requirement is missing for the other – non banking - financial entities.

339. As indicated earlier in this report, there is no risk-based approach in Albania, apart from the standard business risk management requirements that are found for instance in the banking regulations. As a consequence, there are no requirements either to perform enhanced due diligence for higher risk categories of customer, or reduced simplified measures in case of lower risks (certain countries, clients, transactions etc.). The examiners have confirmed on site that the full spectrum of vigilance applies to all transactions subject to reporting i.e. over the limit prescribed in the LPML, even those which present no or little risks, thus creates an unnecessary burden for obliged entities, at least in the banking sector.

340. This being said, increased diligence is required for banks in those cases which fall under the list of suspicious operations *("anomaly in operations")* which is appended to the Regulation of the BoA of 2004. The list is 6 pages long covering a multiplicity of situations, including for instance operations carried out continuously on behalf of third parties, complex and unusual transactions, operations with countries considered as tax heavens or which have not prohibited anonymous accounts amongst others.

341. The (new) Regulation on money laundering prevention of the Bank of Albania of 25 February 2004 only makes one short reference to the need for increased diligence in the case of higher risk due to non-face to face transactions (point 7.11): "*The bank should have adequate policies and procedures to address any specific risk associated with business transactions and relations carried out in the absence of the physical presence of the customer or his representative*."

Criterion 5.13 – 5.15

342. As a rule, identification has to be carried out prior to conducting the transaction (and - under the Guideline-Regulation N°5 and the BoA Regulation – opening an account).

343. As indicated earlier, there is no general requirement that is broad enough, at the moment, to cover identification when establishing a business relationship and the LPML is silent on this, which causes some consistency problems. The beneficial ownership issue is not fully addressed either, as it was also said previously and there are some uncertainties concerning the identification obligation of occasional customers.

344. In principle, financial institutions are required to complete the identification verification, including that for the beneficiary, before carrying out the transaction. Art. 6 para. 2 of the LPML is clear on this requirement and in case the information obtained is incomplete or false ID documents are presented, obliged entities, their employees, agents, directors etc. the financial operation should not be performed and the case is to be reported to the GDPML, which is fully in line with criterion 5.15.

345. There are no provisions permitting the use of the business relationship pending the completion of the verification process.

Criterion 5.16

346. Since the LPML is silent on the issue of customer due diligence when establishing a customer relationship, the LPML does not deal with the situation where identification problems arise at a later stage, in relation with a transaction of a customer with whom a business relationship has been established. It is assumed that the general mechanisms would apply.

347. The Regulation of the BoA contains a requirement which reflects to some extent that of criterion 5.16; point 4.13 requires that the relationship is interrupted and the GDPML informed in case a false identity was used.

Criteria 5.17

348. Due to the preventive AML/CFT system in place which applies to both suspicious and larger transactions, enhanced vigilance is required for transactions of significant amounts. As indicated in other parts of this report, however, the current amount of ALL 20,000,000 (USD 150,000) is probably too high in the context of Albania and this vigilance and reporting duty is limited to transactions in cash and transfer of funds only.

349. The LPML (art.5 para. 3) also requires, in the framework of preventive measures concerning suspicious transactions, to register and report immediately (or within 72 hours) to the GDPML all client transactions which show abnormalities, unjustified/complex/unusual circumstances, transactions without legal or economic justification.

350. Furthermore, as indicated earlier, verifications of the identity take place repeatedly and the BoA regulation provides for some requirements concerning CDD for existing clients.

351. This being said, there is no general obligation to apply CDD requirements to existing customers and relationships and the situation needs to be revisited globally.

Criteria 5.18

352. As indicated earlier, anonymous accounts and accounts under fictitious names are prohibited in Albania. There are no numbered accounts either.

Recommendations 6 to 8

353. The formalities for politically exposed persons, correspondent banking relationships, non-face-to-face situations and introduced business have yet to be addressed by the LPML. All third party transactions are conducted on the strength of an official and legal power of attorney.

354. For the time being, only the Banking sector, in the 2004 Regulation *"On Money Laundering Prevention*" and other texts have some detailed provisions which address to a variable extent, the requirements of Recommendations 6 to 8.

355. On the issue of non face-to face business relations in particular and Recommendation 8, the BoA Regulation of 2004 does not permit the opening of accounts without the physical presence of the beneficiary, even if it is to be managed ultimately by a person acting with a power of attorney. The same applies for the opening of an e-banking account which requires the presence of the customer and full identification requirements. The BoA Regulation of 30.03.2005 on the supervision of electronic banking transactions regulates this kind of service in a detailed manner. For the time being, technological developments in relation with financial services are at an early stage of utilisation.

3.2.2 Recommendations and Comments

356. At the moment, the operative financial sector is the banks. The stock exchange is inoperative and most dealings take place through the banks (6 out of the 8 market participants are banks) which are subject to the BoA regulations. As indicated earlier, the insurance market is very shallow and mostly deals with mandatory insurance products. The LPML addresses the CDD requirements in a limited way. Some but not all of the requirements of R5 are addressed in the BoA Regulations. Recommendation 5 includes several asterisked criteria that require to be addressed in primary or secondary legislation issued or authorised by a legislative body. The ones in this category that are not compliant are:

- 5.2 Financial institutions should be required to undertake customer due diligence (CDD) measures when: a) establishing business relations; b) carrying out occasional transactions above the applicable designated threshold (USD/€15,000). This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked; c) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;*

- 5.5 Financial institutions should be required to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is.*

- 5.5.2 For customers that are legal persons or legal arrangements, the financial institution should be required to take reasonable measures to (...) (b) 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 arrangement.*

- 5.7 Financial institutions should be required to conduct ongoing due diligence on the business relationship.*

357. The Albanian authorities considered that according to the Constitution of Albania; the BoA regulations are secondary legislation. However, under the FATF Methodology they cannot be considered as such since they are not issued or approved by a legislative

body. Leaving aside the issue of the asterisked criteria which need to be in primary or secondary legislation, as defined, several criteria which need to be required by law, regulation or by other enforceable means are also missing. These are in particular:

- 5.6 Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship

- 5.7.1 Ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds.

- 5.7.2 Financial institutions should be required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships

- 5.8 Financial institutions should be required to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

- 5.9 Where there are low risks, countries may decide that financial institutions can apply reduced or simplified measures. The general rule is that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner. Nevertheless there are circumstances where the risk of money laundering or terrorist financing is lower, where information on the identity of the customer and the beneficial owner of a customer is publicly available, or where adequate checks and controls exist elsewhere in national systems. In such circumstances it could be reasonable for a country to allow its financial institutions to apply simplified or reduced CDD measures when identifying and verifying the identity of the customer and the beneficial owner.

- 5.10 Where financial institutions are permitted to apply simplified or reduced CDD measures to customers resident in another country, this should be limited to countries that the original country is satisfied are in compliance with and have effectively implemented the FATF Recommendations.

- 5.11 Simplified CDD measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply.

- 5.12 Where financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis, this should be consistent with guidelines issued by the competent authorities.

- 5.13 Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

- 5.14 Countries may permit financial institutions to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship, provided that:

(a) This occurs as soon as reasonably practicable.
(b) This is essential not to interrupt the normal conduct of business.
(c) The money laundering risks are effectively managed.

- 5.14.1 Where a customer is permitted to utilise the business relationship prior to verification, financial institutions should be required to adopt risk management procedures concerning the conditions under which this may occur. These procedures should include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside of expected norms for that type of relationship.

- 5.16 Where the financial institution has already commenced the business relationship e.g. when Criteria 5.2(e), 5.14 or 5.17 apply, and the financial institution is unable to comply with Criteria 5.3 to 5.5 above it should be required to terminate the business relationship and to consider making a suspicious transaction report.

- 5.17 Financial institutions should be required to apply CDD requirements to existing customers[15] on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

358. The basic identification requirements in place in Albania seem to be satisfactorily complied with as far as the sector under the responsibility of the BoA is concerned (sanctions have been taken against two small banks which had opened anonymous accounts). For the other sectors, it is difficult to make a similar assessment since AML/CFT issues are not yet taken into account by the supervisors for the insurance and securities sector. With regard to the effectiveness of CDD measures in practice, an overall assessment is difficult since there is no CDD procedures as such in place and no risk-based approach.

359. In the light of the above developments, it is recommended:

- **to introduce general requirements in the LPML on the basis of the elements of FATF Recommendation 5, in particular as regards the concept of customer due diligence, identification of beneficial and ultimate ownership, on-going due diligence on the business relationship, "know your customer" principle**
- **to make it a duty for obliged entities to perform CDD measures in line with the FATF approach (risk-based etc.)**

and, in any event,

- **to include the identification of customers when establishing a business relationship (as it is envisaged in the draft new LPML)**
- **to make it clear that CDD measures apply also in case of FT suspicion**

[15] Existing customers as at the date that the national requirements are brought into force.

- **to make sure there is a unique definition of the client or customer which is broad enough to include also persons requesting one-off transactions and clients with whom there is no contractual relationship**
- **to include in the LPML a general prohibition of anonymous accounts (to be understood broadly) as envisaged in the draft new LPML**
- **to clarify the issue of bearer negotiable instruments available in Albania and to apply the CDD requirements in their respect**
- **to provide in the LPML for a general definition of transaction which would encompass the broadest range of services/operations (including those with cheques)**
- **to reduce to the equivalent of 15,000 USD/€ the threshold of transactions triggering the identification of customers (as it is envisaged in the draft new LPML)**

360. At the moment, the LPML is silent on the issues covered by FATF Recommendations 6 to 8. Only the banking sector regulations address some of the elements covered by these principles. Therefore, it is recommended:

- **to implement in the LPML, and to detail in sectoral rules as appropriate, the requirements of Recommendation 6, 7 and 8 on politically exposed persons, correspondent banking relationships and risks associated with new technologies and non-face to face transactions**

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	**- The majority of the key elements of the essential criteria are not present in primary or secondary legislation although to a certain extent, they are covered by the BoA Regulations. - The BoA Regulations do not cover all the elements of the essential criteria and hence these are completely missing from the system - All essential criteria are missing for the insurance sector. Likewise, they are missing for the securities sector.**
R.6	**NC**	**No explicit provisions in current legislation. Issue dealt with in the new draft law.**
R.7	**NC**	**No explicit provisions in current legislation. Issue dealt with in the new draft law.**
R.8	**PC**	**Some provisions exist for the banking sector. No explicit provisions in current legislation. Issue dealt with in the new draft law.**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

361. There are no specific provisions in the current LPML that would regulate or prohibit introduced business and neither is the issue dealt with in other situations allowing identification reliance on third parties. Neither is the issue dealt with in the newly drafted proposed prevention of money laundering legislation.

362. However, the activity of third party reliance for CDD is not conducted in Albania.

3.3.2 Recommendations and Comments

(not applicable)

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N.A.**	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

363. Article 23 of the Banking Law imposes the duty of professional secrecy on all past and present administrators and employees of a bank. They shall not misuse for gain any information that has been obtained in the course of their duty with the bank.

364. The duty of professional secrecy is lifted under the LPML when reporting under that Act. Furthermore, Article 24 of the Banking Law allows banks and their employees to inform on their own initiative the authorities responsible for combating money laundering of the evidence that property is derived from criminal activity. They shall also provide, at the authorities' request, additional related information.

365. There are no restrictions to the sharing of information between competent authorities for the purpose of combating money laundering. Moreover the GDPML requests and obtains from all competent authorities any data, information and documentation needed for the purpose of carrying out its duties and responsibilities under the LPML.

366. The Customs Authorities are obliged to forward to the GDPML all information it receives and collects concerning the physical cross-border movements of cash, precious metals and stones and other antiques.

367. In the opinion of the examiners, there are no financial institution secrecy laws as such that inhibit the implementation of the FATF Recommendations.

368. The examiners were sometimes advised that Art. 300 of the Criminal Code on the criminalisation of failure to report a crime – which provides for a large exemption *("persons obliged to keep secrecy because of their capacity or profession, are excluded from the obligation to report")* would be contradictory with the reporting duty under the LPML and other similar texts, and could be an obstacle in some cases. In the light of discussions with representatives from the financial sector, it does not seem to be an issue for this sector. The GDPML needs to discuss and clarify this issue further in the framework of coordination mechanisms and its dialogue with the industry sectors that feel concerned about this issue.

369. The major problems at the moment seem to be connected with the professional secrecy of certain independent professions (see Chapter 4).

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Criterion 10.1

370. The LPML requires in principle that records are to be kept for a period of no less than 5 years after the transaction has taken place and after the end of the business relationship.

371. The record-keeping provisions, which appear unexpectedly under Art. 6 on "Duty not to disclose", read as follows:

> *All the subjects of this Law, shall retain:*
> *a) all information related to customer identification for a period not less than 5 years from the date the customer terminates civil and juridical relations with the subject;*
> *b) the data, information, and reports of the transaction performed on behalf of the customer for a period not less than 5 years after the transaction has taken place.*

372. This obligation, considered independently, meets globally the requirements of Recommendation 10.

373. The main problem arises when considering the above provisions in their context that is in relation with the rest of the LPML. As indicated earlier, identification applies only where transactions exceed the applicable thresholds (the LPML requires that a record is kept of all transactions of ALL 2 million (USD 15,000) except for insurance business and travel agencies where the threshold is reduced to ALL 200,000 (approx. USD 2,000)) or when they fall under the category of suspicious transactions.

374. Para b) above does not explicitly specify that the information is to be kept for all transactions. A strict reading, in the context of the LPML, could suggest that no records of transactions below the threshold are required.

Criterion 10.2

375. The requirement of this criterion is reflected in para a) above. The examiners found that the drafting of the requirements of art. 6 could be more explicit (e.g. to keep account files, and a copy of the identification document and business correspondence, as well as information on the beneficiary) since art. 4 para.2 which defines the kind of information requested for identification (of natural non-business and business persons, judicial (legal) persons and representatives of legal persons) does not explicitly require the recording of these specific elements either.

376. The evaluators were advised on site that more stringent requirements sometimes exist in the respective sectoral provisions (e.g. the BoA Regulation "On money laundering prevention" of 2004).

Criterion 10.3

377. As already indicated under Section 2.6, the GDPML and prosecutors have access to banking information and the latter can be used as evidence in court when it has been obtained in accordance with the Criminal Procedure Code (which excludes the information collected by the GDPML). The examiners noted that the police have no access to banking information. As the examiners pointed out, a timely access to information held by financial institutions will largely depend on practical arrangements such as the existence of a computerised storage system. For the time being, it is not clear whether all financial institutions have adopted this kind of facility. This issue has also been raised in other sections below.

Special Recommendation VII

378. The detailed requirements for wire transfers have yet to be addressed. The LPML only requires that a record is kept of all wire transfers that exceed the threshold of ALL 2 million (USD 15,000), except for insurance businesses, gambling clubs and casinos, and travel agencies for which, according to art.4 of the LPML, a special threshold of ALL 200,000 (approx. €1700) applies. This is mostly welcome since travel agencies also seem to provide money remittance services. Pending clarification as to the categories of businesses affiliated to money remittance networks, it is likely that many other businesses provide money transfer services without being subject to the specific threshold of art.4 para 1, subpara.3 (see also Section 3.11 on SR.VI).

379. For the time being, some requirements are provided for only in Article 7.9 of the BoA regulation of 2004, according to which *"in respect of e-banking transfers, banks must record information about the individual (name, address and account number) from whom the money has originated.*" These entities are obliged to report to the GDPML those transfers which do not contain complete information, which reflects to some extent para. 2 of SR.VII.

380. Although the above requirements apply to banks and by analogy to all entities licensed by the BoA, it is regrettable that they are limited to e-banking transfers only, and not more widely to all wire-transfers. Furthermore, they are limited to incoming transfers only and they are not broad enough to cover also legal persons and clearly domestic and international transfers.

381. The regulations also need to be more specific to address the various requirements of SR.VII as they appear in the Interpretative Note on issues such as batch transfers, the content of the message or form of payment, the preservation of the accompanying information throughout the chain of intermediaries etc.

382. Also, the issue of the threshold needs clarification. The one contained in the LPML is far above the USD/€ 3000 threshold contemplated under SR VII (except for insurance businesses, gambling clubs and casinos, and travel agencies), whilst the BoA Regulation contains no *de minimis* approach at all. It is unclear whether it is the LPML or the BoA approach which needs to be followed in practice.

383. In the new draft LPML, the threshold has been reduced to ALL 1.5 million and it is also required to have meaningful information included for wire transfers. But the *de minimis* limit for wire transfers is still too high.

3.5.2 Recommendations and Comments

384. The examiners were particularly concerned by the potential consequences of a strict reading of the LPML, which excludes the registration and any information records for transactions below the threshold of ALL 2 million (USD 15,000) or their equivalent in other currencies, a threshold which is quite high in the context of Albania. This could have serious consequences in terms of information available to domestic competent authorities dealing with AML/CFT, bearing in mind the wide scope of obliged entities (including for instance NPOs) and the low level of computerisation of data storage.

385. Discussions with the representatives from the industry, in particular the banking sector, have shown that registration is, of course, also taking place for transactions below the threshold. But the current system could generate conflicts with other legal requirements of a general nature (accountancy rules, fiscal rules etc.) or contribute to certain phenomena allegedly observed in Albania (widespread dual bookkeeping, registration systems of foreign exchange bureaus disconnected etc.).

386. R10 is a fundamental recommendation which comprises several asterisked criteria that require to be addressed in primary or secondary legislation issued or authorised by a legislative body:

- 10.1 Financial institutions should be required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority). This requirement applies regardless of whether the account or business relationship is ongoing or has been terminated.*

- 10.2 Financial institutions should be required to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).*

- 10.3 Financial institutions should be required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.*

387. In view of the developments in this Section, it is recommended:

- **to consider removing the current requirements of Article 4 and 5 of the LPML which deal with the threshold approach concerning registration of transactions**
- **to review the structure of art. 6 of the LPML so as to make a separate provision on the information and record-keeping requirement rather than these being included with other provisions dealing with "tipping-off",**
- **to introduce a clear requirement to store information on transactions for a period of 5 years (or more if requested by a competent authority) following completion of transactions, whatever their amount**
- **to be more explicit as to the information to be kept for a period of 5 years (or more if requested by a competent authority) after the termination of the relationship (to keep account files, a copy of the identification document and business correspondence, as well as information on the beneficiary)**
- **to review the provisions in the BoA regulation of 2004 on wire transfers so as to make them applicable to both incoming and outgoing transfers, to use the regular terminology (wire transfers rather than e-banking) and to draft it in sufficiently broad terms to cover also legal persons, not only individuals, as well as domestic and international transfers**
- **to solve the conflicting issues raised by the diverging provisions on thresholds for wire transfers in the LPML and BoA Regulation of 2004, and to lower it to the limit contemplated by SR.VII (USD/€ 3000)**
- **to make provision on wire transfers also in the LPML in order to cover all financial and other institutions involved in wire transfers.**

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**PC**	**No records for transactions below the established threshold are required; more explicit requirements needed as to the type of information to be retained after the termination of a relationship**
SR.VII	**NC**	**no general requirements apart from the basic ones contained in the BoA regulation of 2004, which are unduly restrictive; the issue of threshold needs clarification and lowering; provision is also needed in the LPML**

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

388. Financial institutions are required to record and report to the GDPML all transactions when they discern unjustified, complex and unusual circumstances in transactions and when they discern abnormalities in customer transaction, especially in deposits, transfer and/or currency exchanges as well as in the issuance of negotiable instruments. This globally meets the requirement of criterion 11.1.

389. There appears to be no requirement, however, to examine the background and purpose of transactions neither in the LPML nor in other texts.

390. There are no general provisions either for enhanced due diligence for business relationships and transactions from countries which do not or insufficiently apply the FATF Recommendations. Possible countermeasures are not contemplated to address these issues.

391. Only the BoA Regulation *"On money laundering prevention"* of 2004, which contains as an appendix, an indicative list of *"indicators of anomaly"* in transactions requires banks to be cautious when transactions involve certain *"banking or financial paradises", "countries that allow the opening of anonymous accounts"* or which have not criminalised money laundering, transactions involving off shore companies, or companies and persons which have been involved in financial scandals, transactions with "offshore centres" or with financial institutions located near drug trafficking areas etc.

392. The examiners were not informed of any measure in place to notify financial institutions and other reporting entities about countries at risk, and as indicated earlier, there is no general requirement to check the background and purpose of the transaction.

3.6.2 Recommendations and Comments

393. Under the new draft AML law, subject persons shall examine all complex, unusual large transactions and all unusual patterns of transactions that have no apparent economic or visible lawful purpose. The background and purpose of such transactions shall be examined and the findings set out in writing.

394. The new draft law addresses also the requirements of FATF Recommendation 21. **It is recommended**:

- **when finalising the new draft AML, to pay special attention to the requirements of FATF Recommendations 11 and 21 and to introduce a requirement to examine the background and purpose of transactions and apply special prudential measures to countries and territories where ML/FT risks are high (and to provide for appropriate countermeasures to be taken when transactions with those regions occur)**
- **to adopt measures to ensure that financial (and other) institutions are advised of concerns about AML/CFT weaknesses in other countries.**

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	**There appears to be no explicit requirement to examine the background or purpose of the transaction and to keep the findings in writing**

R.21	**PC**	**No specific provisions available as yet for the entire financial sector apart from the indicators included in the annex to the BoA Regulation**

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Reporting system and duties in place

395. The reporting system concerning AML and CFT is provided for essentially in the LPML. The reporting duty connected with CFT is mirrored in the Law N°. 9258 of 15.07.2004 *"On measures for the suppression of terrorism financing"* (hereinafter LMSTF).

396. According to the LPML, the system in place in Albania is not limited to suspicious transaction reporting. It also takes into account transactions above a certain amount. It applies both to obliged financial institutions and DNFBP, and to certain state or licensing bodies. It should also be noted that the reporting duty applies after the transaction has taken place.

397. There is also a general requirement in the LPML (art.6 para. 2) for obliged entities not to perform the transaction on their own initiative when there is a suspicion of ML, and to follow the instructions of the GDPML (which is in line with the second EU Directive – Art.7, excepted that there is no clear provision requiring the immediate reporting when the postponement of the transaction is impossible).

398. The list of financial institutions in art. 3 of the LPML includes those addressed in the FATF methodology.

399. The money laundering definition included in art. 2 of the LPML is broad and contains no undue restrictions. It is almost the same as in the Criminal Code, a situation which would facilitate the consistent treatment of a possible criminal case from the reporting to the adjudication stage.

400. Since Albania has adopted the "all crimes approach", also reflected in the LPML, the type of crime generating the monies or assets involved in the transaction is irrelevant, subject to all categories of offences contemplated by the Methodology as minimum categories of offences are covered in the Criminal Code (see the earlier Section on the criminalisation of money laundering)**.** Tax matters are also covered in principle and interestingly, Albania has adopted a system obliging the tax authorities to report their own suspicions to the FIU (see below).

401. The reporting duty is as follows:

a) Financial institutions and other obliged entities listed in Art.3 of the LPML must file reports concerning:

- all transactions in cash and transfers of funds above ALL 20,000,000 (USD 150,000) or the equivalent value in foreign currencies (art. 5.2)

- all transactions in case of: a) abnormalities, b) unjustified, complex and unusual circumstances in the transactions, c) transactions without legal or economic justification; d) information indicates that the funds derive from a criminal activity; e) suspicions of money laundering arise after the transaction has been performed; f) consecutive or fragmented transactions that together exceed the threshold above;

- all suspicions of money laundering relating to transactions (art. 5.3/1)

- all information and suspicions concerning transactions, proceeds or property possibly linked with terrorist acts or terrorist financing (art. 5.3/1).

b) Customs authorities (art. 10 LPML - see also Section 2.7 on SR.IX) must file reports concerning "any suspicion, information or other data" on money laundering

c) Tax authorities (art. 10/1 LPML) must file reports concerning "any suspicion, information or other data" on money laundering

d) Licensing bodies/authorities (art. 10/2 LPML) must file reports concerning "any suspicion of money laundering and financial operations above ALL 20,000,000 or the equivalent value in foreign currencies";

402. The report is to be made immediately but not later than 72 hours after the transaction in case of money laundering, and immediately for suspicions of terrorist financing art.5.3/1.

403. Under the LMSTF (art. 10 – obligation to inform and report), the reporting duty connected with FT is dual: para. 1 introduces a reporting duty (to the GDPML or the Minister of Finance or criminal law bodies) based on evidence, whilst para. 2 – referring to the LPML - deals with a suspicion-based reporting mechanism:

> *"1. Any person who knows that given financial operations, transactions or any other actions are aimed at terror financing shall immediately notify the Minister of Finance, the General Directorate for Prevention of Money Laundering, or other structures assigned to detect and investigate criminal offences.*
>
> *2. As stipulated in law No. 8610, dated May 17, 2000 "On prevention of Money Laundering", the persons responsible for identifying and reporting shall immediately notify the General Directorate for Prevention of Money Laundering whenever they possess information on or suspect of financial operations, transactions or other actions aimed at terror financing, despite their significance. In any case, the General Directorate for Prevention of Money Laundering exercises the respective rights and responsibilities provided for in the law "On prevention of Money Laundering. (...)."*

404. It should however be noted that art.11 of the LPML restricts the reporting duty of banks and other economic operators licensed by the Bank of Albania to certain types of transactions. These are:

- "Transactions of capital in the account of direct investments, bond transactions, credit transactions, inter-bank deposit transactions, transactions of insurance out of the Albanian territory and jurisdiction in the case when such actions are allowed by the Albanian legislation";
- "transferring capital from other countries to the Republic of Albania"
- "transferring capital from the Republic of Albania to other countries"
- "current transactions"
- "unilateral capital transferring of personal transfers of the actives, physical transfers of the actives,
- investment of non-resident in bond,
- foreign bank accounts of Albanian residents,
- bank accounts of non residents,
- payments done abroad.

405. The second round evaluation report had already recommended to review this limitation as a matter of the highest priority. Examiners fully agree with the second round findings and believe that such a restriction is dangerous as many other reportable transactions could fall outside the listed categories. Furthermore, bank representatives met on site complained about the fact that their reporting duty was still too broad and encompasses also transfers of funds between them and the central bank, utility service payments etc., all of which generate a considerable amount of unnecessary paperwork for them and futile reports to the FIU. The examiners believe that art. 11 should address the issue the other way round and provide for a list of transactions or circumstances which are excluded from reporting.

406. As far as the reporting threshold is concerned, the evaluators doubted whether the amount was adequate for a country like Albania. The amount of ALL 20,000,000/USD 150,000 – applicable to both but only to cash transactions and money transfers - is likely to leave many criminal business transactions unreported (although consecutive and fragmented transactions are to be taken into account – see below), unless there are reasons to consider them as suspicious. It should be underlined that the draft new LPML is proposing to reduce the reporting limit to ALL 1.5 million (approx € 12,500 or USD 15,000) for the reporting of cash transactions (only).

407. The new draft law is proposing to add the reporting of all other non-cash transactions of ALL 20 million, a proposal which is currently subject to strong opposition from the banking sector. This amount seems very high for the situation in Albania, should such a reporting mechanism be kept in the future LPML.

408. Art. 5.3 of the LMPL lists some indicators (which could be understood as being indicators for suspicious transactions) for transactions which need to be reported in any case,. A positive point is that it leaves room for ad hoc decisions in particular cases of suspicions (5th bullet point). It also addresses smurfing-type money laundering (last bullet point). These indicators are as follows:

- "abnormalities in customer transactions defined in the Article 2 item 1, especially in deposits, transfers and/or currency exchanges, as well as the issuance of negotiable instruments (check, bill and promissory note);
- unjustified, complex and unusual circumstances in the transactions;
- transactions that do not appear to have a legal or economic justification;
- information that the funds are derived from criminal activity;
- suspicions of money laundering that arise after the transaction has been performed and any other circumstances not provided above, when elements of committing the penal offence of money laundering exist.
- consecutive transactions or fragmented or structured transactions whose sum exceeds the amount determinate in article 5 point 1 of this Law."

409. The requirement of the second EU Directive concerning the reporting of facts which might be an indication of money laundering outside the context of a given transaction (Art. 6.1a) is, in principle, covered by the 5th bullet above, and possibly by art. 5 para. 4

410. The absence of a clear requirement that attempted transactions also need to be reported, whatever the amount, constitutes a major lacunae in the reporting system. On one hand, the LPML as it currently stands, requires that a transaction is reported after it has been registered (art. 5.1 and 5.4), which is contrary to criterion 13.3 of the Methodology. On this issue, the evaluators noted an important contradiction between the LPML and the Guideline-Regulation N°5 of June 2004 *"On implementation of money laundering prevention and the combating of the financing of terrorism"*. The latter indicates (art. 4, last bullet point) that internal AML policies and procedures of obliged entities should provide for reporting before the execution of transactions, but the drafting of the Guideline-Regulation is not always consistent.

411. There is a clear obligation in art. 5.4 to report transactions possibly connected with ML immediately and no later than 72 hours after their registration. For FT transactions, art. 5.3 only states "*immediately*". It is questionable whether such reporting is practically feasible given the absence of a modern IT reporting network – and occasional indirect reporting through the supervisor (e.g. insurance sector).

412. On the provisions on FT, it is worth underlining that Art. 5.3/1, as seen above, provides for the reporting of transactions that involve *"terrorist acts and the financing of terrorism"*. Notwithstanding the fact that only terrorist acts are explicitly referred to (and not also terrorist organisations, for instance), the LPML itself does not contain a definition. An indication of the scope of this provision can be found in Guideline-Regulation N°8 of July 2004 *"on implementation of money laundering prevention and the combating of the financing of terrorism"*. The definition given in Article 2 for financing of terrorism is as follows: *"the financing of terrorist acts and/or terrorist organisations"*, which is too narrow in comparison with the requirements of criteria 13.2 of the Methodology ("terrorism", "terrorist acts", "terrorist organisations", "those who finance terrorism".

Protection of reporting entities and tipping off

413. Article 12 of the LPML provides for a protection mechanism to the benefit of reporting entities:

> ***Article 12 Protection of the rights of the subjects***
>
> *The subjects of this Law or their representatives, and their employees that report confidential information are exempted from the legal responsibility (penal and civil) of the secrecy (including the banking secrecy) and of the confidential business information of the customers. Such lawful disclosure shall not involve the subjects as defined in Article 3, their officers, directors or employees in liability of any kind.*

414. The wording used covers the categories of persons addressed in FATF Recommendation 14 (with some minor inconsistencies – subject to the reliability of the translation) and it is clear that the protection applies against civil and penal proceedings.

415. The situation could be satisfactory if the examiners had not been told on site that in some cases, Art. 305 of the Criminal Code which criminalises the *"false reporting of a crime"* would hinder the reporting of suspicions of ML/FT in certain cases (see also the considerations under Section 4.4). This weakness could be a consequence of possible insufficient provision in the LPML and the latter might need to indicate clearly that protection applies if reports are made in good faith. It is reminded that Recommendation 14 para a) contains useful clear guidance that could be better reflected in the LPML *("This protection should be available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred")*. Furthermore as currently drafted, art 12 is potentially dangerous as the exoneration from the legal responsibility of secrecy is general - which could appear to mean that any disclosure to any person is not sanctionable (and there have been such cases of notorious tipping off – e.g. through the media – which have not been sanctioned). The exoneration is not restricted to the reporting, in good faith, to the GDPML; whilst the duty not to disclose (see below tipping off) that a transaction or information related to money laundering has been reported is restricted to any person involved in the transaction.

416. Certain provisions of the "Guideline-Regulation" N°5 of 2004 should be another source of concern in the examiners' opinion, namely those of art. 8 which empower the GDPML, to sanction individual officers or employees in case of "filing of false or misleading reports". For the reasons indicated above, the provisions should specify that this does not apply to reports filed in good faith.

417. Art. 6, para.1 of the LPML deals with the prohibition of "tipping-off":

> ***Article 6 Duty not to disclose***
>
> *1 The subjects determinate in Article 3 of this Law, including its directors, officers, employees and agents of such subjects which report suspicious transactions pursuant of this law or any other authority, are prohibited from notifying any person involved in the transaction that the transaction has been reported or to disclose any related information of money laundering suspicion. (...)*

418. The examiners welcome the existence of this provision. They regret that the current drafting (subject to reliability of the translation) does not cover reports on

terrorist financing (this is done in the LMSTF – see below) and that it is somewhat vague. They also regret that the prohibition from notifying is addressed only in respect to any person involved in the transaction.

419. It is not clear whether it is limited to the entities under art. 3 or whether it applies also to the bodies designated under art. 10, 10/1 and 10/2 (Customs authorities, tax authorities and licensing bodies, respectively, which all have to report suspicions as mentioned earlier). On the other hand, the reporting of suspicions which are not connected with a given transaction seems to be covered and this follows the spirit of the second EU Directive (art. 6.1a).

420. As already indicated under Section 2.2 of this report, the Criminal Code also deals with the prohibition and criminalisation of tipping off in case of terrorist financing. For money laundering, tipping off remains an administrative offence under the LPML. In the context of Albania, this can create some practical problems and the police cannot investigate the offence because it is not considered as being a criminal offence). See also section 3.10 below.

421. Finally, the LMSTF itself contains a set of provisions on the protection of reporting entities (art.13) and the "prohibition of data publication" (art.12). Art. 13 covers any person fulfilling in good faith his or her duties under the LMSTF. It is partially in contradiction with the LPML since the protection explicitly applies only against criminal proceedings and not civil actions. Art. 12 which imposes a confidentiality duty regulates the use of information gathered by virtue of the LMSTF and provides, among other things, for a prohibition of tipping-off which is quite broad and not limited to the disclosure of information to the customer or suspect (it prohibits disclosures to anyone except the authorised authorities).

422. The GDPML may disclose information and reports to other competent authorities in connection with cases of money laundering. The GDPML reports either to the prosecutor's office when it believes that sufficient evidence exists to start court proceedings or to law enforcement for further investigation.

423. Although the LPML provides for the duty to report exclusively to the GDPML, the examiners were told that the BoA and ISA also received reports. In the case of the BoA it was more a matter of providing the BoA with periodic general information, but in the case of the insurance sector, it was clearly indicated that reports to the GDPML are primarily done through ISA and "sometimes to the FIU directly". The examiners consider that this issue needs to be addressed urgently by the appropriate means (letters, guidance), since it is crucial that reporting takes place rapidly without involving further intermediaries and risks of leaks.

424. There are no provisions to provide feedback to the reporting person or institution.

Statistics on reports received by the FIU

425. The table below shows the numbers of reports received by the GDPML (FTR-financial transaction reports on the basis of the applicable threshold, STR – suspicious transaction reports) and their origin.

426. The data was provided with difficulty to the examiners. The data below is the most detailed breakdown available to date, even though it is not explicit enough as regards the type of entities covered under "non banks" and others".

	2001-2002	2003	2004	First quarter 2005	Total	Reporting Bodies
FTR	300	775	27500	8164	36739	Banks
FTR	12	105	429	92	638	Non-banks
FTR		23	48	9	80	Others
STR	20	27	42	10	99	Banks
STR	3	4	7	2	16	Customs
STR	2	2	10	4	18	Taxation

427. The following observations can be made:

- the current system generates mostly FTRs
- leaving aside those reports sent by the tax administration and the Customs, STRs emanate only from the banking sector
- the data does not allow to assess the level of cooperation of the different categories of non bank financial institutions (in particular exchange offices, money transfer services not affiliated with banks, credit and savings cooperative structures, insurance companies) and DNFBP
- as indicated under Section 2.4, there is no compilation of data on reports received in relation with terrorist financing.

428. It is the opinion of the evaluation team that serious efforts need to be done to make the reporting system more focused on, and able to generate suspicions of money laundering and terrorist financing.

3.7.2 Recommendations and Comments

429. The reporting system is quite sophisticated and sometimes complex. The examiners welcome the ambition to cover both suspicious transactions and those above a certain threshold (which might be too high for Albania). Unfortunately, the GDPML does not have the means to handle the amount of reports generated, although they mainly emanate only from the banking sector at the moment. Albania is fully aware of the need to provide the FIU with an adequate and sophisticated system and there are plans to do so soon. This would enable the FIU to have the technological capacity to receive on-line, store and analyse information coming from the reporting system.

430. Several provisions dealing with the reporting duty need clarification and improvements in various respects to cover more precisely the various requirements of the FATF Recommendations and avoid inconsistencies or contradictions with other texts such as the Guidelines-Regulations of 2004.

431. R13 is a fundamental recommendation which comprises several asterisked criteria that require to be addressed in primary or secondary legislation issued or authorised by a legislative body:

- 13.1 A financial institution should be required by law or regulation to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. At a minimum, the obligation to make a STR should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. This requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a ML offence or otherwise (so called "indirect reporting"), is not acceptable [except for certain DNFBPs].*

- 13.2 The obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.*

- 13.3 All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction.*

432. **It is therefore recommended:**

- **to take the appropriate measures to make it clear that obliged entities, as a rule, need to report directly to the GDPML and not to their supervisor (subject to the admissible exceptions for certain DNFBP)**
- **to introduce the obligation of the reporting of attempted transactions in the LPML**
- **to extend the scope of reporting in relation to terrorist financing, to the various elements contemplated in Recommendation 13 and SR.IV ("terrorism", "terrorist acts", "terrorist organisations", "those who finance terrorism").**
- **to keep statistics on reports concerning terrorist financing**
- **to enlarge the reporting threshold to all transactions (not only cash and transfers) – except those which present limited risks (e.g. commodity service payments, transfers with the BoA) - and adapt the amount to the situation of Albania**
- **to <u>urgently</u> amend art. 11 which introduces restrictions as to the categories of transactions that are subject to reporting; a list could be established that provide on the contrary for circumstances and transactions that need not to be reported**
- **to consider, in this relation, to exclude those transactions that are deemed to be of no value in preventing or detecting money laundering or the financing of terrorism (commodity service payments, transfers involving the BoA etc.)**
- **to amend art. 6 on "duty not to disclose" so as to cover also reports connected with terrorist financing and to clarify that the "duty not to disclose" applies also to entities apart from those listed under art. 3**

(customs and tax authorities, licensing bodies) and to any unauthorised person even though not connected with the transaction.

- **to review the provision on the protection of reporting persons in the LPML (to cover only the reports to the FIU and to specify that it applies to reporting in good faith) and in the LMSTF (to cover explicitly protection against civil actions)**
- **to review the drafting of "Guideline-Regulation" N°5 of 2004 so as to make it clear that reports filed in good faith are not subject to sanctions**
- **to review the drafting of the LPML together with the various secondary texts ("Guidelines-regulations", sectoral texts etc.) to ensure consistency; special care should be taken to the effect that these provisions are also consistent with the Criminal Code (e.g. definition of terrorist financing)**
- **to take measures to enhance awareness of all obliged entities about the reporting of suspicious transactions.**

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	**Direct reporting to the FIU is not an unanimous practice; attempted transactions are not explicitly covered; art. 11 LPML introduces unjustified restrictions as to categories of transactions to be reported by banks; insufficient coverage of terrorist financing; inconsistencies between the LPML and other texts**
R.14	**PC**	**The protection from civil and criminal liability in case of reporting is drafted in a way that is in contradiction with the spirit of the provision; inconsistent approach between the LPML and LMSTF Tipping off does not cover FT and all reporting subjects; possible problems as regards the implementation and sanctions in practice**
R.19	**PC**	**The thresholds may need to be lowered in the context of Albania, GDPML has no systems to adequately store and analyse the reports it receives**
R.25	**NC**	**No provisions to provide feedback**
SR.IV	**LC**	**The LPML does not cover all the elements of SR.IV, inconsistencies between the LPML, the LMSTF and other texts**

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

433. As far as Recommendation 15 is concerned, the LPML provides for a number of measures aimed at preventing money laundering and the financing of terrorism and to ensure that the application of these measures is adequately monitored both internally by

audit mechanisms and externally by the GDPML. In addition, the financial institutions themselves can have more detailed provisions in their internal procedures.

434. By virtue of art. 7 of the LPML, obliged entities are required to implement preventive anti-money laundering measures which include:

- appointment of a staff of high or managerial level for the receiving of information on transactions to be reported (a "money laundering reporting officer");
- establishment of a central unit responsible for the collection of information;
- adoption and implementation of internal regulations and instructions for the prevention of money laundering
- entrusting the internal auditor to ensure that the preventive measures are adequate,
- organisation of on-going training programmes for all employees and
- ensuring that overseas branches, representative offices and agencies are in compliance with the requirements of the LPML.

435. These requirements are also reflected in the Minister of Finance's Guideline-Regulation N°5 of 3 June 2004 *"On implementation of money laundering prevention and the combating of the financing of terrorism"*. This text does not provide clarification as to the type of information to be collected by the central unit referred to above (2nd bullet). However, it is indicated that each entity should establish and maintain an information database about its customers, providing information about their economic and financial characteristics to assist the employees in assessing and identifying transactions that are potentially linked with illegal activities (in line with criterion 15.1.2. of the Methodology). In principle, the banking sector has been fully computerised for several years now. For the insurance sector, this is a requirement which was only introduced in 2005. The situation is unclear for the other financial sectors and the Albanian authorities should address this issue since adequate databases are also crucial for the storing and retrieving of information, the analysis of customer profiles etc.

436. A number of requirements of the Methodology on Recommendation 15 could have been addressed in a more detailed way in the LPML or the Guideline-Regulation N°5. Details are missing for instance on the exact duties, responsibilities and powers of the money laundering compliance officer (who is in the LPML only a "reporting officer") and the central body for the receiving of reports). They could also have been more specific on the training requirements (to address CDD issues, ML/FT techniques and trends, suspicious transactions reporting etc.) and the role of the internal audit in testing the internal AML/CFT mechanisms.

437. In this respect, it was confirmed to the evaluators by compliance officers from the banking sector that the distinction in the LPML between the "money laundering receiving officer" and the central unit for the centralisation of reports is not clear. None of them referred to the Guideline-Regulation N°5, where things are a bit clearer.

438. Although it is understood that financial institutions often have in place procedures for hiring employees, there is no specific legal requirement to screen and scrutinise candidates before hiring them.

439. Turning to Recommendation 22, the Bank of Albania has consented to the opening of a branch in an EU Member State by one of its licensed banks and only two or three insurance companies have branches abroad (in two or three countries). Compliance of foreign branches of Albanian businesses with the LPML is dealt with, as seen above, in art. 7 of the LPML (last bullet).

3.8.2 Recommendations and Comments

440. Despite some gaps in the LPML and secondary guiding texts, it seems that at least the banking sector is not facing serious difficulties to cope with the above requirements.

441. The situation in the other financial sectors could not be assessed as the team only managed to meet with compliance officers of the banking sector. Supervisors acknowledged that there has been occasional problems (BoA: absence of training due to the size of the bank, insufficient level of the reporting officer, non reporting of transactions etc.); in other instances, they are not aware of the situation (ISA: "we are not sure whether money laundering reporting officers, internal procedures and training are in place").

442. In any event, the legal/regulatory requirements are not ambitious enough. **It is therefore recommended**:

- **to introduce a requirement for internal procedures to address CDD measures**
- **to review the function of the institution of the "money laundering reporting officer"(MLRO) and to make this officer responsible not only for the reporting of transactions but also for the effective implementation of internal AML/CFT procedures and mechanisms (and to clarify on that occasion, as appropriate, the distinction between the MLRO and the central unit for the centralisation of reports; alternatively, the content of Guideline-Regulation N°5 of 2004 could be reminded to reporting entities)**
- **to include in internal training programmes and awareness raising measures information on trends and techniques in the field of ML/FT**
- **to provide for manager and employee screening**
- **to require the establishment of computerised information and data management systems in all financial institutions (apart from the banking and insurance sector), and non financial institutions as appropriate.**

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	**No explicit requirement for internal procedures to deal with CDD, responsibilities of MLRO and "central unit" need clarification, requirement on training in ML/FT trends and techniques is missing, specific provisions on employee screening are needed**
R.22	**C**	

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

443. Although the Bank of Albania conducts a thorough analysis of the application for a bank licence this issue has not yet been formally addressed in a legal text. Neither the LPML nor the Regulations issued by the Bank of Albania define shell banks or prohibit banks from establishing correspondent or continue relationships with shell banks. The draft new LPML does not address the issue of shell banks either. Whilst criterion 18.1 is complied with due to the general requirements of the BoA (bank licensing criteria require the physical presence/location in Albania and to start operating within 6 months following licence delivery), clear provisions are needed to implement criteria 18.2 and 18.3.

3.9.2 Recommendations and Comments

444. **It is recommended to insert in the LPML or banking regulations clear provisions defining and prohibiting the establishment of shell banks in Albania and the establishment of correspondent banking relationships with, or the opening of accounts by shell banks**.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	**Licensing conditions of the BoA require physical presence of the bank and to start operating within 6 months after license delivery but no explicit provisions in either the LPML or banking regulations on the issue of shell banks in Albania, the establishment of correspondent banking relationships and the opening of accounts by shell banks**

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs , Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

445. Competent authorities for financial services are: the Bank of Albania for credit institutions and other non-bank financial institutions, the Insurance Supervisory Authority (ISA) for the insurance business and the Albanian Securities Commission (ASC) as the supervisory and licensing authority for the securities market. These authorities supervise and oversee their respective sectors against the applicable (sector specific) regulations and the LPML to some extent.

446. This is explicit in the case of the BoA under its Regulation of 2004 *"On money laundering prevention"*. More generally, all supervisory authorities under art. 13 para.2 of the LPML are responsible for *"checking the implementation of the programs against*

money laundering and ensure that these programs are appropriate". However, it is unclear which programs are addressed by this provision.

447. AML/CFT requirements have been "incorporated" into the banking regulatory framework, through the BoA Regulation of 2004 (which replaced an earlier version of 2001).

448. The GDPML is the authority in charge of supervising the implementation of the LPML. It was given explicitly inspection powers in 2004 with the adoption of Guideline-Regulation N°5 "*On the implementation of money laundering prevention and the combating of the financing of terrorism"*. It is in a process of setting up a unit responsible for this work, including carrying out inspections. It is now competent for the supervision over all sectors.

449. This would be a major improvement since it has not been clear so far whether the various categories of obliged entities were subject to effective supervision, including for AML/CFT purposes (see second round report). Art. 8 of Guideline-Regulation makes it clear that the GDPML *"shall evaluate how each reporting subject implements the Law On Money Laundering Prevention"*. Furthermore, although the LPML refers to the supervisory authorities, these are not identified.

450. On-site, and in the replies to the questionnaire, it was said that the GDPML shares its responsibility with others but the information was not always consistent (the replies to the questionnaire do not mention the Albanian Securities Commission)[16].

451. Whatever the current model used, it has not really been tested yet. The revised LPML - a draft of which has been prepared – contemplates already another supervision model according to which the GDPML would share this responsibility with the BoA, the ASC, ISA, the Ministry of Finance and the Bar Association (being itself supervised by the Ministry of Justice). The draft new article 13 deals in a detailed manner with the distribution of tasks and responsibilities, which is to be welcomed.

Licensing bodies in general

452. As indicated earlier in this report, licensing bodies are also required to comply with the LPML (at least those which are responsible for the licensing of entities listed in art. 3 of the LPML. In March 2004, the Council of Ministers adopted Guideline N°3 of March 2004 *"On identification and reporting forms and procedures for licensing bodies relative to anti-money laundering"*.

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16 According to the replies to the questionnaire, the supervisory authorities are as follows:
- for banks and subjects licensed by bank, foreign exchange offices: BoA,
- stock exchange, brokers , certified public accountants: MoF
- for insurance companies: ISA
- for gambling clubs or casinos: Gambling Directory in MoF
- for non-profit organisations: Ministry of work and social affairs
- for notaries, lawyers: the Independent Professions Directorate in MoJ and the Bar Association in MoJ
- for business clarified in letter 'g' article 3: the responsible Ministry
- for subjects witch are not supervised directly by another supervisory authority: the GDPML

453. These Guidelines require in particular (item 4), that:

> 1. *licensing bodies shall report to the "competent authority" every suspicion, on the source and origin of capital, type of financial activity etc, regardless of the threshold specified in the article 5, of the law no. 8610 dated 16.05.2000, amended, on money laundering prevention, such as:*
>
> *a) when there are grounded suspicions related to the identifying and explanatory documents of the source of capital*
>
> *b) when they notice irregularities in the declaration of the source of the proceeds and funds, as well as when there are suspicions on the declared sources and wealth and for connections with criminal activities.*
>
> *c) Economically or legally unjustified wealth or property;*
>
> *d) When there is information, signals or data that assets or money deposited for the license derive from criminal activity or are implicated with criminal money or assets, or when there are suspicions that the activity that the subject wants to start is intended for money laundering etc.*
>
> *e) When there is no declaration of the source of money or assets*
>
> *f) Suspicions other than the above-listed ones.*
>
> *For every suspicion, the reporting shall be made using the "Signalling Form for the licensee", attached to this regulation.*
>
> 2. *The licensing bodies shall report to the "responsible authority" every financial action over 20 million leke of the applicant licensee, before issuing the license. See attached Annex 2, "form of the financial actions of natural and judicial persons, applicant licensee"*
>
> 3. *Licensing bodies shall require the declaration of the legal source of capitals and additional clarifications related to natural and judicial person and its administrator, co-owner and sources identification.*
>
> 4. *Licensing bodies shall report to "the responsible authority", immediately and no later than 72 hrs after the registration of the transaction, every action described above, as well as every data, that indicates money laundering. The report and an official cover letter shall be transmitted per fax, e-mail, telephone, and courier.*
>
> 5. *Licensing authorities shall notify "the responsible authority" any time they have indications or suspicions that the activity will be used to support, facilitate, incite, protect or conceal terrorist acts or terrorism financing*

454. This interesting initiative of Albania is a positive development. It requires from licensing bodies a certain level of AML/CFT-specific vigilance as regards fitness, properness and the criminal background of the applicant, owner and co-owners (whether they are natural or legal persons) and the source of the capital. This vigilance needs to take into account both money laundering and terrorist financing issues (item 5).

455. Item 8 also requires to remain vigilant on an ongoing basis after the initial licensing process: "*Licensing authorities shall notify "the responsible authority" any time they have indications or suspicions that the activity will be used to support, facilitate, incite, protect or conceal terrorist acts or terrorism financing*."

Bank of Albania.

456. The Bank of Albania performs the functions of a central bank by virtue of Act 8269 *"On the Bank of Albania"*. The objectives of the Bank are:

- to achieve and maintain price stability
- to formulate, adopt and execute monetary policy and the exchange arrangement and rate policy
- to licence, revoke and supervise banks
- to hold and manage official foreign reserves
- to act as banker and adviser to the Government
- to promote the operation of payment systems.

457. The Bank of Albania is responsible for the licensing, supervision and monitoring of banks and non-bank financial institutions (foreign exchange offices, entities providing financial services such as money transfers, payment facilities, credit-savings associations and unions) and to achieve this end has the authority to issue rules and regulations as deemed necessary.

458. Article 13 of the LPML requires the Bank of Albania in its supervisory role to report to the GDPML suspicions of money laundering and financing of terrorism as well as breaches of the LPML whilst Article 10/2 of the same Law requires the Bank of Albania, as a licensing authority, to report to the GDPML financial transactions over the established threshold.

459. Penalties and sanctions are prescribed in Article 44 of Law No. 8269 *"On the Bank of Albania"*. These range from written warnings to orders of restrictions on operations, imposition of fines, suspension and dismissal of administrators, imposition of fines on the banks, temporarily managing banks and revocation of the licence.

460. The Supervisory Council has, as at 31st December 2003, licensed 15 banks, 7 non-bank institutions, 2 Savings-Credit Association Unions which comprise 131 associations each separately licensed, 1 representative office of a foreign bank and 57 foreign exchange bureaux. During the year the Bank also gave its consent to a bank to open a branch in an EU Member State.

461. The Bank of Albania has issued two sets of regulations for the granting of licences; one to conduct banking activity and another to conduct non-bank activities. These are in line with the relevant EU legislation and include:

- Requirements with regards to the expansion or reduction of a bank's network both within and outside Albania;
- Amalgamation, merge, division and sale of a bank's assets;

462. A bank can be established as either a public or a private joint stock company or as a co-operative bank. In conducting its licensing AML/CFT due diligence the Supervision Department goes as far as is necessary to determine the real owners as well as the members of the executive council, the control committee and the main executive

managers based on fit and proper criteria that include an assessment of each person's wealth, background and any business connections and interests.

463. The licensing of foreign exchange bureaux is also regulated by regulations issued by the Bank of Albania. These are based on the same criteria as for banks. Furthermore the regulations require that all foreign exchange bureaux employees are registered with the Bank of Albania and are issued with an identification card which must be kept within sight during office duties.

464. The Supervision Department of the Bank of Albania conducts complete and partial (i.e. focused) examinations at licensed institutions as well as through off-site analysis and reviews. Each bank is thoroughly examined at least once a year whilst focused inspections are carried out in order to assess the performance of their business activity, risk management, internal control functions including AML/CFT compliance.

465. When in the course of its supervisory examinations the Bank of Albania identifies AML/CFT breaches under the LPML and which are subject to sanctions and punitive measures under the responsibility of the GDPML, it notifies and co-operates with the latter so that the GDPML can execute its responsibilities accordingly.

466. For other AML/CFT infringements which do not fall under the responsibility of the GDPML, the Bank of Albania has the authority to apply sanctions and punitive measures in compliance with the Law on Banks in the Republic of Albania and its Regulation of 2004 *"on money laundering prevention"*. For the most serious violations such as where evidence shows that the administrators are involved in money laundering and/or financing of terrorism, grave acts of fraud, have benefited personally or have caused considerable damage to third parties, these sanctions go as far as empowering the Bank of Albania to revoke a licence and appoint a liquidator.

467. The Association of Bankers complained of an imbalance in the supervision of non-bank licensees, particularly foreign exchange bureaux. The Association claimed that foreign exchange bureaux were conducting foreign currency transactions under the counter. The Bank of Albania acknowledged the fact that they were aware that foreign exchange bureaux were conducting transactions under the counter but there were so far unable to find any records or any trace of these transactions during their on-site visits.

468. The Bank of Albania advised that they were collaborating with the Tax Authorities in order to detect these unregistered transactions by foreign exchange bureaux but they have not yet succeeded in this regard.

469. Since 2001 the Supervision Department has been implementing a development plan which was designed in cooperation with the World Bank. The main objectives of this development plan are the convergence of the supervisory process and its procedures towards international standards (namely the BIS Core Principles), the development of supervision into a continuous process and its orientation to risk indicators, the implementation of corrective actions and the verification of their implementation. Although changes have been effected towards convergence with the Core Principles, work is still on-going.

470. The Supervisory Department is also assessing the impact of the new Basel Accord and has set up a working team with the intention to initiate a process of an open discussion with the banking industry.

471. It was acknowledged that all the positions in the Department had not been filled yet[17]. Although this has not prevented the BoA to implement supervision plans covering all the banks, it might have affected the ability of the BoA to exert the same level of vigilance and supervision over other sectors under its responsibility for which the situation is not totally clear (foreign exchange bureaus, money remittance providers and other non bank financial institutions).

The insurance sector and the Insurance Supervisory Authority (ISA).

472. Although the Insurance Supervisory Authority (ISA) was established in 1999 following the enactment of a first piece of legislation on insurance activity in 1996, it was only in July 2004 that the Albanian insurance legislation started to converge towards the EU insurance legislation.

473. The main responsibilities of ISA are to licence insurance companies and their supervision in order to protect the interest of the policyholders. The Insurance Supervisory Authority has the authority to issue by-laws, rules and regulations in order to carry out its functions and responsibilities under the Laws.

474. The Insurance Supervisory Authority is in the process of introducing rules and regulations that converge with international standards on supervision[18].

475. In its supervisory role the ISA can conduct off-site and on-site examinations through a reporting system that covers management supervision that includes fit and proper rules for stockholders and employees, actuarial supervision, and financial and economic supervision including the collection of statistical information. More comprehensive information reporting is required from insurance companies where the risks exceed the limit of ALL 30 million (approx US$ 30,000) or for claims that exceed the value of ALL 10 million (approx US$ 10,000).

476. In order to comply with the requirements of the LPML, the Insurance Supervisory Authority established a working team to implement the internal procedures in compliance with the LPML and to assist licensed insurance companies to draft internal procedures and develop training programmes on the prevention of money laundering and the financing of terrorism.

477. The implementation of such programmes has not started yet as ISA does not yet have sufficient expertise in this field and needs to train its own staff first.

478. The same level of due diligence exercised by the Bank of Albania is performed by the Insurance Supervisory Authority for the licensing of insurance companies.

[17] All the positions were filled at the time of the adoption of the report.
[18] After the visit, an inspection department was established within ISA and an insurance specific AML/CFT regulation was passed at the end 2005.

479. It was noted that currently, the insurance companies have not yet appointed any agents and all their sales are conducted directly with the public.

480. The present Director of the Authority, who was the evaluators' interlocutor for this sector during the on site discussions had only been appointed in December 2004 and the examiners understood that the holder of this position had changed a few times over the last few years.

481. With regard to AML/CFT issues the Authority needs to establish a sound relationship with the GDPML so as to be is a position to implement effective AML/CFT procedures, guidelines etc.

482. It appeared to the examiners that the resources available to the Authority are barely sufficient to meet the current demands.

The Albanian Securities Commission.

483. The Albanian Securities Commission is established under the Law on securities dated 1996, as amended subsequently. The Commission's functions include the licensing, supervision and monitoring of the activities of:

- the securities market and the providers of services for the clearing and settlement of securities transactions and depositaries and
- licensed dealers, investment advisers and their respective representatives, licensed investment managers and licensed investment funds.

484. The Albanian Securities Commission has the power to inspect, investigate and request information from any of its licensees and can take disciplinary action for contraventions of any provision of the Law on securities irrespective of any other action whether civil or criminal that may be taken against the licensee in respect of the same misconduct. A person who commits an offence against the Law on securities shall be liable to a fine of between Lekë 30,000 (approx US$ 300) Lekë 1 million (approx US$ 10,000) in the case of a person not being a company; reaching a fine of between Lekë 50,000 (approx US$ 500) Lekë 5 million (approx US$ 50,000) in the case of a company.

485. The Law on securities provide for the adequate prudential criteria which include capital adequacy and minimum capital requirement, fit and proper criteria for all operators in the market. The Commission also supervises the stock exchange. As already noted the securities market has yet to start operations.

486. Plans are being developed by the Albanian Securities Commission so that the Commission will be able to fulfil its supervisory role which include AML/CFT issues once the market starts operating.

Self regulatory organisations (SROs)

487. There are currently two potential self regulatory organisations, the bar association and the chamber of notaries. They have not been granted nor recognised any particular AML/CFT responsibility so far. They both consider that these professions are not subject(able) to the LPML due to their own professional privilege and statutory rules.

488. In the draft revised LPML, the Bar Association would be recognised as a supervisory body for the profession of lawyers.

Guidelines for the industry

489. A general AML/CFT Guideline-Regulation N°5 was adopted to provide further guidance to all obliged entities. The text sometimes does not add much more to the LPML and, as already indicated in other parts of this report, it sometimes contradicts (or *de* facto amends) it.

490. Once the new draft of the LPML is adopted, Guideline-Regulation N°5 will obviously need to be revised and will have to provide guidance, examples, more precise requirements under the FATF Recommendations and other international texts etc.

491. The examiners noted that other Guidelines-Regulations by the Ministry of Finance have been adopted for the state authorities and licensing bodies.

492. Sector specific guidelines have been drafted so far only for the sector covered by the Bank of Albania. AML/CFT Guidelines for the insurance, securities and other sectors have yet to be drafted.

493. In February, 2004 the Bank of Albania issued a Regulation *"on money laundering prevention"* which also includes guidance (notably a list of suspicious transactions) to assist banks in satisfying their prevention of money laundering obligations.

494. The Regulation expands on the obligations under the LPML and includes detailed procedures for identification, recordkeeping and reporting, training, internal procedures and gives an expansive but not exhaustive list of indicators of what could constitute a suspicious transaction. Banks are required to look into the background of these types of transactions and conduct a full analysis of all available information in order to carry out an assessment of the operations.

495. The procedures require identification for account opening or other ongoing relationships, one-off or a series of connected transactions above the limit established by the LPML and all suspicious transactions irrespective of the amount.

496. The identification procedures cover natural or legal persons and list the extent required to determine those persons who own, manage and control legal persons and the documentation required including the taking of a copy of the identification document which must be kept in the customer's file.

497. The procedures for record keeping including retention period of records, training and reporting to the Bank of Albania and the GDPML are also provided for.

498. The Regulation also includes the requirement to appoint a MLRO who needs to have sufficient authority within the bank and enough expertise to carry his duties which are in line with international requirements. The MLRO whose name and contact details are relayed to the Bank of Albania and the GDPML is required to keep regular contact both with the Bank of Albania and the GDPML to whom he is required to make AML/CFT disclosures. It was however noted that similar Regulation/Guidelines have not been issued for non-bank license holders which include foreign exchange bureaux and neither have the Regulation/Guidelines issued for banks been extended for non-bank licensees.

Feedback

499. As indicated earlier, there are no arrangements in Albania on the issue of feedback. Feedback is not a practice either and the concept itself was not known from the private sector representatives met on site (including commercial banks which are the main target of AML/CFT efforts at the moment).

Sanctions under the LPML, "Guideline-Regulation" N°5 of 2004, the LMSTF and the BoA regulation of 2004.

500. Albania has put in place a comprehensive but complex system to ensure the implementation of AML/CFT requirements.

501. According to art. 14 of the LPML, breaches by persons subject to the LPML (the obliged entities listed under art.3) which are considered as being a minor offence are liable to a fine ranging from ALL 50,000 (approx. US$ 500) to ALL 10 million (approx US$ 100,000). Whilst employees of subject persons are liable to a fine ranging from ALL 50,000 (approx US$ 500) to ALL 100.000 (approx US$ 3,000), high level officials or appointed representatives are liable to a lesser fine ranging from ALL 20,000 (approx US$ 200) to ALL 100,000 (approx US$ 1,000). The fine is determined by the Head of the GDPML.

502. The drafting of article 14 is complex and the following remarks can be made:

- there are some mistakes in the structure of the provisions
- the opening of bank accounts with forged and untrue names (art.7 para.1f) does not seem to be sanctionable under the LPML (although it is sanctionable under the Criminal Code,– see Section 3.2)
- the duty to report immediately information and suspicions related to terrorist acts and terrorist financing (art.5 para.3/1) does not seem to be sanctionable under the LPML (although it might be sanctionable under the LMSTF and the Guideline Regulation N°5– see below).

503. These fines are imposed by the Head of the GDPML. Legal persons are not subject as such to penalties (unless they are involved in a criminal activity or act, under the Criminal Code which provides for the criminal liability of legal persons). Penalties apply only to the natural persons listed above.

504. The examiners found that the sanctioning system did not leave sufficient room for milder measures such as warnings.

505. The provisions of the 2004 Guideline-Regulation N°5 *"on implementation of money laundering prevention and the combating of the financing of terrorism"* (art.8) are different from the LPML. Art. 8, which is dealing with its enforcement– one of the responsibilities of the GDPML - essentially contemplates three types of controls:

- assessing the adequacy of the reporting subjects' programmes and internal control system for money laundering prevention (it should be noted here that CFT issues are not included); no enforcement measures are provided as such for warnings, fines etc.
- applying sanctions against the *"governing authorities, individual officers or employees for failure to file required reports, failure to file reports on time and for the filing of false or misleading reports"*
- to recommend the revocation of a licence *"if there is reliable evidence showing that the reporting subjects' administrators are involved in illegal transactions such as money laundering and/or terrorism financing"* and other types of offences, or the entity is operating without licence.

506. Pursuant to Art. 24 of the LMSTF, 1) "*If the act committed does not constitute a criminal offence, the failure of the entities listed in this law and in the law "On preventing money laundering" to meet requirements under these laws, is considered an administrative contravention/offence and is punishable by a fine ranging from 50 thousand to 10 million ALL, as well as indemnifying the government for the value, of the fund and of the other asset, with respect to which it is proved that the designated person has an interest.* 2) *Administrative sanctions according to paragraph 1 of this article are established by the Minister of Finance."*

507. Since no entities are listed in the Law on Measures for the Suppression of Terrorism Financing No. 9258 (it says "any person" under the provisions on the duty to report), it is to be understood that the Law includes the same reporting entities as those referred to in the LPML.

508. The provisions of art. 24 para.1 interconnect the LMSTF and the LPML in a way that raises doubts concerning the legal technique used and its consequences. The end result is legally unclear since violations to the LPML would also be sanctionable according to the LMSTF, whereas the provisions are not the same and the LMSTF is not a text amending the LPML.

509. For infringements detected by the BoA, the 2004 Guideline-Regulation n°5 of the BoA *"On money laundering prevention"* provides for the joint enforcement by the GDPML (for sanctions which are within its competence) and the BoA (in all other cases). This complementarity is foreseen under art. 14.

Sanctions in practice

510. Despite it being the sole authority able to do so under art. 14, the GDPML has never applied any sanctions for non-compliance with the provisions of the LPML. It was said that some warnings (4 or 6, depending on the source) and suggestions for

improvements had been addressed to certain entities. It remained unclear on which basis these warnings had been issued.

511. The Bank of Albania has applied certain measures by virtue of the banking regulations (mostly calling the attention of the Head of the institution about the insufficiencies or issuing a warning). There have also been two cases of banks keeping anonymous accounts which were brought to trial and sanctioned. The most frequent weaknesses identified were the lack of AML/CFT training (mainly in smaller banks that had little resources), compliance officers of an insufficient level, unreported transactions (mainly as a result of negligence as the examiners were told).

512. The examiners were also advised that there had been notable cases where tipping off had happened (e.g. a newspaper published on the following day about a report that was filed by a bank to the FIU). There have also been cases where the Bank of Albania has come across transactions that would have had to be reported according to objective factors (cash transaction above the legal threshold). It would have informed the FIU of those facts but the type of measures applied in the end remained unclear to the examiners since the FIU has only issued warnings. Since "tipping off" is only an administrative offence punishable – in the case of natural persons – with a fine, it is impossible to sanction the entity when the employee who divulged the information cannot be identified.

513. The FIU might have been reluctant to apply fines on natural persons. The existence of explicit provisions on warnings and the possibility to apply sanctions against legal entities could facilitate the exercise of the GDPML's enforcement powers and enable it to deal with cases where a natural person was not identified as being responsible for the infringement to the LPML. This is particularly the case for tipping off, which therefore also requires to be criminalised in the Criminal Code also in the case of money laundering, should the existing provisions not be adequate (e.g. professional secrecy duty, already mentioned in other parts of this report).

514. It could also well be that the complex structure in place concerning sanctions (under the various laws and regulations) has created some uncertainties and confusions.

3.10.2 Recommendations and Comments

515. It appears that the necessary legal and regulatory framework is in place and there is evidence that they are being applied at least by the banking supervision. Whilst the securities market has yet to start operating, insurance supervision needs to be established on a more continuous basis.

516. Whilst the supervision of banks is deemed to be satisfactory in line with the plan developed with the assistance of the World Bank, supervision for other non-bank licensees especially foreign exchange bureaux needs to be more aggressive in order to minimise the AML/CFT risks inherent with the under-the-counter transactions conducted by the bureaux. The Insurance Supervisory Authority and the Albania Securities Commission need to ensure that their supervision resources are adequate to be able to meet their respective obligations. Establishing a dialogue and cooperating

with the GDPML would help in the drafting of guidelines and planning of training programmes on AML/CFT issues.

517. Whilst the Regulation/Guidelines for banks are deemed to be adequate and comprehensive, similar Regulation/Guidelines have not been issued for the financial sector not licensed by the BoA This situation has created an imbalance in the financial industry whereby BoA license holders are obliged to implement measures which other licensees are not burdened with. This situation was also highlighted by the Association of Bankers during the on-site visit.

518. Albanian supervisors altogether have made a moderate use of sanctions so far despite occasional serious problems and insufficiencies. Improvements are needed in this respect.

519. It is recommended:

- **to implement measures to ensure effective AML/CFT supervision over the non banking sectors covered by the BoA**
- **to review the adequacy of staffing of the BoA supervision department and increase it as necessary to enable it to effectively supervise the various sectors under the responsibility of the BoA**
- **to implement measures to ensure effective AML/CFT supervision over the insurance sector**
- **to draft a development plan for the Insurance Supervisory Authority – in order to address its insufficient staffing and resources - taking into consideration the anticipated growth in the insurance sector**
- **to adopt Regulation/Guidelines similar to the ones issued to banks for non-bank licensees (to address transactions particular to the activities performed by the non-bank licensees)**
- **to review the policy concerning sanctions and make sure they are adequately applied by supervisors and the GDPML when it is necessary**
- **to review the sanction system in the LPML and Guideline-Regulation N°5 to ensure consistency, to include explicit milder measures such as warnings and to make them applicable to legal persons; Albania should consider in this respect a simpler system (applicable to all requirements of the LPML without listing them), leaving more discretion to the responsible authorities to decide**
- **to examine the situation resulting from the provisions in art. 24 of the LMSTF concerning the connection with the LPML, and remedy to the possible conflict of norms by redrafting this article (and clarify its exact scope and purpose).**
- **to examine the need to introduce criminal law provisions on tipping-off (if existing measures are insufficient)**

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	**Ineffective sanctions; range of sanctions insufficient and only applicable to natural persons; legal problems connected with connection between LPML and LMSTF that undermines the sanction**

		mechanism
R.23	**PC**	**Supervision of non-bank and insurance licensees by their respective authority needs to be developed further**
R.25	**PC**	**AML/CFT guidelines for non-BoA license holders have not yet been introduced apart from the general guidelines; no feedback policy**
R.29	**LC**	**Effectiveness issue: powers have been used moderately despite certain problems**
R.30	**PC**	**The Insurance Supervisory Authority is not sufficiently resourced and the situation regarding the BoA needs to be examined; GDPML is in a process of recruiting further staff**
R.32	**PC**	**Only statistical information on the banking sector is deemed to be adequate.**

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

520. Alternative money transfer services are provided by two companies (AK Invest and Financial Union) which are franchised by Moneygram and Western Union respectively and therefore hold the Albanian contracts for these networks. These two franchised companies are licensed by the Bank of Albania (BoA) which does not require further licensing of the ultimate operator affiliated. The two companies are subject to the AML/CFT requirements. The BoA monitors compliance of the two licensed companies with the rules of their parent company and the Albanian regulations, including the LPML. The Bank of Albania assesses the owners and management under fit and proper criteria and carries out on-site inspections as regards the two licensed companies. It was also indicated that they carry out inspections of the affiliates.

521. However, it was difficult to find out exactly the level of the operators that are affiliated to the two companies. A register and lists are available on the website of Western union and Moneygram. From what the team could find out, these lists include also, in addition to commercial banks and foreign exchange offices, post offices, travel agencies, car rental companies, public transportation companies and possibly others. The total number of businesses is quite significant.

522. For one of the licensed companies in particular, the BoA recently identified several insufficiencies for which a report was prepared with recommendations for improvements. The team understood that these had been addressed at a latter stage. The Bank of Albania is still seeking ways to ensure that satisfactory AML/CFT procedures are applied at the retail subagent level and that enough information is gathered and retained by the Albanian agents of Western Union and Money Gram to ensure proper analysis, in addition to the controls applied by the networks themselves.

523. It is to be noted that the list of obliged entities covers some businesses involved in money transfer services, for instance travel agencies. It seems however that there have never been any reports from the businesses affiliated to money transfer service networks. The BoA explained that money transfers are always below the threshold for reporting. The evaluators recognise that the Albanian authorities are aware of the problems and risks connected with money transfer services. But the alleged difficulties of distinguishing between the high quantity of legitimate transfers (by the many Albanians living abroad) and transfers connected with criminal activities should not be an excuse for the lack of reinforced measures. At the moment, the BoA does not know exactly who the ultimate service providers are, apart from those it has licensed.

524. Although less formal money transfer services in the form of hawala and hundi-type networks do not seem to be present in Albania according to the evaluators' interlocutors, the latter wondered whether the many "street currency exchangers" can be/are used occasionally – in the context of a cash based economy and under-use of the banking system - as correspondents or facilitators for money transfers.

3.11.2 Recommendations and Comments

525. The evaluators acknowledged the fact that the BoA has opted for a licensing and supervision approach as regards money transfer services. For the time being, there seem to be strong reliance on the internal controls by the two licensed operators.

526. In the opinion of the evaluators, many doubts remain, as regards the full compliance of the sector and the BoA itself is looking for ways to improve the situation and develop systematic controls over all businesses affiliated to money transfer networks. Serious risks in this field are acknowledged, which should entice the authorities to develop tougher controls.

527. Until the weaknesses in supervision are adequately addressed, money transfer services, especially through economic operators which are not traditionally dealing with financial services, still remain vulnerable to money laundering or financing of terrorism. Albania should rapidly clarify the situation.

528. **It is recommended to take rapidly all the necessary measures to ensure the proper implementation of SR VI and the related general FATF Recommendations, in particular Recommendation 23, to all economic agents providing money transfer services. The Albanian authorities (BoA and GDPML) should identify all the ultimate operators affiliated and keep a list that would enable them to carry out direct inspections, depending on the seriousness of risks.**

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	**The two companies licensed to operate a money transfer service network in Albania are controlled by the BoA but the latter is not in a position to conduct examinations on affiliates (which are not BoA licensees)**

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

529. The replies to the questionnaire contained almost no information about the situation as regards DNFBP, apart from the general AML/CFT measures applicable by virtue of the LPML.

530. From a general point of view, it is important to underline that the LPML requirements for DNFBP are almost the same as for financial institutions. There are only very minor variations (e.g. thresholds for identification and reporting). The weaknesses identified in the previous Section also apply to this one.

531. For the time being, it is acknowledged that there have been no particular measures taken to make DNFBP (and other businesses) comply with the LPML requirements. There is a general discussion going on as to how this situation needs to be addressed and adequate control mechanisms put in place.

4.1 Customer due diligence and record-keeping (R.12)
(applying R.5, 6, 8 to 11, & 17)

4.1.1 Description and Analysis

532. The list of natural and legal persons subject to the AML/CFT obligations under the LPML includes various types of entities which fall under the category of designated non-financial businesses and professions (DNFBP) contemplated in Recommendation 12. The full list of obliged entities is detailed in Article 3.1 of the LPML. Accordingly:

- Casinos: are listed; as indicated earlier in this report, for the time being there are no casinos in Albania. The first licence for operating a casino has just been delivered.

- Real estate Agents: are not listed as such; art. 3.1 covers every natural and legal person the business of which is related to the evaluation of real estate and construction: this could cover real estate agents in some cases. Other categories of listed entities, due to the broad wording, could also be considered as covering real estate agents (e.g. "offices that evidence the conveyances or alienation of property"); in any event, the concept of real estate agent which acts as intermediary in real estate transactions needs to be included explicitly

- Dealers in precious metals and stones: are listed

- Lawyers, notaries, other independent legal professionals and accountants: are listed (the LPML covers certified public accountants, financial advisors, auditors, attorneys, notaries and representatives with a power of attorney)

- Trusts and company service providers: are not listed; whilst trust services are offered by banks (and are thus covered in practice), providing company services is not an activity carried out in Albania.

533. As far as the list of art. 2a of the EU Directive is concerned, the requirements of the LPML leads to the following observations:

- the list of DNFBP does not include tax advisors;
- the LPML does not distinguish between external and other types of accountants and auditors;
- the LPML obligations are applied to all the activities of lawyers, notaries, accountants and auditors
- other dealers in high value goods are covered (e.g. those involved in the trading of "means of transport" and the trading in "precious and antique things").

534. It was also noted that the AML obligations have been extended to other businesses and professions not listed in the FATF 40 Recommendations nor the second EU Directive. These are:

- gambling clubs
- financial advisors;
- transportation business including forwarding (shipping) activities;
- the trading of precious and antique things;
- the administration of third party property;
- travel agencies;
- the construction industry.

535. The LPML regime applicable to DNFBP does not fundamentally change.

536. As already stated under Chapter 3 above, the LPML requires that identification is carried out only before conducting financial (or a series of connected) transactions of ALL 2 million (approx US$ 20,000) or over or when there is suspicion of money laundering of financing of terrorism, irrespective of the amount. The transaction threshold for gambling clubs, casinos and travel agencies is reduced to ALL 200,000 (approx US$ 2,000). Identification is to be made against an original valid document; however DNFBP are not required to obtain and keep a copy as part of the identification record.

537. The strengths and weaknesses in the LPML and Guideline-Regulation N°5 concerning the identification and CDD process have already been underlined.

538. It does not appear that identification, when establishing a relationship, is required under the relevant law governing the respective DNFBP. In the case of the gambling sector (electronic and betting games), identification is required in case of bettings and winnings over the LMPL threshold. This applies to all betting games and the winnings. Winnings with slot machines are limited by the regulations of the sector to the equivalent of USD 5000. The company which received a license to operate a casino had to submit the internal regulations, which provide for customer identification also at the entrance of the casino.

539. The LPML does not exempt accountants, notaries, lawyers and other independent legal professions from the AML/CFT obligations when receiving or obtaining information in the course of ascertaining the legal position of their client or performing their responsibility of defending or representing their client in judicial

proceedings. The examiners were also sometimes advised that their duties under the LPML (notably reporting) was totally incompatible with their professional statutory secrecy.

540. The Bar Association and to some extent that of the notaries contend that this conflicts with the client/attorney privilege in their respective legislation where secrecy restrictions prevail in line with applicable international standards.

541. At the moment, these two professions are not applying any AML/CFT requirements. The situation could not be checked for other professions. Albania clearly needs to address this issue by introducing in the LPML, specific provisions based on Recommendation 12 which contemplates a series of situations in which lawyers, notaries, other independent legal professionals and accountants are required to comply with AML/CFT provisions.

542. The situation regarding DNFBP in respect of politically exposed persons, the misuse of technological developments, introduced business, record keeping and enhanced vigilance vis-à-vis certain transactions does not essentially differ from the general situation described under Section 3. The representatives of lawyers indicated that they are not entitled, according to the Law on Advocacy, to act as administrators or managers in a company. Acting as the "right hand" in a business would not be a tradition for the profession either.

4.1.2 Recommendations and Comments

543. There are several lacunae in the Albanian AML/CFT system regarding this Recommendation. The lack of identification requirement when establishing a relationship together with the high thresholds that would trigger identification are two major limitations that render a weak effectiveness of the LPML. The missing derogation to lawyers, notaries and accountants puts these professionals in conflict with their compliance obligations under their respective legislation. Furthermore, the lack of enhanced due diligence for higher risk persons increases the risk of money laundering.

544. Most of these weaknesses would be addressed in the draft AML legislation which still needs to be refined to bring it in line with current international standards.

545. **It is therefore recommended to review the identification and CDD measures applicable to DNFBP:**

- **to cover explicitly real estate agents when they are involved in transactions for a client concerning the buying and selling of property**
- **to introduce a clear requirement for traders in precious metals and stones to apply CDD principles when they engage in any cash transaction with a customer equal or above €/USD 15,000**
- **to cover attorneys, notaries, other independent legal professions and accountants in the circumstances provided for in recommendation 12**

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	**Same weaknesses as under Section 3; real estate agents, traders in precious metals and stones, attorneys, notaries, other independent legal professionals and accountants need to be covered under the circumstances provided in R.12**

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

4.2.1 Description and Analysis

546. The reporting system applicable to DNFBP (and other businesses and professions) listed under art. 3 of the LPML is the general one. As already indicated in Section 3.7, it consists in reporting:

- immediately but within 72 hours, all transactions in cash and transfers of funds above ALL 20,000,000 (USD 150,000) or the equivalent value in foreign currencies (art. 5.2),
- immediately but within 72 hours, all suspicions of money laundering relating to transactions (art. 5.3)
- immediately all information and suspicions concerning transactions, proceeds or property possibly linked with terrorist acts or terrorist financing (art. 5.3/1);

547. In this respect, there are no changes or differences of approach that may apply to DNFBP.

548. Regarding casinos and real estate agents (subject to them being clearly designated in the LPML – see previous Section), the situation is in line with FATF Recommendation 16.

549. Regarding dealers in precious stones and metals, the threshold of ALL 20,000,000 (USD 150,000) is far above the FATF requirement of USD/€ 15,000. The LPML needs to provide for a specific threshold for this category of dealers that would be in line with the FATF requirement (preferably lower, because of the particularities of Albania)

550. Regarding lawyers, notaries and other legal professionals and accountants, the LPML provides for no derogation as it was the case under the previous section on identification, CDD and other requirements. The LPML needs to be amended to restrict the reporting of transactions only in those cases provided under Criterion 16.1.

551. As indicated earlier, trust and company service providers do not exist as such. Trust services are offered by banks (and are thus covered in practice). Providing company services is not carried out in Albania.

552. In principle, all DNFBP report directly to the GDPML, like financial institutions. There is no mechanism provided for in the LPML nor any arrangement in practice for certain categories such as lawyers, notaries, other independent legal professionals and accountants, to submit disclosures through a self-regulatory organisation (SRO) responsible for the profession. It could be worth for Albania to consider a reporting mechanism through certain SROs as an incentive for those independent professions to cooperate in the framework of AML/CFT.

553. The rules on protection against civil and criminal liability, prohibition of tipping off, sanctions etc. are the same as for all other obliged entities:

- Article 6 of the LPML imposes a duty of non-disclosure on all subject persons including lawyers;

- Article 17 of the LPML establishes preventive measures that have to be implemented by subject persons. These include: The appointment of a Money laundering reporting officer (MLRO) who should be an official of high or managerial level to act as a central point responsible for receiving and collecting information; the implementation of internal procedures, on-going training programmes for employees; the assignment to an internal auditor of the responsibility to carry out examinations to ensure compliance;

- Administrative sanctions are provided for in Article 14 of the LPML and other general texts, as seen under Section 3. These are applied by the Head of the GDPML.

554. The weaknesses in this respect have been analysed under Section 3 and other sections of this report.

555. The level of awareness among businesses and professions falling under the FATF category of DNFBP is not satisfactory. The evaluation team met representatives of lawyers, notaries, gaming and casinos owners. A meeting with an audit firm was asked but this could not be arranged. It was clear that all of them never made any report to the GDPML.

556. The representatives of the lawyers expressed their opinion that they do not have to report to the GDPML since other laws are protecting the confidentiality of their relations with clients. The examiners were advised that there had not been consultations with their profession before they were included in the LPML.

557. The representatives of the Association of notaries have met with the GDPML a few times and have insisted on the fact that they cannot cooperate under the LPML since they would have no information about the reality of transactions and their amount, they would not always handle the money on the occasion of a transaction (the payment is often made between the parties without the presence of the notary).

558. For the time being, there are no particular forms of cooperation between professional organisations representing certain categories of DNFBPs and the GDPML. In some cases, there has been no dialogue (e.g. lawyers).

559. Section 3 on financial institutions already provided a table with an overview of reports received from the obliged entities. As it was indicated earlier, the figures available contain no breakdown as regards DNFBP.

	2001-2002	2003	2004	First quarter 2005	Total	Reporting Bodies
FTR	300	775	27500	8164	36739	Banks
FTR	12	105	429	92	638	Non-banks
FTR		23	48	9	80	Others
STR	20	27	42	10	99	Banks
STR	3	4	7	2	16	Customs
STR	2	2	10	4	18	Taxation

560. The examiners were advised on site that for the time being, there have been no reports by entities falling under the FATF category of DNFBP. They were also advised that there are no sector specific guidelines issued as yet by the GDPML and other supervisory bodies or SROs.

4.2.2 Recommendations and Comments

561. The total lack of reports of suspicious and other transactions from DNFBPs is particularly worrying, in the opinion of the examiners. Especially since there are many alleged risks in the sectors they are dealing with (real estate transactions and construction, selling of cars etc.) and the range of economic coverage by DNFBPs is so broad.

562. Lawyers, notaries, other independent legal professionals and accountants should be allowed not to report suspicious transactions if the relevant information is obtained in circumstances where they are subject to professional privilege or legal professional secrecy.

563. **It is therefore recommended**:

- **To develop an on-going dialogue between the GDPML and the various sectors of the DNFBPs so that legislative conflicts are identified and appropriate solutions proposed.**
- **to arrange a scheduled and continuous training program for the various non financial entities that have to report to the GDPML**
- **to issue directives for all the sectors that is the supervisory authority and to assist in preparing a directive from other supervisory authorities**
- **to review the reporting requirements and thresholds for DNFBP, along the lines of Recommendation 16**

- **to consider the utility of a system where certain professions (e.g. lawyers) report through their organisation**

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	**The reporting duty for DNFBP needs to be refined regarding certain entities and thresholds; training and guidelines are needed for these sectors which have never reported yet (effectiveness issue).**

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and Analysis

564. The Gaming Directorate established in 2002 is the authority that licenses, regulates, supervises and monitors casinos. Only land-based casinos are permitted to operate as on-line casinos are prohibited. For the time being there are no casinos in Albania. The first licence for operating a casino is in the final stage for approval. As the examiners could find out by themselves, several gaming houses using the name "casino" in fact operate automated live games (e.g. roulette).

565. When assessing applications the Directorate conducts a due diligence process to check amongst other requirements the source of capital and capital adequacy and fit and properness of persons managing and controlling the casino. These steps go back to identifying natural persons who hold any shareholding in the casino and the process is re-applied when changes in the shareholding occur.

566. The Directorate applies the same licensing criteria to gambling clubs where no live games are allowed.

567. All other DNFBP are supervised and monitored, in principle, by the respective Ministry which is responsible for that particular activity e.g. the Ministry of Justice is responsible for lawyers and notaries, etc. The existing self-regulatory organisations (SROs) have no specific responsibility as regards AML/CFT regulation, supervision and monitoring.

568. Little efforts have been devoted to DNFBPs so far and no guidelines have been issued for them. There are no sector specific regulations either.

569. Unsurprisingly, there appears to be little awareness of AML/CFT issues and of the provisions of the LPML, although there is at least an obligation to report to the GDPML. Notaries are a striking example. Representatives of the profession candidly objected that they had no knowledge of what money laundering and terrorist financing was all about. They admitted for instance the current practice of practically all real estate transactions being concluded for a price below the real market price (there are well known market prices for every district of the capital for instance), and that although the partial "off the record" payment could be used to invest dirty money, the main purpose of this practice was tax avoidance.

570. In some cases – e.g. lawyers - there was even a strong opposition from the profession, arguing that other pieces of legislations dealing with professional secrecy - do not allow them to cooperate in AML/CFT issues with the authorities and the GDPML in particular.

571. In the opinion of the evaluators, these anecdotal testimonies are indicators for an insufficient dialogue between the authorities and certain categories of obliged entities when they were included in the LPML.

572. The fragmented supervision of DNFBP apart from casinos by the different Ministries/Authorities does not permit a standard assessment of compliance with AML/CFT requirements across all DNFBPs. Although the GDPML has been the overall competent authority for the supervision of all reporting entities since 2004, it seems that nothing has been done in practice. On the other hand, pending the increase of staff and completion of its development, the GDPML is still not in a position to take on this onerous role.

573. From the meetings held with the representatives from various DNFBP, and assuming that this was a representative sample even though not all of the businesses and professions had been met, the examiners reached the overall conclusion that for the time being, DNFBPs do not comply with the LPML, which raises the question of the effectiveness of supervision.

4.3.2 Recommendations and Comments

574. The Albanian authorities acknowledge that no significant steps have been taken as yet on those issues. A general discussion is under way to devise ways to ensure compliance of, and supervision over the non-financial obliged entities. Such measures need to be taken urgently, given the serious allegations of ML in some sectors.

575. **It is recommended to urgently devise and implement a supervision mechanism for DNFBP along the lines of FATF Recommendations 24 and 25.**

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	**No supervision system in place for DNFB as yet. No information available on compliance with AML/CFT requirements**
R.25	**NC**	**General guidelines are in place but no sector specific guidelines have been issued for DNFBP, despite their obvious lack of cooperation**

4.4 Other non-financial businesses and professions - Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

576. As already mentioned above the LPML also includes entities - other than those falling under the category of DNFBPs - which are considered as being at risk or misused for money laundering and terrorist financing. These have not been subject to further AML/CFT measures so far and they do not report transactions as yet.

577. As also indicated earlier, Customs authorities (art. 10 LPML, Tax authorities (art. 10/1 LPML) and licensing bodies/authorities (art. 10/2 LPML) are required to report their suspicions to the GDPML. These are positive steps and as far as licensing bodies are concerned, this is in line with the second EU Directive, art. 10.

578. Pending further clarification by the Albanian authorities, several of these are affiliated to money transfer service networks and are to be considered – by analogy - as financial institutions according to the new methodology. The issue is addressed under Section 3.11 above.

579. As indicated earlier in Section 3.7, concerning the issue of protection of reporting entities and tipping off, only those listed as "subjects" under Art. 3 of the LPML enjoy protection under its art. 12.

580. Furthermore, certain professions perceive contradictions between the duty to report under the LPML, and the provisions of the Criminal Code which criminalise false reporting and the breach of the duty of secrecy. This was particularly the case for one of the public administrations obliged to report its own suspicions to the GDPML. The examiners therefore believe that this situation needs to be addressed by extending the scope of art. 12 to all reporting entities and institutions, including the Customs authorities (art. 10 LPML, Tax authorities (art. 10/1 LPML) and licensing bodies/authorities (art. 10/2 LPML).

581. As already underlined in other parts of the report there is great reliance on cash transactions. The only limits at the moment, according to the evaluators' interlocutors, concern the salaries of state employees, as well as certain payments done by legal persons, which must be made through the banking system. As regards the latter, although it is sometimes said that legal persons cannot perform transactions in cash above ALL 300,000 (2500€), the evaluators were told by representatives from the banks that what the law really says is that payment of invoices above ALL 300,000 must be made through the banking system. "But one can buy an apartment in cash because this is a contract, not an invoice".

582. Automated teller machines are increasingly available. Cheques are also increasingly used as a modern transaction technique, but there is no unanimity at present as to whether payments with cheques are to be reported. As the examiners were advised on site by a bank representative, the GDPML would have specified that a payment by cheque is not a transaction in the meaning of the LPML. The examiners

therefore understand that such transactions would not be reported, which puts at question the usefulness of cheque payments for the purposes of AML/CFT.

583. The largest banknote, introduced in 1996, is 5000 ALL (equivalent to approx. 40 €) which is a reasonable amount given the economy of the country.

584. The use of electronic cards is increasing. The Bank of Albania issued a regulation in this matter.

4.4.2 Recommendations and Comments

585. The issue of DNFBPs and other non-financial obliged entities in general was addressed in a more detailed way earlier in this report. The examiners welcome that Albania has extended the list of obliged entities beyond the list of financial institutions and DNFBP of the FATF. Albania will need to implement the LPML also in their respect. The problem remains as regards the scope of Art. 12 of the LPML which does not currently protect the reporting administrations and supervisory bodies.

586. As regards the measures taken to date to reduce cash transactions, these do not appear to have had the desired effect so far. Reliance on cash is still extensive but more worrying, unexpected interpretations seem to prevail concerning modern transaction techniques. **It is recommended**:

- **To extend the scope of art. 12 of the LPML so as to cover also the tax administration, Customs and licensing/supervisory bodies**
- **to introduce further limits on cash payments and consider the usefulness of introducing a general prohibition to perform outside the banking system transactions above a certain amount (adapted to the situation of the country)**
- **to take the necessary measures, whether legal or interpretative, so that the wording of existing regulations obliging legal persons to disburse/pay amounts above ALL 300,000 through the banking system applies to all types of payments**
- **to take the necessary measures, whether legal or interpretative, to ensure that the definition of transactions in the LPML and elsewhere clearly applies to all payment instruments (and does not exclude for instance cheques).**

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**NC**	**AML/CFT measures need to be implemented in respect of the other categories of business, apart from DNFBP and financial institutions** **AML/CFT efforts and measures to reduce cash are potentially seriously undermined by restrictive interpretations of certain concepts (cheques, payment of invoices)**

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

587. The registration of legal persons (including companies, political parties and non-profit organisations in their various forms) was, in the past, under the responsibility of the various first instance courts and not centralised in Tirana. Since the recent creation of central registers in the capital (kept by the 1st Instance Court of Tirana), it can be said that there are over 30,000 companies and 1,000 NPOs registered. The Ministry of Labour and Social Affairs has its own register which comprises about 700 non-profit, non governmental organisations. Access to the register is open to the public.

588. It is possible, also for obliged entities, to check information (including participations or investments) in legal persons but since the registers are not computerised, retrieving data remains a difficult task. Another difficulty is to keep the information up-to-date and to exert controls at the time of registration.

589. Another characteristic of businesses and companies in Albania is that the practice of parallel balance sheets is very common (one interlocutor said "all companies keep a double balance sheet"). This could be due to the limited number of audit requirements (e.g. insurance companies have been subject to financial auditing only since 2005).

5.1.1 Description and Analysis

590. The legal provisions concerning the establishment and the operation of companies are set forth in the first part of the Commercial Code and the Law on Trade and Companies, as well as in the Instructions that have to be applied when establishing a trade company.

591. The main types of companies are joint stock companies, companies with limited liability, limited partnerships and general partnership, with the largest number of companies being registered as LTDs which accounts for 95% of all registered companies. There are about 60 joint stock companies according to the activity recorded by the Central Register of Shares.

592. Registration is of constitutive nature and the company is established by the decision of the Court.

593. Founders of companies can be domestic and foreign individuals/legal entities. The data requested for any type of company are the same: name and address of the founders, name and registered office of the company, activity of the company, the company's subscribed capital, name and address of the person vested with power of representation.

594. There is no condition for company founders or representatives to demonstrate the absence of previous convictions. There are in fact no regulations on the possible consequences of having a criminal record for the establishment of, or involvement in a company. In addition, there is no requirement for the staff of the court register to check the whereabouts of applicants, although the evaluators were told that this was done

from time to time in practice. This lack of examination applies also as to whether the founders or representatives are listed on the national CFT list.

595. The Court only exercises a procedural control in order to check that all formal requirements are satisfied. In the case when a foreign company establishes a branch or another company in Albania, it is sufficient to provide an authenticated copy of the documentation concerning the establishment in the country of origin. Should a change regarding a registered company occur, this must – in principle - be reported to the Court. The change may include: change of founders, directors, head office, increase in capital assets, etc.

596. There is no fixed deadline for the reporting of such changes, and there have been no sanctions imposed so far for failure to notify changes. As the examiners were advised, changes are often not reported. As a consequence, the register is not up to date.

597. As the evaluators were told, the requirement to submit during the registration process information and documents dated less than a month is a requirement in practice. The law is silent on this issue.

598. As indicated in the introductory part to this section, the court register is not computerised and that inevitably raises certain questions concerning the ability of the authorities or an obliged institution applying "know your customer" policy to retrieve data contained in the register. The evaluators were told that the search can be made manually, but it was not clear how long it would take. As seen earlier, it is likely that the information is not very much reliable.

599. The team was also informed of the problem of companies which become dormant after some time, or even immediately after registration. There seem to be no AML/CFT policy applied in practice either.

600. This being said, the examiners welcome the inclusion of the tax authorities and licensing bodies on the list of entities required to report suspicions (10/1, 10/2 of the LPML. Although they cooperate in practice and do report a non negligible number of suspicions to the GDPML (at least this is clearly the case for the tax administration according to the statistics available), the impact of their association to AML/CFT efforts remained unclear. The examiners noted that under the LPML, in fact, the reporting is limited to money laundering suspicions. It might be worth reviewing this situation.

601. The evaluators were informed that legal entities can issue bearer shares. They also found references to bearer instruments in certain list of suspicious transactions or patterns (see Section 3.2). However, it was difficult to know what kind or level of vigilance is applied in practice.

Controls by licensing bodies

602. At the moment, the Albanian efforts are mostly focused on controls at the time of delivery of a licence, not when a company is formed.

603. As indicated earlier in this report, licensing bodies also are required, by virtue of the LPML, to comply with its requirements and among other things, to report to the GDPML (transactions above a certain amount, as well as suspicions of money laundering).

604. In addition to the LPML, guidelines have been issued by the Council of ministers for this sector: Guidelines N°3 of March 2004 "On identification and reporting forms and procedures for licensing bodies relative to anti-money laundering". As indicated earlier (see Section 3.10), it remains unclear, though, whether the licensing bodies have to refuse to issue a license in case they suspect a criminal activity/background and whether they are required to remain vigilant on an ongoing basis after the licensing process.

5.1.2 Recommendations and Comments

605. The examiners welcome the fact that the tax authorities and the Customs, but also licensing bodies have to report their own suspicions to the GDPML. In the context of Albania, these are useful safeguards and ways to facilitate the detection of criminal activities involving companies and business structures.

606. This being said, the current AML/CFT measures and vigilance applicable at the stage of company formation clearly suffer from technical and legal insufficiencies. **It is recommended to enhance the requirements regarding the establishment of companies, along the lines of the FATF Recommendations:**

- **to provide for a clear legal basis on deadlines for reporting changes to the Court register**
- **to computerise the Court register**
- **to review the regulations applicable to bearer shares and make sure they take into account AML/CFT needs**

607. It is also recommended:

- **to establish an AML/CFT policy at the level of the register of companies; this policy should provide for controls of the criminal background of applicants and investors, identification of ultimate beneficial ownership, controls over the origin of funds.**
- **to consider extending the reporting duty of tax authorities and licensing bodies (art. 10/1 and 10/2) also to FT**
- **to devise ways to improve the transparency of businesses' real financial situation and to avoid the practice of double balance sheets (e.g. development of audit requirements for sectors at risk etc.).**

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**NC**	**No measures in place at the creation/registration stage to prevent the unlawful use of legal persons in relation to ML/FT (no updated**

		information, no computerisation, no information available on existing bearer shares and policy in their respect, no AML/CFT policy in place at the level of the registry of companies, double balance sheet is a common practice among companies and no preventive general measures in place (e.g. auditing), possible controls by licensing bodies and reports to FIU not extended to CFT

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

608. Three banks have received a license authorising them to carry out certain additional services, in particular to provide trust services, including – without limitation – the investment and administration of funds received in trust. There is no information available at the moment on the importance of this sector or clientele, or on any other trusts or legal arrangements operating in Albania, although it has been said on one occasion that foreign trusts had tried to establish businesses in the country. Albanian interlocutors explained the little information available by the fact that this was not part of the Albanian tradition.

609. The examiners understood that the three banks apply the same identification, CDD and other requirements in the case of trusts. The issue deserves further clarification and should be addressed in the LPML and other relevant texts as appropriate. For the time being, trust services are not dealt with at all.

610. The problems connected with the absence of an automated registry kept up to date – which would facilitate access and control of information on beneficial owners for instance when a legal person holds participations in another legal person - was discussed above.

5.2.2 Recommendations and Comments

611. **It is recommended to clarify the issue of the existence in practice of trust arrangements and businesses established by foreign trusts and adopt the measures required by Recommendation 34 of the FATF**.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**LC**	**Although the issue is marginal in Albania, further clarification and provision are needed**

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

612. NPOs and NGOs are regulated by two different pieces of legislation but the rules are basically the same, according to the Albanian authorities. One regulates in particular the trade unions and political parties (and some other organisations), whilst Law N° 8788 of 7 May 2001 "On non-profit organisations" applies to associations, foundations and centres. These NPOs are also subject to the provisions of the civil code.

613. As indicated in the previous section, the registration of legal persons, including organisations, was under the responsibility of the various first instance courts and not centralised in Tirana. Since the creation of a central register in the capital (kept by the 1st Instance Court of Tirana), it can be said that there are over 1,000 NGOs or NPOs registered. Foreign charities are also present in Albania (mainly from the United Kingdom, Italy, the Netherlands). These have to register in Albania as well.

614. All organisations did not re-register after the central register was created and some therefore exist *de facto*. Access to the register is open to the public. Since the register is not computerised, the same problem as for companies remains: it is difficult to retrieve data.

615. NPOs acquire juridical capacity only ones the decision of the court on the registration has become final. The registration procedure opens with submitting an application form, containing information on the form and purpose of the organisation, the object of its activity, identity of the founders and its managers/representatives, the structure of management, the location of its headquarters and the identity of its legal representatives. The respective documentation in the original form or certified by a notary should be attached to the application for the registration. The court decides on application for registration within 15 days from the date the request is submitted. The court only checks the formal fulfilment of requirements, and may reject an application if the applicant failed to provide all the necessary documentation, even though an extended deadline could have been given.

616. Just like in company formation, for establishing an NPO/NGO there is no requirement to provide a certificate proving that founders or managers of an NPO have no previous convictions. There is no requirement nor policy to check whether they have been designated on terrorist lists.

617. According to Law N° 8788 "On non-profit organisations", the sources of income can be membership fees, grants, donations. The state does not exercise a systematic control on the origin of money used for establishing a NPO. The General Tax Directorate merely controls whether taxes are paid.

618. As the examiners were advised, because of the unfavourable taxation regime applicable to NPOs, it is not uncommon for these entities not to report all donations and to maintain a parallel book-keeping, in agreement with donors. The examiners wer advised that more than 90% of civil society organisations are unable to pay their taxes.

619. The registration requirements and on-going supervision by the tax authorities do not seem to provide measures of protection against terrorist organisations posing as legitimate NPOs, nor provide protection against diversion of funds collected by NPOs.

620. Albania has not undertaken a review of the AML/CFT vulnerabilities of the NPO/NGO sector, although it has been proven that some have been misused for FT purposes (two Arab foundations operating in Albania were included in the lists as financiers of terrorism), or ML purposes, to dissimulate the origin of money (funds embezzled in France).

5.3.2 Recommendations and Comments

621. Albanian authorities clearly need to improve the situation as regards the non profit sector. The examiners believe that ways could be found to encourage greater transparency of this sector on a mutual trust basis and with adequate measures (preferential taxation regime, audit of NPOs receiving donations, public control in case of public subsidies, background checks of founders etc.).

622. **It is thus recommended**:

- **to conduct a review of the AML/CFT risks and situation in the associative/non-profit sector**
- **to review, as appropriate, the legal and financial regime applicable to NPOs in order to avoid common illegal practices such as dual bookkeeping, and therefore to increase transparency and the reliability of information available**
- **to devise a policy for the control and supervision over NGOs/NPOs taking into account ML/FT considerations (dissemination of FT list to the registers, awareness raising actions of the register, tax and other administrative services dealing with the sector etc.).**

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**NC**	**No measures in place to prevent the unlawful use of NPOs in relation to ML/TF (no review of risks, common practice of double bookkeeping, no policy for the supervision and control of NPOs)**

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

623. The national efforts in the field of AML are coordinated by the National Committee on Coordinating the Fight Against Money Laundering, the existence and responsibilities of which are provided for in Article 8 para. 1 of the AML Law. This committee, which was created in 2003, is directed by the Prime Minister. It involves the Minister of Foreign Affairs, the Minister of Defence, the Minister of Public Order, the Minister of Finance, the Minister of Justice and the Head of the State Intelligence Service. The meetings also involve specialists and senior staff from the various ministries, including the Head of the FIU and the General Prosecutor.

624. The committee meets at least 2 times per year. It has responsibility for the overall state policy for preventing and fighting money laundering on the basis of the half-yearly reports prepared by the GDPML (in theory) and reports and documents prepared by international institutions in the field of AML. It also discusses any important matter and cases submitted by the Prime Minister, the General Prosecutor or the Governor of the Bank of Albania.

625. The practical functioning of the Committee is dealt with in a separate text (Regulation N°1), which was adopted on 23 March 2004 when the Committee met for the first time.

626. Besides, an Inter-Institutional Technical Working Group for the prevention of money laundering has been set up, with representatives from all the institutions involved in this field. This working group, which is involved in the overall decision-making and also technical implementation processes is led by the General Director of the GDPML. Monthly meetings are organised as a minimum. Concrete issues are also dealt with in small groups.

627. As indicated in the beginning of the present report, these coordination structures have resulted in the adoption of:

- a Programme on money laundering prevention (with a focus on the elimination of cash economy and illegal foreign exchange activity),
- a series of recommendations concerning cross border movements of assets, and the initiation of a project to draft a national strategy and action plan in this area (notably to import the declaration system at the level of the Customs).

628. Cooperation between the Ministry of Finance (including the GDPML), the Ministry of Public Order, the Office of the Prosecutor General, the Secret Service and the Bank of Albania is also supported by a memorandum of understanding "For institutional cooperation in combating and preventing money laundering" of September 2002. The objective of this MoU is to facilitate the sharing and exchange of information, including on the identification of proceeds from organised crime activities and resources used for terrorist financing. Meetings take place, in principle, every quarter.

629. According to the Albanian authorities, these various meetings have had positive effects on the limitation of illegal currency exchange activities, the strengthening of controls over illegal border movements of cash, combating the informal economy, and on the operational cooperation (direct cooperation between the FIU and the criminal police on concrete cases, cooperation with the border police, General Prosecutor's Office, Customs, Supervising and Licensing authorities, etc.

630. Coordination Mechanisms are thus in place to address both the policy making and the operational levels.

631. However, as far as the effectiveness of these coordination mechanisms is concerned, it seemed to the evaluators that there is much room for improvement. As mentioned earlier in this report, the evaluation team found it strange that the GDPML was not aware of the final outcome of the cases forwarded to the Prosecutor's office and could not say with certainty whether there had been convictions for money laundering so far, whether or not these cases had been generated by the reporting system. The replies to the questionnaire remained silent on this. It was explained on site that the secrecy of investigations prevents the GDPML from being informed of the development of cases. Even though, the authorities should be able to inform each other at least about the final results of ML/TF cases.

632. As far as the black market currency exchange is concerned, the situation would have very much improved in the last 5 years according to the interlocutors from the BoA and the issue is continuously discussed. The authorities are aware that removing this activity from the streets could make it reappear in other forms or in connection with legal businesses such as the licensed foreign exchange bureaus. This would require a coordinated approach with the tax authorities to implement strict controls over the reality of the financial balance. Whilst the examiners understand the need for a well coordinated approach, they consider that this issue should receive the highest priority from the coordination bodies. It seems that this business was just moved away from the vicinity of the central bank and as they could observe, it is still extremely common in other parts of the centre of Tirana. This situation is not acceptable any longer under the strict requirements of the new Methodology and the effective fight against ML/FT. It is addressed and rated here as it involves concerted efforts to be effectively dealt with. The Albanian authorities will also need to satisfy themselves that this activity is not linked with informal money remittance issues addressed under SR.IX.

633. It also appeared that there is little shared knowledge and recognised information on the phenomenon of money laundering. Most authorities have their own views, and these are often simple assumptions. The absence to date of an activity report produced by the GDPML could partially explain this situation.

634. The existence of diverging interpretations on crucial issues is also disturbing, and just to mention a few examples already presented in Section 1 and the relevant parts of this report:

- a cheque would not be a transaction as a bank would have been told by the GDPML,

- Art 300 CC on the criminalisation of failure to report a crime – which provide for a large exemption ("persons obliged to keep secrecy because of their capacity or profession, are excluded from the obligation to report") – would be contradictory with the reporting duty under the LPML and other similar texts,
- Art. 305 CC which criminalises false reporting of a crime is sometimes perceived as a deterring factor which would hinder individuals from reporting suspicions of ML/FT in certain cases
- legal persons are obliged to pay invoices above ALL 300,000 through the banking system, but any purchase of real estate can be made in cash since it is considered, according to the banking association, that this would correspond to the payment of a contract, as opposed to an invoice.

635. There is also the issue of certain practices which are quite common, although they go against the LPML (e.g. the insurance business reporting mainly through ISA).

636. Coordination thus seems to be at an early stage. Although the legal bases and structures are in place for enhanced coordination between state bodies and dialogue with the private sector, the results are not convincing yet. Better communication between these actors is needed. Although important problems seem to affect the economic sectors covered by DNFBP and other non financial obliged entities, training activities have focused so far on the banks and certain professions clearly refuse to contribute to the AML/CFT efforts for reasons of incompatibility of legislation. The absence of any feedback arrangements and policy deprives cooperation with the industry from an incentive which has proven to be useful in a number of other countries.

637. relevant authorities should be established in order to initiate more cases and have more results. Special attention is given to the fact that the police does not initiate ML cases during normal investigations of predicated offence outside the reporting system.

6.1.2 Recommendations and Comments

638. The existence of coordination and dialogue structures is a positive step, which deserve to be better exploited to assess the money laundering and terrorist financing threats, to develop a common culture of AML/CFT and to solve urgently diverging interpretations of the provisions in place which could undermine the efficiency of the preventive mechanisms.

639. **It is recommended to make better use of the various existing coordination levels to review the effectiveness of AML/CFT efforts; this would first require to identify the common patterns of money laundering and to devise more effective approaches to reduce current vulnerabilities. Cooperation with the obliged and reporting entities needs also to be fostered and diverging interpretations eliminated.**

640. **It is also recommended to adopt urgent coordinated measures to stop the street foreign exchange business, which currently offers significant money**

laundering facilities and support to smuggling (and possibly other criminal) activities.

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**PC**	**Effectiveness: legal and institutional bases are in place for coordination but still no evaluation of ML problem and patterns and serious concern raised by persisting, important sector of street currency exchange**
R.32	**NC**	**No overall review undertaken nor possible in the absence of concerted analysis of ML phenomenon and risk sectors**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

641. Albania has signed and ratified (in 2002) the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the UN 1988 Convention (in 2000) against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the UN 1999 Convention on Transnational Organised Crime (the Palermo Convention) (in 2002), and the 1999 UN Convention on the suppression of financing of terrorism (in 2002).

642. As discussed earlier in this report in relation to SR.II, Albania has incorporated the criminal offence of financing of terrorism of the UN Terrorist Financing Convention in the Criminal Code. In the other Sections of this report, current strengths and weaknesses have been identified as regards the Albanian system in place to combat organised crime, money laundering and terrorist financing. The weaknesses in this respect have already been underlined (e.g. criminalisation of ML/FT and provisions on seizure and confiscation that need some refining, clarifications and provisions needed for certain investigative techniques etc.).

643. As discussed earlier in this report in relation to SR.III, Albania has also implemented the United Nations Security Council Resolutions relating to the prevention and suppression of financing of terrorism e.g. S/RES/1267(1999) and S/RES/1373(2001).

644. Albania has also ratified several Council of Europe conventions which are relevant in the context of AML/CFT; for instance:

- European Convention on extradition of 1957 and its two protocols
- European Convention on mutual legal assistance in criminal matters of 1959 and its two protocols
- European Convention on the transfer of proceedings in criminal matters of 1972
- European Convention on the suppression of terrorism of 1977

6.2.2 Recommendations and Comments

645. The examiners welcome the fact that the main international instruments in the field of AML/CFT have been ratified. **As regards the implementation of the UN conventions, some adjustments are recommended concerning criminalisation, temporary and final measures, investigative means etc. which have already been discussed in other parts this report.**

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	**Some adjustments needed concerning criminalisation, temporary and final measures, investigative means, possibilities for direct contacts in the field of judicial cooperation etc.**
SR.I	**C**	

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

646. The general rules applicable to mutual legal assistance are provided for in international agreements to which Albania is a Party, and the Criminal Procedure Code. Different interpretations were presented to the evaluating team as to which of these two sources takes precedence. Some of the interlocutors stated that international instruments take precedence over domestic legislation based on the general principle provided for in Art.122 of the Constitution of the Republic of Albania. Others, however, stated that the Criminal Procedure Code prevails and that international provisions are not directly applicable (a judge also indicated that the two are at the same level). The official position of the Albanian delegation in MONEYVAL is that the Constitution makes it clear that international agreements prevail over domestic law.

647. As already indicated under the previous Section, Albania is a Party to international agreements relating to mutual legal assistance, such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its two additional protocols, and the 1990 Strasbourg Convention. It is also a Party to several bilateral mutual legal assistance agreements.

648. According to the declaration made by Albania to the 1990 Strasbourg Convention, the FIU has been designated as the central authority for handling all incoming and outgoing requests related to Chapter VII of the Convention which deals with the various forms of assistance and cooperation in the field of money laundering, search, seizure and confiscation of proceeds (except cooperation between FIUs).

649. So far as domestic provisions are concerned, mutual legal assistance is regulated by Art. 505-523 of the Criminal Procedure Code. Articles 505-510 deal with the receiving and sending of letters rogatory, Art. 511-518 deal with the execution in

Albania of foreign decisions (sentences), and Art. 519-523 are related to the enforcement abroad of Albanian decisions (sentences).

650. Art. 505 deals with procedural assistance regarding "*communications, notifications and the taking of proofs"* as stated in the English version. This can be understood as covering the production, search and seizure of information, documents or evidence from financial institutions, taking of evidence from or statements from persons, providing of originals or copies of relevant documents, and the service of judicial documents). The Albanian authorities clearly stated that these forms of assistance are possible to provide and are provided in practice. Summoning witnesses to appear before a judicial authority of the requesting Party is covered by Art. 508.

651. It was underlined that secrecy laws do not impede mutual legal assistance in these respects.

652. Generally, the principle of reciprocity applies when providing legal assistance and the responsibility for the control of this requirement lies with the Minister of Justice. According to Art. 505(4): "*The Minister has the right not to grant support to the letter of application in case the requesting state does not give the necessary guarantee of reciprocity*."

653. Albania also applies the basic requirement of dual criminality. It is the courts which decide on the execution of a foreign request and if the condition of dual criminality is not met, the courts shall refuse the providing of assistance. A positive point is that technical differences regarding the category of offences or the terminology and definition used for the offence do not constitute an impediment for providing assistance, as the examiners were told.

654. Requests for legal assistance shall be sent through the diplomatic channels by the Albanian Ministry of Justice. However, Art. 509/4 explicitly provides Albanian authorities with the possibility to send a letter rogatory directly to a foreign authority (through the diplomatic channel) and to inform the MoJ about it. It remains unclear whether requests from abroad can be received directly without passing through the diplomatic channel, and also whether direct communication between judicial authorities is possible without formal contacts through the Ministry of Justice. The representative from the Serious crime Court indicated that reservations and declarations made by Albania to the relevant instruments have excluded the possibility for any direct contacts between judicial bodies, without going through the Ministry of Justice.[19]

655. A positive point is that offences which involve fiscal elements are not an obstacle for the execution of a foreign assistance request, as the examiners were told on site.

[19]The Albanian authorities advised at the time of the discussion of the report that a new declaration to the Convention on Mutual Assistance in Criminal Matters of the Council of Europe was adopted in the beginning of 2006 (however, this declaration has not yet been received by the Council of Europe Secretariat). According to the declaration, the Ministry of Justice would not be the central authority anymore and direct contacts between judicial authorities would be possible, this being already in practice with certain countries.

656. According to the information provided by the Albanian authorities, there have been 320 requests for mutual legal assistance sent by the country to foreign judicial authorities (as understood by evaluators, this is the figure for the year 2004). 105 requests have been executed. However, this figure refers to both criminal and civil cases with no specification given as to their nature. In the criminal area, requests were related to organised crime, exploiting prostitution, human trafficking etc.

657. There have been 92 requests received from foreign authorities out of which 65 were executed in the same period and 86 specific requests for recognition of foreign legal acts. Again, no specification as to their criminal or civil nature were given. However, it was underlined that in the criminal field, requests were mostly related to organised crime, exploiting prostitution, human trafficking etc. 7 requests for transferring criminal proceedings were received from abroad.

658. There has apparently never been any request sent or received for legal assistance in the field of AML/CFT, or at least, there are no figures available. After the on-site visit, the Albanian authorities advised that one formal request would have been received in April 2005 from Switzerland, asking for information on criminal proceeds in the context of terrorism financing, on the basis of a European convention (it was not specified which one).[20]

659. Different elements of information regarding the timeframe for providing assistance were presented to the evaluators. Some interlocutors stated that the timeframe was ideally 2 months and that 90 days was the overall objective in practice. It was acknowledged that depending on the case, it could take up to one year or so to respond to a formal assistance request. Since no statistics are available on this matter, it is difficult to assess the effectiveness of cooperation and the ability of Albania to respond and provide assistance in a timely manner.

660. Concerning FATF Recommendation 38 in particular, and legal assistance in the field of seizure and confiscation, the matter is regulated by Articles 516 (in particular para. 5), 517 and 518 (in particular para. 5) of the Criminal Procedure Code:

Article 516
Issuing the decision

1. When recognises a foreign sentence the court determines the punishment to be served in the Albanian state. It converts the punishment imposed in the foreign sentence into one of the sentences provided for the same fact by the Albanian law. This punishment shall be similar as a nature with that which is rendered by the foreign sentenced. The duration of the sentence may not exceed the maximal limit provided for the same fact by the Albanian law.
2. When the foreign sentence does not specify the duration of the sentence, the court provides it on basis of criteria indicated in the Criminal Code.
3. When the execution of the sentence rendered in the foreign state is suspended on parole the court, by the decision of recognition, in addition to other issues, does also dispose of the suspension on

[20]Further information was provided at the time of the discussion of the report, on the basis of a research done for the period January-October 2005 (5 cases with Italy, 2 further cases with Switzerland, all which dealt with money laundering).

parole of the sentence. The same does the court when the defendant has been released on parole in the foreign country.

4. In order to specify the punishment by fine, the sum specified in the foreign sentence shall be converted in equal value into Albanian currency, observing the exchange rate of the day on which the recognition has been provided.

5. The decision of recognition regarding the execution of a confiscation shall also order the execution of the confiscation.

Article 517
Seizure

1. Upon request of prosecutor the competent court may impose the attachment of sequestrable objects.
2. The decision is subject to appeal.
3. Shall be respected, as far as they are applicable, the provisions regulating the preventive attachment.

Article 518
Execution of the foreign decision

1. After being recognised, the criminal sentences of foreign courts are enforced in conformity to Albanian law.
2. The prosecutor in the court which has made the recognition of a sentence takes the measures for its execution.
3. The sentence by imprisonment served in the foreign country is calculated for the effects of the execution.
4. The sum deriving from the execution of the fine penalty is paid into the bank of Albania. It may be paid into the state where the sentence is rendered, upon its request when that state, under the same circumstances should have decided the payment to be executed into the favour of the Albanian state.
5. The confiscated objects shall be delivered to the Albanian state. They are delivered, upon its request, to the state where the decision subject to recognition is rendered when this state is under the same circumstances should have decided the delivery in the Albanian state.

661. The Albanian interlocutors met on site acknowledged that they had no experience at all with the execution of foreign seizure and confiscation orders.

662. From a theoretical standpoint, as far as the provisions on confiscation are concerned (Art. 516 para. 5), Art. 516 and 518 primarily deal with the execution of foreign sentences (as opposed to decisions), and accessorily with the issue of confiscation. It remains unclear, for instance, whether Albanian courts would examine the merits of the foreign request in its entirety (the conviction and the confiscation order), and whether they could examine a foreign confiscation order outside the context of the execution of a sentence in Albania. It also remains unclear whether the domestic provisions on confiscation could be applied, which would be useful since the wording

used for the confiscatable assets is broader and more explicit than that of Art. 516 and 518. Some interlocutors indicated that in principle, the entire mechanism of Article 36 would be applicable so that for instance foreign value confiscation orders could be envisaged.

663. As far as the provisions of Art. 517 on seizure are concerned, these make a reference to the general provisions on temporary measures ("preventive attachment"), which is not provided for in the case of those on confiscation. Therefore, as the Albanian authorities explain, the provisions apply beyond the mere "sequestrable objects", which is the wording used in Art. 517.

664. Overall, the Albanian authorities acknowledge that these provisions need to be reviewed and possibly amended to allow for broader legal assistance in this field. It was indicated that a formal investigation would need to be opened in Albania to fulfil a foreign seizure or confiscation decision. Whereas this is understandable when the targeted assets are not specified in the request and need domestically to be identified, it would be more surprising if this also applied in those cases where the investigation abroad has already revealed those assets. It remained unclear whether this requirement reflects a high level of examination of the merits of the foreign request and not only a formal check of the basic requirements, as a recognition procedure would suppose. One prosecutor indicated that the scope of control by the domestic decision is limited to formal requirements and does not suppose a full decision.

665. The law "On Preventing and Striking at Organized Crime" provides for new, non criminal measures to target the proceeds from crime, in particular the confiscation of proceeds on non criminal standards of evidence (See Section 3 of this report). It remained unclear whether these are also applicable in the framework of requests from abroad.

666. The same Law (Art. 36) also deals with the establishment of the Agency for the Administration of Sequestrated and Confiscated Assets as the institution responsible for the management of assets which have been subject to temporary or final measures. The examiners were told that in principle, an assets forfeiture fund should be created in parallel. Secondary legislation is needed to give effect to these new initiatives. The Albanian authorities advised that the Agency will be established within the Ministry of Finance.

667. The examiners were also advised that some form of sharing of assets could be envisaged on the basis of Art. 518 of the Criminal Procedure Code – especially para. 4 and 5 - dealing with the execution of foreign decisions. The examiners had difficulties to agree with this interpretation, since the provisions in question only envisage the full retention by Albania of the proceeds confiscated, and not a sharing as such, which is the partial repatriation to the requesting country where the initial confiscation decision was rendered (e.g. to cover that country's investigatorial /procedural costs or to feed its own special assets forfeiture fund).

6.3.2 Recommendations and Comments

668. Albania is able, in principle, to cooperate internationally in the area of AML/CFT. It would seem that the provisions in place are little used for such purposes. In any event,

there is a need to make more explicit provision on certain issues. **It is therefore recommended:**

- **to analyse the reasons why mutual legal assistance mechanisms are never used by Albanian authorities in ML/TF cases, and why no more requests reach the country despite certain factors (characteristics of Albanian organised crime, importance of Albanian diaspora leaving abroad etc.)**
- **to issue guidance documents and take other initiatives aimed at judges and prosecutors, as appropriate, to make it clear that international instruments take precedence over Criminal Procedure Code provisions and can be directly applied for mutual legal assistance purposes in Albania**
- **to amend the provisions of the Criminal Procedure Code to permit letters rogatory to circulate without passing through the diplomatic channel (Art. 509 of the CPC) and to consider providing for direct contacts of Albanian judicial authorities with foreign counterparts**
- **to introduce provisions dealing specifically with the execution/recognition of foreign decisions on seizure and confiscation of assets that meet the requirements of Recommendation 38 and SR. V**
- **to consider making provision on the sharing of confiscated assets (with requesting countries, when assets are confiscated in Albania)**
- **to keep more specific and detailed statistics on mutual legal assistance mechanisms**

6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**	Situation unclear as to hierarchy of standards; use of the diplomatic channel
R.37	**C**	
R.38	**PC**	Situation unclear as to hierarchy of standards; No explicit provisions on the execution/recognition of foreign seizure/confiscation decisions; use of the diplomatic channel; no use of legal assistance mechanisms so far
SR.V	**PC**	Situation unclear as to hierarchy of standards; No explicit provisions on the execution/recognition of foreign seizure/confiscation decisions; use of the diplomatic channel; no use of legal assistance mechanisms so far
R.32	**PC**	no statistics on requests and no statistics whatsoever on legal assistance regarding seizure and confiscation

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

669. Extradition is regulated by the Criminal Code (art. 11) and Criminal Procedure Code (art. 488-503 concerning extradition to foreign jurisdictions, and 505 concerning extradition from abroad).

670. According to Article 11 of the Criminal Code, extradition may be permitted only when explicitly provided for by an international treaty to which Albania is a Party. Albania is a Party to the Council of Europe Convention on Extradition of 1957 and its two protocols of 1975 and 1978, as well as the European Convention on extradition of 1977 and its Protocol of 2003 (which has not yet entered into force). Albania is also a party to a number of bilateral agreements (with the USA, Turkey, "the former Yugoslav Republic of Macedonia", Greece and Egypt).

671. Dual criminality is required for extradition. The Albanian authorities informed the evaluators that dual criminality is not an impediment for extraditing a person when the offence in question, although it would be regarded as criminal both by Albania and the other country, is subject to technical differences such as diverging terminologies used to designate the offence.

672. Extradition of Albanian nationals is not possible in principle. It can only be allowed if it is provided for by an agreement. For the time being, there is only one such bilateral agreement in place, concluded with the USA. The evaluators were informed that on the basis of this agreement, two Albanian citizens had been extradited in 2000 and in 2004. The agreement is applicable also for ML and FT offences.

673. There are no explicit provisions stating that a non extraditable Albanian citizen would subsequently be subject to a domestic criminal procedure but the Albanian authorities advised that provisions are in place to follow up to a foreign request made to that end, without any distinction with purely domestically initiated proceedings.

674. The Albanian Criminal Procedure Code in Article 488 provides for the extradition of a person sentenced to imprisonment or subject to criminal proceedings. It does not impose any further limit, e.g. a minimum level of penalty to consider an offence as extraditable. Therefore, all criminal offences – including Money laundering and terrorist financing (as required by SR. V) – are extraditable offence.

675. Extradition is permitted upon a request submitted directly to the Minister of Justice. The specific circumstances in which extradition is permitted are provided in Article 11 of the Criminal Code and Articles 490 and 491 of the Criminal Procedure Code. These include the usual restrictions (e.g. offences of a political nature or risk of inhuman and degrading treatments, risk of persecution or discrimination due to racial, religious and other considerations, risk of prosecution for reasons other than those stated in the request etc.). A rather unusual provision is that of Art. 491 para. 3 which grants broad powers to the Minister of Justice by authorising him/her to impose further limits (others than those provided by the law) which are not specified. (*"3. The Minister of Justice that permits the extradition may impose even other requirements which he considers as appropriate"*). The examiners found this high level of discretion rather disturbing as it could jeopardise the extradition process for reasons not foreseen by law.

676. The various steps in the procedure need to be accomplished within a given timeframe, so as to avoid undue delays.

677. When he/she receives a request for extradition from a foreign country, the Minister of Justice sends it to the competent prosecutor, or he/she rejects it. Within

three months from the date the request was received, the prosecutor submits the request to court for examination. The court can order coercive measures by imposing the seizure of real evidence and of the objects related to the criminal offence. Upon request from a foreign country, the court may temporarily impose coercive measures before the formal request for extradition is received. If the request for extradition is not received within forty days from the notification, the coercive measures applied shall be terminated. In case of urgency, the judicial police may arrest the person who is subject to a request for temporary arrest, and perform the seizure of material evidence concerning the criminal offence as well as the object(s) connected thereto. The court, within forty eight hours from the arrest, approves it or orders the release of the arrested person. The Minister of Justice is to be informed of the court decision. The arrest shall be revoked in case the Minister of Justice does not request its continuance within ten days from the approval. The court rules in favour of the extradition when the necessary information and documents establishing the guilt is in its hands, or when there has been a final decision. The Minister of Justice decides upon the extradition within thirty days from the date the decision of the court has become final.

678. The Ministry of Justice does not keep statistics on extraditions on an ongoing basis. Some figures were provided for the years 2003 and 2004 in the replies to the questionnaire, but they were inconsistent: in 2004, 57 outgoing requests have been formulated for the extradition of Albanian citizens from Italy, Greece, England, Spain, and Germany. In 2003 and 2004, 47 (foreign?) extradition requests have been approved.

679. Information is not available as to the average time for execution of the extradition and to the objections invoked in practice when it comes to executing of a foreign request, which makes it difficult to assess the effectiveness of measures in place. The Albanian authorities acknowledge that, like in other countries, it can take a certain amount of time to locate a person in the country if that person is hiding.

6.4.2 Recommendations and Comments

680. The provisions in place appear to be sound on paper. Reasonable deadlines are provided for the accomplishment of the various steps and urgent measures can be taken by the police. The ability of the Minister of Justice to decide discretionarily about extradition requests remains the major source of interrogations. It may not be a source of problems in practice, but more detailed information and statistics would have allowed to assess how, overall, the provisions on extradition are applied. **Therefore, it is recommended**:

- **to regulate more precisely the discretionary power of the MoJ under art. 491 para. 3 of the Criminal Procedure Code.**

- **to keep more specific and detailed statistics on extradition.**

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**LC**	**MoJ enjoys high level of discretionary power to refuse extradition**

R.37	**C**	
SR.V	**LC**	**MoJ enjoys high level of discretionary power to refuse extradition**
R.32	**PC**	**Lack of adequate statistics and no breakdown for ML/TF**

6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

681. Albania has the legal bases to cooperate and provide assistance in a wider range of matters regarding AML/CFT issues and the fight against organised crime. Cooperation is permitted on the basis of direct contacts at the level of the police and the prosecution (except when formal assistance is involved, which requires the channels of the Ministry of justice and of foreign affairs. Specialist services exist to deal with AML and CFT issues which facilitates the identification of the adequate Albanian bodies by foreign counterpart agencies.

682. The GDPML itself, according to Art. 15 of the LPML, is entitled to cooperate with its foreign counterparts (the condition of reciprocity is not explicitly required) in various areas, including for the application of temporary and final measures, and for investigative purposes. Whereas it is clear that the GDPML itself does not have all of these competencies, it can at least act as intermediary with the national authorities. The competence of the GDPML to cooperate in the CFT field is not provided yet in the LPML under art. 15, although its competence on CFT issues is recognised (art. 7/1 para.2). This needs to be clarified given the central role of the GDPML in the field of AML/CFT information exchange and general cooperation.

683. The tables below provide an overview of the incoming and outgoing requests handled by the GDPML:

Requests received by the GDPML from foreign FIUs					
2001	2002	2003	2004	Quarter 2005	Totally
1	5	14	18	3	41

- These requests came from such countries as Bulgaria, Slovenia, Croatia, "the former Yugoslav Republic of Macedonia", Greece, Italy, USA, Austria, Hungary, Netherlands, Romania, Turkey, Cyprus, Switzerland, FIU and other investigative agencies from France, USA, Germany etc.

Requests sent by the GDPML to foreign FIUs					
2001	2002	2003	2004	Quarter 2005	Totally
-	7	11	16	5	39

- These requests were sent to counterparts in Bulgaria, Croatia Slovenia, Greece, Italy, USA, Austria, Hungary, Netherlands, Romania, Turkey, Cyprus, Switzerland etc.

684. Exchanges of information are possible both spontaneously and upon request and in relation to ML and predicate offences. Most provisions regarding international co-operation are applied for both ML and FT, subject to certain clarifications and amendments which have been discussed above.

685. The GDPML has the power to inquire on behalf of foreign counterparts its own records including STR records, other databases like those of law enforcement, public, administrative and commercial databases.

686. Law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts. The co-operation also includes fiscal matters as it was underlined in earlier Sections of this report.

687. The examiners were advised that exchanged information is treated and protected in principle by the same confidentiality provisions that apply to similar information from domestic sources. The issue of the GDPML having only since recently its own premises and greater protection against external influences was discussed in other parts of this report.

688. Since July 2003, the GDPML cooperates within the EGMONT counterpart Units and other international structures. It has signed Memorandums of Cooperation with 21 counterpart units. Based on this cooperation`, during 2004, the GDPML received 18 and sent 16 requests. An ongoing cooperation is also taking place at various levels with/through international structures and counterparts such as: SECI, Italian Inter Force, the American Treasury Department, the Mission of the European Union in Albania, PAMECA, IMF, FCV, UNDCP, ICITAP, etc.

689. The most important obstacles at the moment are of a practical nature. As it was said earlier in this report, the GDPML has lost access to the Egmont secured network because of the lack of technical compatibility between the system of the Ministry of Finance with this network. At the moment, information can only be sent in hard (paper) copy.

690. The Customs are developing data comparison mechanisms with other countries in the region to evaluate the importance of customs duties and VAT fraud, the quality of Albanian figures etc. Whilst some countries did not respond (Italy, Turkey), the data provided by Greece indicated a match.

691. The supervisors of the banking, insurance and securities markets also work with foreign counterparts through the Basel Committee, the International Association of Insurance Supervisors (IAIS) and the International Organisation of Securities Commissions (IOSCO).

6.5.2 Recommendations and Comments

692. The Albanian authorities show commitment to cooperate effectively and within acceptable timeframes. The ability to cooperate in a rapid manner when it comes in particular to exchanging information, depends to a certain extent on structural and logistical factors.

693. Retrieving information that was requested by foreign counterparts remains difficult when the police, the courts, the FIU have no operational information systems in place and the various regional bodies are not yet fully interconnected. In other cases, the establishment of central databases is as at an early stage (e.g. the central registers on legal persons) and secondary issues need now to be addressed to ensure that the data is reliable, up to date etc. The difficulties of Albania to provide certain information for the purposes of this report, especially figures and statistics, are just an example.

694. The Albanian authorities are aware of that and they work together with international partners to fill these gaps and develop further projects (the computerisation of the GDPML).

695. The examiners **recommend, as a priority, to finalise throughout the country the computerisation of law enforcement authorities, the courts and all other databases which are useful for AML/CFT purposes (e.g. registers of persons and identification documents, registers of property, registers of companies and non profit organisations etc.) and ensure as much as possible on line access to the GDPML.**

696. **It is also recommended to make clear provision in the LPML under art. 15 on the competence of the GDPML to cooperate in the CFT field.**

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	**Mechanisms are in place to cooperate in a rapid, constructive and effective manner; however, there is a need to overcome the practical deficiencies in respect of information systems; GDPML not explicitly competent for international cooperation on CFT issues under art. 15 LPML**
SR.V	**LC**	**Need to overcome the practical deficiencies in respect of information systems; GDPML not explicitly competent for international cooperation on CFT issues under art. 15 LPML**
R.32	**C**	**(as regards the GDPML)**

7 OTHER ISSUES

7.1 EU standards

697. The present report contains some remarks in respect of the revised Directive of 2001, especially when there are variations compared to the FATF Recommendations. The third EU Directive, which was adopted in June 2005 (Directive 2005/60/EC) is even more comprehensive. Whilst several provisions of the (second) EU Directive are already reflected in the regulatory framework of Albania, the Examiners believe that these texts could remain a useful source of inspiration for the AML/CFT framework.

7.2 General framework for AML/CFT system (see also section 1.1)

698. The evaluators welcome the ability of Albania to rapidly adopt legal changes and make available English translations of the provisions.

699. This being said, the drafting of legislation and secondary texts should be more careful and rigorous when elaborating and/or amending legal texts. At present, there are many redundancies and consistency problems in essential texts such as the LPML or between the LPML and other implementing texts (e.g. Minister of Finance Guideline Regulation of 2004 "On implementation of money laundering prevention and the combating of the financing of terrorism", which sometimes goes beyond implementing measures and introduces new standards or contradictory definitions compared with the LPML).

700. The drafting of a new LPML is therefore timely.

701. **It is recommended that Albania uses this opportunity to improve the drafting of the LPML and make it as accurate, coherent and user friendly as possible to avoid misunderstandings. The LPML should become the backbone of the preventive AML/CFT system. Secondary legislation or guidance documents should deal with the specific and practical matters, and not "amend" the law.**

702. **Once the revised LPML has been adopted, a general review of other texts should be undertaken to make them consistent with the LPML ("Guideline-Regulations of 2004", LMSTF, Regulation of the BoA on money laundering prevention of 25.02.2004 etc.).**

703. The examiners were seriously concerned about the money laundering opportunities in the real estate sector which has been flourishing for some years now. As they found out, most real estate transactions are officially made and registered below the real market value. It was said that the main motivation behind this phenomenon was connected with tax avoidance. It is however clear that "under the table" payments are a good way to launder dirty money. The problem is that all those professions and businesses potentially able to deter or report such transactions are not cooperating. Recommendations have been made in earlier sections to improve the collaboration of and application of the LPML and other standards to the obliged entities. However, the examiners believe that this situation deserves an overall approach from the Albanian authorities which would go beyond the improvement of cooperation in the AML/CFT field of notaries, real estate agencies (once they are clearly listed as

obliged entities) and other business and professions involved. The establishment of a list with some reference prices for the various sectors and categories of real estate goods could be one of the implementing guidelines which could assist those in charge of investigating money laundering and tax offences.

704. **It is recommended to take urgent remedial action to counter the phenomenon of real estate transactions below their market value**.

705. Various authorities acknowledged that they had to cope with the politicisation of their structures and work, or that this could sometimes seriously impact on their activities and the effectiveness of criminal policies (police, Customs, justice). The examiners were told that Albania is preparing a law on Civil servants that would introduce certain improvements, notably by regulating and limiting the movements of officials and securing their rights and duties. The examiners encourage the Albanian authorities to ensure the effective implementation of this law once it is adopted.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[21]
Legal systems		
1. ML offence	Partially Compliant	Certain issues need to be clarified (that Albania has jurisdiction when predicate offence was committed abroad by a foreign citizen, that self laundering is covered, that a separate court decision is not needed to establish the link between the money laundering offence and a specific underlying criminal act); the structure of art. 287 needs to be reviewed and the text be made consistent; effectiveness issue: few cases in the context of Albania
2. ML offence – mental element and corporate liability	Largely Compliant	Secondary legislation on corporate criminal liability is missing; objective factual circumstances as standard of proof not explicitly provided
3. Confiscation and provisional measures	Partially Compliant	Lack of explicit confiscation from third parties; formal investigation needed to apply provisional measures and impossibility for prosecutors to apply directly urgent temporary measures; definition of TF in Law N° 9284 is not clear and broad enough; effectiveness issue as regards confiscations
Preventive measures		
4. Secrecy laws consistent with the Recommendations	Compliant	
5. Customer due diligence	Non - Compliant	- The majority of the key elements of the essential criteria are not present in primary or

[21] These factors are only required to be set out when the rating is less than Compliant.

		secondary legislation although to a certain extent, they are covered by the BoA Regulations. - The BoA Regulations do not cover all the elements of the essential criteria and hence these are completely missing from the system - All essential criteria are missing for the insurance sector. Likewise, they are missing for the securities sector.
6. Politically exposed persons	Non - Compliant	No explicit provisions in current legislation. Issue dealt with in the new draft law.
7. Correspondent banking	Non - Compliant	No explicit provisions in current legislation. Issue dealt with in the new draft law.
8. New technologies & non face-to-face business	Partially Compliant	Some provisions exist for the banking sector. No explicit provisions in current legislation. Issue dealt with in the new draft law.
9. Third parties and introducers	N.A.	
10. Record keeping	Partially Compliant	No records for transactions below the established threshold are required; more explicit requirements needed as to the type of information to be retained after the termination of a relationship
11. Unusual transactions	Partially Compliant	There appears to be no explicit requirement to examine the background or purpose of the transaction and to keep their findings in writing
12. DNFBP – R.5, 6, 8-11	Non - Compliant	Same weaknesses as under Section 3; real estate agents, traders in precious metals and stones, attorneys, notaries, other independent legal professionals and accountants need to be covered under the circumstances provided in R.12
13. Suspicious transaction reporting	Partially Compliant	Direct reporting to the FIU is not an unanimous practice; attempted transactions are not explicitly covered; art. 11 LPML introduces unjustified restrictions as to categories of transactions to be reported by banks; insufficient coverage of terrorist financing; inconsistencies between the LPML and other texts.
14. Protection & no tipping-off	Partially Compliant	The protection from civil and criminal liability in case of reporting is drafted in a way that is in contradiction with the spirit of the provision; inconsistent approach between the LPML and LMSTF Tipping off does not cover FT and all reporting subjects; possible problems as regards the implementation and sanctions in practice
15. Internal controls, compliance & audit	Partially Compliant	No explicit requirement for internal procedures to deal with CDD, responsibilities of MLRO and "central unit"

		need clarification, requirement on training in ML/FT trends and techniques is missing, specific provisions on employee screening are needed
16. DNFBP – R.13-15 & 21	Non - Compliant	The reporting duty for DNFBP needs to be refined regarding certain entities and thresholds; training and guidelines are needed for these sectors which have never reported yet (effectiveness issue).
17. Sanctions	Partially Compliant	Ineffective sanctions; range of sanctions insufficient and only applicable to natural persons; legal problems connected with connection between LPML and LMSTF that undermines the sanction mechanism
18. Shell banks	Partially Compliant	Licensing conditions of the BoA require physical presence of the bank and to start operating within 6 months after license delivery but no explicit provisions in either the LPML or banking regulations on the issue of shell banks in Albania, the establishment of correspondent banking relationships and the opening of accounts by shell banks
19. Other forms of reporting	Partially Compliant	The thresholds may need to be lowered in the context of Albania, GDPML has no systems to adequately store and analyse the reports it receives
20. Other NFBP & secure transaction techniques	Non - Compliant	AML/CFT measures need to be implemented in respect of the other categories of business, apart from DNFBP and financial institutions AML/CFT efforts and measures to reduce cash are potentially seriously undermined by restrictive interpretations of certain concepts (cheques, payment of invoices)
21. Special attention for higher risk countries	Partially Compliant	No specific provisions available as yet for the entire financial sector apart from the indicators included in the annex to the BoA Regulation
22. Foreign branches & subsidiaries	Compliant	
23. Regulation, supervision and monitoring	Partially Compliant	Supervision of non-bank and insurance licensees by their respective authority needs to be developed further
24. DNFBP - regulation, supervision and monitoring	Non - Compliant	No supervision system in place for DNFB as yet. No information available on compliance with AML/CFT requirements
25. Guidelines & Feedback	Non - Compliant (for the issue of feedback and of absence of sector specific guidelines; Partially Compliant for the rest)	- No provisions to provide feedback - AML/CFT guidelines for non-BoA license holders have not yet been introduced apart from the general guidelines; no feedback policy. - General guidelines are in place but no sector specific guidelines have been issued for DNFBP, despite their obvious lack of

		cooperation
Institutional and other measures		
26. The FIU	Partially Compliant	The GDPML needs to be strengthened in various respects (independence and autonomy, protection and status of information, production of a report etc.).
27. Law enforcement authorities	Partially Compliant	Unclear distribution of tasks; little attention paid to ML by the police and prosecution bodies during criminal cases initiated at their level; no clear provision on the ability to waive arrest warrants and controlled deliveries; no research on ML (and FT) trends and techniques
28. Powers of competent authorities	Compliant	
29. Supervisors	Largely Compliant	Effectiveness issue: powers have been used moderately despite certain problems
30. Resources, integrity and training	Partially Compliant	- Insufficient means (equipment, IT and analytical facilities/capacities, staff etc.); heavy reliance on foreign assistance - More resources, awareness raising initiatives and training are needed at the level of police, prosecution and judges on money laundering issues and financial crimes more generally - The Insurance Supervisory Authority is not sufficiently resourced and the situation regarding the BoA needs to be examined; GDPML is in a process of recruiting further staff
31. National co-operation	Partially Compliant	Effectiveness: legal and institutional bases are in place for coordination but still no evaluation of ML problem and patterns and serious concern raised by persisting, important sector of street currency exchange
32. Statistics	Partially Compliant (6 occurrences out of 11)	- lack of accurate, reliable and consistent statistics; leading authorities unaware of the real situation - figures are inconsistent - no detailed statistics systematically kept; statistics difficult to obtain (partly due to incomplete computerisation) - no information on confiscation measures applied to FT; number of FT reports and information sent to the GDPML is unknown which makes assessment of effectiveness difficult - insufficient breakdown of the origin of transactions and no information on outcome of cases forwarded to the prosecutor's office; not clear if information is kept on an ongoing basis - no accurate and consistent statistics

		available on the impact of the work done by the police and prosecution concerning ML - only statistical information on the banking sector is deemed to be adequate - no overall review undertaken nor possible in the absence of concerted analysis of ML phenomenon and risk sectors - no statistics on requests and no statistics whatsoever on legal assistance regarding seizure and confiscation - lack of adequate statistics and no breakdown for ML/TF
33. Legal persons – beneficial owners	Non - Compliant	No measures in place at the creation/registration stage to prevent the unlawful use of legal persons in relation to ML/FT (no updated information, no computerisation, no information available on existing bearer shares and policy in their respect, no AML/CFT policy in place at the level of the registry of companies, double balance sheet is a common practice among companies and no preventive general measures in place (e.g. auditing), possible controls by licensing bodies and reports to FIU not extended to CFT
34. Legal arrangements – beneficial owners	Largely Compliant	Although the issue is marginal in Albania, further clarification and provision are needed
International Co-operation		
35. Conventions	Largely Compliant	Some adjustments needed concerning criminalisation, temporary and final measures, investigative means, possibilities for direct contacts in the field of judicial cooperation etc.
36. Mutual legal assistance (MLA)	Largely Compliant	Situation unclear as to hierarchy of standards; use of the diplomatic channel
37. Dual criminality	Compliant	
38. MLA on confiscation and freezing	Partially Compliant	Situation unclear as to hierarchy of standards; No explicit provisions on the execution/recognition of foreign seizure/confiscation decisions; use of the diplomatic channel; no use of legal assistance mechanisms so far
39. Extradition	Largely compliant	MoJ enjoys high level of discretionary power to refuse extradition
40. Other forms of co-operation	Largely Compliant	Mechanisms are in place to cooperate in a rapid, constructive and effective manner; however, there is a need to overcome the practical deficiencies in respect of information systems; GDPML not explicitly competent for international cooperation on CFT issues under art. 15 LPML

Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	Compliant	
SR.II Criminalise terrorist financing	Partially Compliant	The Criminal Code needs to be amended to cover all elements of SRII, to explicitly provide for the applicability of provisions regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist organisation is located or the terrorist act occurred, to specify that knowledge, intent or purpose can be inferred from objective factual circumstances, to provide explicitly for the applicability to legal persons of sanctions for terrorist financing
SR.III Freeze and confiscate terrorist assets	Largely Compliant	No explicit procedures for actions initiated by other jurisdictions; further guidance needed for the private sector and making sure the lists are taken into account; not clear what the rules are to deal with authorised expenditures
SR.IV Suspicious transaction reporting	Largely Compliant	The LPML does not cover all the elements of SR.IV, inconsistencies between the LPML, the LMSTF and other texts
SR.V International co-operation	Largely Compliant	- Situation unclear as to hierarchy of standards; No explicit provisions on the execution/recognition of foreign seizure/confiscation decisions; use of the diplomatic channel; no use of legal assistance mechanisms so far - MoJ enjoys high level of discretionary power to refuse extradition - Need to overcome the practical deficiencies in respect of information systems; GDPML not explicitly competent for international cooperation on CFT issues under art. 15 LPML
SR VI AML requirements for money/value transfer services	Partially Compliant	No information available to the authorities as to the situation in this respect despite the acknowledged risks
SR VII Wire transfer rules	Non - Compliant	No general requirements apart from the basic ones contained in the BoA regulation of 2004, which are unduly restrictive; the issue of threshold needs clarification and lowering; provision is also needed in the LPML
SR.VIII Non-profit organisations	Non - Compliant	No measures in place to prevent the unlawful use of NPOs in relation to ML/TF (no review of risks, common practice of double bookkeeping, no policy for the supervision and control of NPOs)

SR.IX Cross Border Declaration & Disclosure	Partially Compliant	Sanctions are inadequate; working culture is focused on immediate seizure/confiscation; effectiveness issue due to lack of familiarity with ML/FT and due to corruption (but situation is improving)

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & 32)	• to make it clear preferably in the Criminal Code that Albania has jurisdiction over money laundering offences when the predicate offence was committed abroad by a foreign citizen, • to specify that self-laundering is covered (bearing in mind that Albania has accepted this principle), • to specify that knowledge, intent or purpose can be inferred from objective factual circumstances • to make sure (through guidance documents, general instructions or otherwise) that the standard of evidence for establishing the link between the illegal origin of assets laundered and the money laundering offence does not require a separate court decision as art. 287 para.3 seems to suggest • to adopt the secondary legislation needed for the implementation of the Criminal Code provisions on corporate criminal liability • to review the order of the sub-paragraphs of art. 287 1) and to insert the ancillary offence of «helping» or assisting also in sub-para 1d) (and to move this sub-para at the end of sub-para. 1)) • to examine whether greater use should be made of the provisions criminalising money laundering when investigating all major proceeds-generating offences.
Criminalisation of Terrorist Financing (SR.II, R.32)	• to review the current Criminal Code provisions criminalising the financing of terrorism to make them more consistent and ensure they explicitly cover the various elements (terrorist acts, terrorist organisations, individual terrorists) and the collection of funds, along the lines of the UN Convention and FATF Special Recommendation II. • to explicitly provide for the applicability of terrorist financing provisions regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist organisation is located or the terrorist act occurred • to specify that knowledge, intent or purpose can be inferred from objective factual circumstances • to provide explicitly for the applicability to legal persons of sanctions for terrorist financing.
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	• to provide explicitly for confiscation from third parties along with the legal protection for bona fide third parties • to consider reviewing the legal framework so as to allow for the application of provisional measures before

	opening a formal investigation • to allow for the application of provisional measures under Articles 274-276 directly by the prosecutor in case of urgency (with *ex post* approval by the judge). • to analyse the reasons for the moderate use of temporary and final measures in money laundering cases and to take measures to encourage their use (e.g. training, internal circulars etc.) • to examine the functioning in practice of the automatic cessation of temporary measures under Art. 276 (when the court does not render a decision within 15 days of the application) to make sure that measures applied against criminal proceeds are not revoked for undue reasons (court overload, insufficient file management etc.) • to review in the Law N° 9284, the definition of terrorism financing, in line with the similar recommendation already made concerning the Criminal Code
Freezing of funds used for terrorist financing (SR.III, R.32)	• to develop legal procedures for actions initiated by other jurisdictions (including the designation of an authority to deal with these) • to ensure secondary provisions and a mechanism are in place to adequately deal with requests for payments (of subsistence and other expenditures) from listed persons, and that those involving persons listed by virtue of Resolution 1267 are decided upon by the Security Council • to develop guidance for the private sector in the field of reporting suspicions and information in relation with TF and to make sure they are checking their clientele against the Albanian list of persons elaborated by virtue of the Security Council Resolutions • to keep figures on the origin of FT information and suspicion reports in order to assess the effectiveness of cooperation of the industry and other sectors
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• to take any further measures that are deemed necessary to ensure definitely the autonomy and independence of the GDPML (e.g. a fixed term for the post of General Director, statutory independence *vis a vis* instructions etc.) • to provide for clear rules guaranteeing the confidentiality and regulating the use/sharing of information centralised by the GDPML so that it is used only for AML/CFT purposes • to provide the GDPML with an adequate budget and equipment to make it less dependent on foreign assistance • to clarify the role of the GDPML as an analytical, administrative body instead of a body in charge of investigations and finding hard evidence on ML/FT offences (which should remain the police and prosecutorial bodies' responsibility) • to ensure the increase of staff takes place as planned so

	that the GDPML can deal with its analytical work and can start implement its new supervisory and inspection function, and to put in place a training programme for the GDPML staff • to produce and publish a periodic report by the GDPML and to provide for consistent requirements on this matter • to establish as soon as possible a computerised information system to receive on-line, process and store rapidly the data transferred by obliged entities and to help the GDPML improve access to information, the quality of its analytical work and its ability to cooperate domestically and internationally • to introduce a training scheme taking into account the newly recruited staff, the development of supervisory/inspection functions, and the introduction of an IT system (an analytical software) • to keep on an ongoing basis more detailed statistics on the origin of reports received and the outcome of cases forwarded to the prosecutor.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• to clarify the respective responsibilities of the GDPML on the one hand and the police and prosecutorial bodies on the other hand; the former should in principle be an analytical body generating possible ML and FT cases, whilst the latter should initiate their own cases, in addition to investigating and prosecuting cases generated by the GDPML • to produce studies on ML, including its trends and techniques • to increase the level of expertise at the level of judicial police (further training and guidance in all police departments that deal with the investigation of ML and financial crimes more generally, recruitment of experts with academic background etc.) • to review the adequacy of the staffing of the Police Directorate for Combating Organised Crime and Witness Protection (especially its central Division on the fight against money laundering and economic-financial crime) and of the Prosecutor's Office for economic crime, money laundering and terrorist financing, and increase it as necessary with transfers from district agencies • to provide further training to judges on ML and financial crimes more generally • to clarify the legal basis for controlled deliveries and the possibility to waive the arrest of a suspect for the purpose of ML/FT investigations
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	-
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• to introduce general requirements in the LPML on the basis of the elements of FATF Recommendation 5, in particular as regards the concept of customer due diligence, identification of beneficial and ultimate ownership, on-going due diligence on the business

	relationship, "know your customer" principle • to make it a duty for obliged entities to perform CDD measures in line with the FATF approach (risk-based etc.) and, in any event: • to include the identification of customers when establishing a business relationship (as it is envisaged in the draft new LPML) • to make it clear that CDD measures apply also in case of FT suspicion • to make sure there is a unique definition of the client or customer which is broad enough to include also persons requesting one-off transactions and clients with whom there is no contractual relationship • to include in the LPML a general prohibition of anonymous accounts (to be understood broadly) as envisaged in the draft new LPML • to clarify the issue of bearer negotiable instruments available in Albania and to apply the CDD requirements in their respect • to provide in the LPML for a general definition of transaction which would encompass the broadest range of services/operations (including those with cheques) • to reduce to the equivalent of 15,000 USD/€ the threshold of transactions triggering the identification of customers (as it is envisaged in the draft new LPML) • to implement in the LPML, and to detail in sectoral rules as appropriate, the requirements of Recommendation 6, 7 and 8 on politically exposed persons, correspondent banking relationships and risks associated with new technologies and non-face to face transactions
Third parties and introduced business (R.9)	(N.A.)
Financial institution secrecy or confidentiality (R.4)	-
Record keeping and wire transfer rules (R.10 & SR.VII)	• to consider removing the current requirements of Article 4 and 5 of the LPML which deal with the threshold approach concerning registration of transactions • to review the structure of art. 6 of the LPML so as to make a separate provision on the information and record-keeping requirement rather than these being included with other provisions dealing with "tipping-off", • to introduce a clear requirement to store information on transactions for a period of 5 years (or more if requested by a competent authority) following completion of transactions, whatever their amount • to be more explicit as to the information to be kept for a period of 5 years (or more if requested by a competent authority) after the termination of the relationship (to keep account files, a copy of the identification document and business correspondence, as well as

	information on the beneficiary) • to review the provisions in the BoA regulation of 2004 on wire transfers so as to make them applicable to both incoming and outgoing transfers, to use the regular terminology (wire transfers rather than e-banking) and to draft it in sufficiently broad terms to cover also legal persons, not only individuals, as well as domestic and international transfers • to solve the conflicting issues raised by the diverging provisions on thresholds for wire transfers in the LPML and BoA Regulation of 2004, and to lower it to the limit contemplated by SR.VII (USD/€ 3000) • to make provision on wire transfers also in the LPML in order to cover all financial and other institutions involved in wire transfers.
Monitoring of transactions and relationships (R.11 & 21)	• when finalising the new draft AML, to pay special attention to the requirements of FATF Recommendations 11 and 21 and to introduce a requirement to examine the background and purpose of transactions and apply special prudential measures to countries and territories where ML/FT risks are high (and to provide for appropriate countermeasures to be taken when transactions with those regions occur) • to adopt measures to ensure that financial (and other) institutions are advised of concerns about AML/CFT weaknesses in other countries
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• to take the appropriate measures to make it clear that obliged entities, as a rule, need to report directly to the GDPML and not to their supervisor (subject to the admissible exceptions for certain DNFBP) • to introduce the obligation of the reporting of attempted transactions in the LPML • to extend the scope of reporting in relation to terrorist financing, to the various elements contemplated in Recommendation 13 and SR.IV ("terrorism", "terrorist acts", "terrorist organisations", "those who finance terrorism"). • to keep statistics on reports concerning terrorist financing • to enlarge the reporting threshold to all transactions (not only cash and transfers) – except those which present limited risks (e.g. commodity service payments, transfers with the BoA) - and adapt the amount to the situation of Albania • to urgently amend art. 11 which introduces restrictions as to the categories of transactions that are subject to reporting; a list could be established that provide on the contrary for circumstances and transactions that need not to be reported • to consider, in this relation, to exclude those transactions that are deemed to be of no value in preventing or detecting money laundering or the financing of terrorism (commodity service payments, transfers involving the BoA etc.)

	• to amend art. 6 on "duty not to disclose" so as to cover also reports connected with terrorist financing and to clarify that the "duty not to disclose" applies also to entities apart from those listed under art. 3 (customs and tax authorities, licensing bodies) and to any unauthorised person even though not connected with the transaction. • to review the provision on the protection of reporting persons in the LPML (to cover only the reports to the FIU and to specify that it applies to reporting in good faith) and in the LMSTF (to cover explicitly protection against civil actions) • to review the drafting of "Guideline-Regulation" N°5 of 2004 so as to make it clear that reports filed in good faith are not subject to sanctions • to review the drafting of the LPML together with the various secondary texts ("Guidelines-regulations", sectoral texts etc.) to ensure consistency; special care should be taken to the effect that these provisions are also consistent with the Criminal Code (e.g. definition of terrorist financing) • to take measures to enhance awareness of all obliged entities about the reporting of suspicious transactions.
Cross Border declaration or disclosure (SR.IX)	• to adopt the draft amending Chapter 8 of the Customs Code (on sanctions), making sure they provide for adequate sanctions in case of under or false declaration • to review the current policy which consists in applying immediate seizure and confiscation measures so as to allow, in certain cases, for the gathering of further information and evidence on criminal activities and persons involved and to initiate more cross-border covert operations since organised criminal activities remain an important issue (stolen cars trafficking, smuggling etc.) • to intensify training on AML/CFT issues for Customs employees, including on the detection and recognition of serious criminal activities (human beings trafficking, arms trafficking, drugs trafficking, smuggling of different goods) and movements of funds possibly related with ML/FT
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• to introduce a requirement for internal procedures to address CDD measures • to review the function of the institution of the "money laundering reporting officer"(MLRO) and to make this officer responsible not only for the reporting of transactions but also for the effective implementation of internal AML/CFT procedures and mechanisms (and to clarify on that occasion, as appropriate, the distinction between the MLRO and the central unit for the centralisation of reports; alternatively, the content of Guideline-Regulation N°5 of 2004 could be reminded to reporting entities) • to include in internal training programmes and awareness raising measures information on trends and

	techniques in the field of ML/FT • to provide for manager and employee screening • to require the establishment of computerised information and data management systems in all financial institutions (apart from the banking and insurance sector), and non financial institutions as appropriate
Shell banks (R.18)	• To insert in the LPML or banking regulations clear provisions defining and prohibiting the establishment of shell banks in Albania and the establishment of correspondent banking relationships with, or the opening of accounts by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	• to implement measures to ensure effective AML/CFT supervision over the non banking sectors covered by the BoA • to review the adequacy of staffing of the BoA supervision department and increase it as necessary to enable it to effectively supervise the various sectors under the responsibility of the BoA • to implement measures to ensure effective AML/CFT supervision over the insurance sector • to draft a development plan for the Insurance Supervisory Authority – in order to address its insufficient staffing and resources - taking into consideration the anticipated growth in the insurance sector • to adopt Regulation/Guidelines similar to the ones issued to banks for non-bank licensees (to address transactions particular to the activities performed by the non-bank licensees) • to review the policy concerning sanctions and make sure they are adequately applied by supervisors and the GDPML when it is necessary • to review the sanction system in the LPML and Guideline-Regulation N°5 to ensure consistency, to include explicit milder measures such as warnings and to make them applicable to legal persons; Albania should consider in this respect a simpler system (applicable to all requirements of the LPML without listing them), leaving more discretion to the responsible authorities to decide • to examine the situation resulting from the provisions in art. 24 of the LMSTF concerning the connection with the LPML, and remedy to the possible conflict of norms by redrafting this article (and clarify its exact scope and purpose). • to examine the need to introduce criminal law provisions on tipping-off (if existing measures are insufficient)
Money value transfer services (SR.VI)	• To take rapidly all the necessary measures to ensure the proper implementation of SR VI and the related general FATF Recommendations, in particular Recommendation 23, to all economic agents providing

	money transfer services. The Albanian authorities (BoA and GDPML) should identify all the ultimate operators affiliated and keep a list that would enable them to carry out direct inspections, depending on the seriousness of risks.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	To review the identification and CDD measures applicable to DNFBP: • to cover explicitly real estate agents when they are involved in transactions for a client concerning the buying and selling of property • to introduce a clear requirement for traders in precious metals and stones to apply CDD principles when they engage in any cash transaction with a customer equal or above €/USD 15,000 • to cover attorneys, notaries, other independent legal professions and accountants in the circumstances provided for in recommendation 12
Suspicious transaction reporting (R.16)	• To develop an on-going dialogue between the GDPML and the various sectors of the DNFBPs so that legislative conflicts are identified and appropriate solutions proposed. • to arrange a scheduled and continuous training program for the various non financial entities that have to report to the GDPML • to issue directives for all the sectors that is the supervisory authority and to assist in preparing a directive from other supervisory authorities • to review the reporting requirements and thresholds for DNFBP, along the lines of Recommendation 16 • to consider the utility of a system where certain professions (e.g. lawyers) report through their organisation
Regulation, supervision and monitoring (R.24-25)	• To urgently devise and implement a supervision mechanism for DNFBP along the lines of FATF Recommendations 24 and 25
Other designated non-financial businesses and professions (R.20)	• To extend the scope of art. 12 of the LPML so as to cover also the tax administration, Customs and licensing/supervisory bodies • to introduce further limits on cash payments and consider the usefulness of introducing a general prohibition to perform outside the banking system transactions above a certain amount (adapted to the situation of the country) • to take the necessary measures, whether legal or interpretative, so that the wording of existing regulations obliging legal persons to disburse/pay amounts above ALL 300,000 through the banking system applies to all types of payments • to take the necessary measures, whether legal or interpretative, to ensure that the definition of transactions in the LPML and elsewhere clearly applies to all payment instruments (and does not exclude for

	instance cheques).
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	It is recommended to enhance the requirements regarding the establishment of companies, along the lines of the FATF Recommendations: • to provide for a clear legal basis on deadlines for reporting changes to the Court register • to computerise the Court register • to review the regulations applicable to bearer shares and make sure they take into account AML/CFT needs It is also recommended: • to establish an AML/CFT policy at the level of the register of companies; this policy should provide for controls of the criminal background of applicants and investors, identification of ultimate beneficial ownership, controls over the origin of funds. • to consider extending the reporting duty of tax authorities and licensing bodies (art. 10/1 and 10/2) also to FT • to devise ways to improve the transparency of businesses' real financial situation and to avoid the practice of double balance sheets (e.g. development of audit requirements for sectors at risk etc.).
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• To clarify the issue of the existence in practice of trust arrangements and businesses established by foreign trusts and adopt the measures required by Recommendation 34 of the FATF.
Non-profit organisations (SR.VIII)	• to conduct a review of the AML/CFT risks and situation in the associative/non-profit sector • to review, as appropriate, the legal and financial regime applicable to NPOs in order to avoid common illegal practices such as dual bookkeeping, and therefore to increase transparency and the reliability of information available • to devise a policy for the control and supervision over NGOs/NPOs taking into account ML/FT considerations (dissemination of FT list to the registers, awareness raising actions of the register, tax and other administrative services dealing with the sector etc.).
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	• To make better use of the various existing coordination levels to review the effectiveness of AML/CFT efforts; this would first require to identify the common patterns of money laundering and to devise more effective approaches to reduce current vulnerabilities. Cooperation with the obliged and reporting entities needs also to be fostered and diverging interpretations eliminated. • To adopt urgent coordinated measures to stop the street foreign exchange business, which currently offers significant money laundering facilities and support to

	smuggling (and possibly other criminal) activities.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• As regards the implementation of the UN conventions, some adjustments are needed concerning criminalisation, temporary and final measures, investigative means etc. which have already been discussed in other parts this report.
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	• to analyse the reasons why mutual legal assistance mechanisms are never used by Albanian authorities in ML/TF cases, and why no more requests reach the country despite certain factors (characteristics of Albanian organised crime, importance of Albanian diaspora leaving abroad etc.) • to issue guidance documents and take other initiatives aimed at judges and prosecutors, as appropriate, to make it clear that international instruments take precedence over Criminal Procedure Code provisions and can be directly applied for mutual legal assistance purposes in Albania • to amend the provisions of the Criminal Procedure Code to permit letters rogatory to circulate without passing through the diplomatic channel (Art. 509 of the PPC) and to consider providing for direct contacts of Albanian judicial authorities with foreign counterparts • to introduce provisions dealing specifically with the execution/recognition of foreign decisions on seizure and confiscation of assets that meet the requirements of Recommendation 38 and SR. V • to consider making provision on the sharing of confiscated assets (with requesting countries, when assets are confiscated in Albania) • to keep more specific and detailed statistics on mutual legal assistance mechanisms
Extradition (R.39, 37, SR.V & R.32)	• to regulate more precisely the discretionary power of the MoJ under art. 491 para.3 of the Criminal Procedure Code. • to keep more specific and detailed statistics on extradition.
Other Forms of Co-operation (R.40, SR.V & R.32)	• As a priority, to finalise throughout the country the computerisation of law enforcement authorities, the courts and all other databases which are useful for AML/CFT purposes (e.g. registers of persons and identification documents, registers of property, registers of companies and non profit organisations etc.) and ensure as much as possible on line access to the GDPML. • Also to make clear provision in the LPML under art. 15 on the competence of the GDPML to cooperate in the CFT field.
7. Other Issues	
Other relevant AML/CFT measures or issues	-
General framework – structural issues	• It is recommended that Albania uses this opportunity to improve the drafting of the LPML and make it as accurate, coherent and user friendly as possible to avoid misunderstandings. The LPML should become the

	backbone of the preventive AML/CFT system. Secondary legislation or guidance documents should deal with the specific and practical matters, and not "amend" the law. • Once the revised LPML has been adopted, a general review of other texts should be undertaken to make them consistent with the LPML ("Guideline-Regulations of 2004", LMSTF, Regulation of the BoA on money laundering prevention of 25.02.2004 etc.). • It is recommended to take urgent remedial action to counter the phenomenon of real estate transactions below their market value.

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: List of abbreviations

Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.

Annex 3: Copies of key laws, regulations and other measures

ANNEX 1
List of abbreviations

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML Law (or LMLP)	Law "On Money Laundering Prevention" law No.8610 May 17, 2000 amended last June 16, 2003 by Law no. 9084**.**
ASC (or SC)	Albanian Securities Commission (or Securities Commission)
BoA	Bank of Albania
CC	Criminal Code
CDD	Customer Due Diligence
CPC	Criminal Procedure Code or Code of Criminal Procedure
CTR	Currency (or cash) Transaction Report
CVTR	Currency and Value Transaction Report
DPA	Department of Public Administration
EU	European (Union)
GDPML	General Directorate for the Prevention of Money Laundering.
GDT	General Directorate of Taxation
GDC	General Directorate of Custom
DNFBP	Designated non Financial Businesses and Professions
FATF	Financial Action Task Force on Money Laundering
FI	Financial Institutions
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FSVC	Financial Services Volunteer Corps,
FT	Financing of Terrorism
GDPML	General Directorate for the Prevention of Money Laundering
IMF	International Monetary Fund
ISA	Insurance Supervisory Authority
KYC	"Know your customer"
LMSTF	Law on Measures for the Suppression of Terrorist Financing
ML	Money Laundering
MLCO	Money laundering compliance officer
MLGD	Ministry of Local Government and Decentralization
MoE	Ministry of Economy
MoF	Ministry of Finance
MoJ	Ministry of Justice
MWSA	Ministry of Work and Social Affairs
MoU	Memorandum of Understanding
MPO	Ministry for Public Order
NBFI	Non Bank Financial Institutions
NCCFAML	National Comity for the Coordination of the Fight Against Money Laundering
NIS	National Intelligence Service
NPO	Non Profit Organisation(s)
OSCE	Organisation for Security and Cooperation in Europe
PAMECA	Police Assistance Mission of the European Communities to Albania
PG's office	Office of the Prosecutor General
SAR	Suspicious Activity Report
STR	Suspicious transaction report

ANNEX 2

List of bodies met during the visit

Authorities, State institutions

- FIU (General Directorate for the Prevention of Money Laundering)
- Ministry of Finance: Insurance Supervision Commission, Directorate of Gaming and Casinos, Taxation Department (Internal Audit Directorate)
- Customs: Investigation unit, Directorate of Information
- Ministry of Justice: Codification Directorate, International Relations Directorate
- representatives of Judges
- First Instance Court of Tirana: Register of Legal Persons
- Court for Serious Crimes
- Prosecutor's Office: Office for economic crime, money laundering and terrorist financing (General Prosecutors, in the Directory for Investigation of Organization Crime, Office to the Court for Serious Crimes
- Ministry of Public Order (Ministry of Internal Affairs since 2005): Directorate for the Fight Against Organised Crime and Witness Protection (money laundering unit, analytical unit, anti-drugs unit, special operations unit, illegal trafficking unit), Directorate of Information Technologies
- Bank of Albania: Supervisory Department
- Securities Commission
- National Office of Real Estate Property Registration

Private sector, civil society

- Albanian Association of Banks.
- Money laundering compliance officers from American Bank and Tirana Bank
- Stock Exchange
- National Chamber of Advocacy
- Albanian Lawyer Associations
- Chamber of Notaries
- Citizens' Advocacy Office

ANNEX 3

Reference texts