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PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

TECHNICAL PAPER

ASSESSMENT OF THE ALBANIAN ANTI–MONEY LAUNDERING REGIME AND PROPOSED AMENDMENTS TO THE LAW ON PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING

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Table of Contents

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EXECUTIVE SUMMARY

This Technical Paper provides an overall assessment of the Albanian anti-money laundering (AML) regime, both from a prevention and law enforcement perspective. In addition, it assesses the proposed amendments to the 2008 Law "On the Prevention of Money Laundering and Terrorism Financing", the core legal act in the current AML regime.

Concerning the prevention pillar of the Albanian anti-money laundering regime – centred on the FIU and the obligations of reporting entities – Albania has steadily progressed towards compliance with international standards and best practices as acknowledged by the 2009 MONEYVAL Progress Report on Albania. However, following the release of the preliminary assessment by MONEYVAL, it seems Albania will be rated again partially compliant or non-compliant with a number of Core and Key Recommendations.

Concerning the law enforcement pillar, this paper notes a number of achievements such as the enhanced capacities of and cooperation between the police and prosecution, the establishment and operation of the Joint Investigative Units with an AML remit, and the increased number of referrals from the General Directorate for the Prevention of Money Laundering (FIU or GDPML) to law enforcement agencies. In addition to the findings of the MONEYVAL preliminary analysis of progress in this pillar, according to which Albania will likely be rated partially compliant on four recommendations (including one core and one key), this PACA also recommends using the Anti-Mafia Law in the fight against money laundering and specifically pursuing cooperation between the Serious Crimes Prosecution Office (SCPO) and the Joint Investigative Units (JIUs).

Concerning the criminal law framework the paper has two main findings and recommendations:

- It appears that under Article 287 of the Criminal Code, only the laundering of proceeds of crime is punishable under Albanian criminal law, while the laundering of instrumentalities is not explicitly criminalized. PACA recommends that the criminalization of laundering of instrumentalities of crime is also made explicit in the Criminal Code.

- There appear to be two different evidence thresholds for the criminalization of money laundering within article 287. PACA recommends that the issue of the different evidence thresholds be resolved to ensure that there is only one threshold.

Concerning the proposed amendments to Law no. 9917 On the Prevention of Money Laundering and Terrorism Financing, PACA has the following recommendations:

- The FIU should not be conferred judicial police status at this time.

- Efforts to enhance exchange of data between the FIU on one side and the courts and the prosecution service on the other should be pursued in the following way:

    - The Minister of Finance and the Prosecutor General enter a Memorandum of Understanding (MoU) with the aim of facilitating the flow of information from the prosecution to the FIU;

    - The Ministry of Justice should tailor court statistics in a way that would fit the need of the FIU and Government for significant information in this important subject.

- PACA commends the rest of the proposed amendments such as those aiming to reinforce the role of FIU in the licensing process of obliged entities, aiming at setting up a unique database that would allow the identification of bank accounts and their owners, including beneficial owners, the revision of administrative sanctions providing for a minimum and maximum fine and the introduction of a statute of limitation (5 years) for the administrative violations.

1 BACKGROUND AND SOURCES

This Technical Paper is based on documentary and legal research and builds upon PACA's earlier activities on the subject matter. Its main findings and recommendations relate to the pertinent MONEYVAL recommendations and PACA's two earlier Technical Papers (TPs) under components 1.3.1 and 1.3.2 of its work plan.

The first TP, released in March 2010, reviewed the legislation related to money laundering, financing of terrorism seizure and confiscation of proceeds of crime for its internal consistency and functionality in the light of relevant treaty obligations and Albanian judicial practice in the interpretation of search and seizure of crime proceeds and their procedural provisions.

The second TP entitled "Enhancing the Implementation of the Albanian Law on the Prevention of Money Laundering and Financing of Terrorism" and released in June 2010, assessed the level of implementation of the AML/CFT and the possibility of legal amendments by juxtaposing the requirements of the Albanian law, the international standards as encapsulated in the FATF and MONEYVAL recommendations and the actual state of affairs, in terms of adopted policies and practices, at the various reporting entities. The findings of that paper, which is also a building block for present paper, established at a practical level the progress made by all AML actors in Albania, both state institutions and obliged private entities.

2 OVERALL ASSESSMENT

2.1 The AML Regime

Findings Concerning the Prevention Component of the AML Regime:

Concerning the prevention pillar of the Albanian anti-money laundering regime – centred on the FIU and the obligations of reporting entities – Albania has steadily progressed towards compliance with international standards and best practices as acknowledged by the 2009 MONEYVAL Progress Report on Albania.

The 2009 MONEYVAL Progress Report on Albania acknowledges the positive steps undertaken by Albania since efforts began in 2006 following the signing of the Stabilisation and Association Agreement (SAA). Following the cyclical evaluations in the framework of MONEYVAL, the AML regime has addressed to varying degrees of compliance most of the recommendations, which on their side originate in the FATF standards and EU Conventions and Directives. Just to cite a few examples of Albania's progress, as pointed out by PACA's Technical Paper on "Enhancing the Implementation of the Law on the Prevention of Money Laundering and Terrorism Financing", there is no question that the array of private entities such as banks and the other financial institutions, accountants, notaries, attorneys and other businesses and professionals has definitely been brought into the AML system and is assuming an increasing share of responsibilities. The GDPML, has performed commendably on most fronts despite natural difficulties associated with growth. Interagency and international cooperation are also being directed effectively by FIU despite a nascent concern about the responsiveness of the law enforcement agencies to FIU's intelligence information.

The current Albanian AML regime in both its components (prevention and enforcement) is also largely compliant with the key requirements of United Nations Convention Against Transnational Organized Crime (UNTOC) as it duly criminalizes the participation in an organized criminal group, the laundering of proceeds of crime and establishes a functioning domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering. All of this is clearly provided by the various laws that make up the Albanian AML regime.

The same positive evaluation goes as far as compliance with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism is concerned. Just to cite a few examples of compliance, the Albanian FIU has been modelled in conformity with article 12 of the Convention. The law on Prevention of Money Laundering details the Convention's requirements regarding measures to prevent money laundering (Article 13), banking details, transactions and monitoring for foreign investigators (Articles 17-19)

Clearly, these developments constitute a solid basis for further enhancement of the effectiveness of the AML regime.

However, on the prevention pillar, a recent preliminary analysis by MONEYVAL of Albania's progress on past non compliant and partially compliant ratings, it seems Albania will be rated again partially compliant (PC) or non compliant (NC) with regard to the following Core Recommendations[1]:

- Core recommendation R10 (PC) which deals with record keeping. Whereas the recommendation is that account files and business correspondence should be maintained for at least five years following the termination of an account or business relationship, the Albanian AML law stipulates five years from the date of the execution of the financial transaction as it is currently stipulated by Albanian law);

- Core recommendation R13 (PC) which deals with suspicious transactions reporting. The preliminary analysis argues that deficiencies remain as regards the width of the STR obligation. Also in terms of effectiveness the number of STRs remains low);

- Core recommendation R5 (NC) which deals with Customer due diligence mostly because of under performance in this regard by DNFBPs.

As far as the Key Recommendations[2] relevant to the prevention pillar are concerned, Albania is likely to be rated partially compliant with regard to the following key recommendations:

- Key recommendation R23 which deals with regulation, supervision and monitoring of obliged entities. This rating is likely because according to the preliminary analysis the supervision of non bank and insurance licensees by their respective authority needs to be developed further.

- Key recommendation R26 which deals with the FIU. The partially compliant rating here is possible because according to the preliminary analysis the operational autonomy of the GDPML has not been strengthened by providing for a term in office for the Director General and grounds for his dismissal.

Again, on the prevention pillar, Albania is expected to be rated partially compliant or non compliant on 18 so called other recommendations relevant to the prevention pillar.

Findings Concerning the Enforcement Component of the AML Regime:

Despite the achievements of legislative reform in this area, a few remaining problems, as shown below, concern the enforcement component of the regime.

[1] The Core recommendations are defined in the FATF procedures

[2] The Key recommendations are defined in the FATP procedures

The preliminary analysis of Albania progress in this component of the AML regime has come up with PC or NC ratings on the following recommendations:

- Core recommendation R1 which deals with the definition of the money laundering offence. A PC rating is expected under R1 because the language of article 287 does not make it so clear that Albania has jurisdiction when the 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 the underlying criminal act. On the effectiveness side it is considered that few ML cases have been investigated in Albania).

- Key recommendation R3 which deals with confiscation and provisional measures. A NC rating is expected under R3 because MONEYVAL's preliminary analysis maintains that provisional measures against property under Albanian law are not possible outside the formal criminal investigation. PACA disagrees with this preliminary finding and hopes that Albania's rating under R3 will be elevated to PC (given the remaining effectiveness issue) because the Anti-Mafia Law does provide for application of provisional measures outside a formal investigations.

- Other recommendation R27 which deals with law enforcement authorities. A NC rating is expected under R27 because Albania has not taken concrete steps to establish a clear provision on the ability to waive arrest warrants and controlled deliveries, Additionally, no research on ML and TF trends and techniques has been done.

- Other recommendation R38 which deals with mutual legal assistance on confiscation and freezing. Here again Albania is provisionally rated PC because the new law of December 2009 "On Jurisdiction Relations with foreign authorities in criminal matters has not been assessed yet by the MONEYVAL.

In addition to the findings of the preliminary analysis of Albania's progress, this paper has the following findings and recommendations as regards the enforcement pillar of the Albanian AML:

Two possible discrepancies may need to be considered by the Albanian authorities with regard to the criminalization of money laundering under article 287 of the criminal code.

- The first finding is that under article 287 of the Criminal Code, it may be that only the laundering of proceeds of crime is punishable under Albanian criminal law. The use of the proceeds is criminalized by article 287/1/dh together with investment of such proceeds, but not the instrumentalities. Article 36 of the Criminal Code regulates in general confiscation as a punishment and does envisage confiscation of instrumentalities, and case law

could go a long way to cover these loopholes by way of interpretation. However, legal amendments seem the best way to achieve this result, particularly given Albania's legal culture of over-dependency on the letter of the law.

- The second discrepancy relates to what appear to be 2 different evidence thresholds within article 287 that criminalizes money laundering. Namely, under 287/1/a, to establish the crime of money laundering, the following facts or elements must be proven: 1) there was an exchange or transfer of an asset; 2) the asset was the proceeds of crime; 3) the defendant knew the asset was the proceeds of crime; and 4) the exchange or transfer was done for the purpose of hiding or concealing the origin of the asset or to help avoid the legal consequences related to the commission of the crime. This is quite an elevated threshold. On the other hand, under Article 287.1b, which prohibits concealment or disguising the nature, source, location, position, shift of ownership, or other rights related to the asset, and Article 287.1c which prohibits the structuring[3] of transactions to avoid a reporting requirement, it would appear that the State does not need to prove that the defendant was aware of the criminal origin of the funds.

Further, under 287.1c, the State does not even have to show that the funds were the proceeds of crime, only that the defendant structured transactions to avoid reporting requirements. Of course proof that the money was the proceeds of crime would still be helpful in refuting a defendant's claim that there was a legitimate purpose to the multiple transactions. While this may seem like an extra opportunity for Albania to effectively tackle money laundering (the state may choose 287.1b or 287.1c as an easier route to a conviction than under 287.1a), it may entail possible human rights violations.

Recommendations Concerning the Enforcement Component of the AML Regime:

- As pointed out in PACA's March 2010 Technical Paper "Review of the Consistency of the Albanian Legislation in Respect of the Confiscation of Criminally Derived Assets in the light of Albania's International and Human Rights Obligations", the money laundering offence mentions only the proceeds of crime, and fails to mention its instrumentalities This is particularly important, as not all elements of the confiscation of assets under article 36 of the Criminal Code are applicable to the crime of money laundering. The consequence of this may be that Albania has a softer punch on money laundering. **PACA recommends the laundering of instrumentalities of crime is clearly established as a criminal offence.**

- **PACA recommends that the issue of the different evidence thresholds be resolved to ensure that there is only one threshold.**

[3] Structuring refers to breaking up a larger transaction into smaller ones, usually to avoid arousing suspicion or triggering the requirement that the bank or facility file a report with the FIU.

- Regarding the use of civil forfeiture on the money laundering offence, it should be emphasized that, because the Court of First Instance in this case would be the Serious Crimes Court, civil forfeiture matters are to be handled by the prosecutors of the Serious Crimes Court. Therefore, the other prosecutors must work closely with the serious crimes prosecutors in determining whether and when to pursue a civil forfeiture action in cases of money laundering. This is a mutually beneficial situation because also the serious crimes prosecutors will often be reliant upon the investigative efforts that have been carried out by the normal prosecutor and judicial police. **PACA recommends that this kind of cooperation be explored and used further because it has the potential to be very helpful in the investigation of the money laundering offence;**

2.2 Assessment of the Proposed Amendments

As regards the proposed amendments to the 2008 Law "On the Prevention of Money Laundering and Terrorism Financing" (henceforth the AML/CFT), the paper notes that the proposed amendments intend to achieve the following outcomes:

- confer to the General Department for the Prevention of Money Laundering (henceforth GDPML or FIU) the status of judicial police (Article 5);

- enhance the exchange of data between GDPML on one side and the courts and the prosecution on the other (Article 3);

- strengthen GDPML's role/standing in the procedures for the suspension/revocation of licenses of the obliged entities by their supervisory authorities (Article 7);

- set up a unique database of bank accounts and their owners (Article 1);

- introduce a range of fines (as against the so far fixed ones) in cases of failure of obliged entities to report, distinguishing between the different types of violators (physical or legal persons) and the different kinds of the unreported transactions (Article 8.1);

- introduce a 5 years statute of limitation for the investigation of administrative contraventions under the AML/CFT (Article 8.3).

The main findings/recommendations of this paper in this regard are the following:

Concerning the proposed judicial police status - Plainly, the most important item in the proposed amendments concerns the acquisition by the GDPML of judicial police status in addition to its current analytical role. The FIU's current mandate includes the collection of financial data from the financial institutions and other obliged entities under the AML/CFT, the analysis of such data and, eventually, the

production of financial intelligence that is consequently disclosed to law enforcement agencies and the prosecution service for criminal investigations proper.

The proposed judicial police status would empower the GDPML to gather evidence on ML/FT offences as a formal actor in the criminal prosecution, engage in the criminal investigation of these offences and perform all kinds of investigative actions such as protecting the evidence, identifying the suspect and possible witnesses, use special investigative techniques and other related tasks as specified in the Albanian Criminal Procedure Code.

The expert notes that the proposed acquisition of judicial police powers runs against a recommendation by the 2009 MONEYVAL progress assessment of Albania which supports the option that GDPML be confined to an analytical body generating possible ML and FT cases for further review, and eventually prosecution by the police and prosecutorial bodies.

In addition to the formal finding that the proposition conflicts with the MONEYVAL recommendation, the expert points out that judicial police status for the GDPML is not justified on the following grounds:

- Criminal investigation powers are constitutionally vested with the prosecution service.

- Certain criminal investigation powers are also conferred by statute (Criminal Procedure Code, Law on Prosecution Service, Law on Judicial Police etc) to police.

- In those rare cases when criminal investigative powers are awarded to administrative agencies (most notably in Albania the case of the tax authority and the customs authority), this is done to enable such bodies to collect perishable evidence on the spot, bearing in mind that evidence of the commission of crime in these cases is traced in the course of routine administrative process (unlike in the case of murder, theft, car accident etc).

- Money laundering and terrorism financing are derivate crimes which originate in other crimes whose investigation is already under the remit of the various existing police departments;

- Flagrance is never involved in ML and FT crimes. Evidence only surfaces in later financial transactions and is always of a documentary type. Such evidence is already reported to GDPML by the numerous obliged entities;

- The acquisition of judicial police status could have been acceptable if GDPML would have had a broader mandate on serious and organized crime (like the UK SOCA for example) which would give it first hand exposure to evidence of the original crimes such as illegal traffics, and then spot correlation with certain banking operations aimed at laundering the proceeds of the original

crime.

Based on the arguments above, PACA recommends that GDPML/FIU should not be conferred judicial police status at this time.

Concerning the exchange of data with the courts and the prosecution - The second most important proposal involves an effort to enhance the cooperation and exchange of data between the GDPML on one side and courts and the prosecution on the other. Whereas this proposal may have originated in actual difficulties faced by FIU in getting information by the latter, the expert is of the opinion that the proposed regulation is dubious from a constitutional viewpoint as it stipulates the obligation of independent agencies to report to the executive. The expert favours a solution whereby the proposed regulation would go into a Memorandum of Understanding between the concerned agencies.

Additionally, the experts believes that the GDPML should explore the potential of article 23 of the law that establishes the Coordination Committee for the Fight against Money Laundering. Bearing in mind that both the Prosecutor General and the Minister of Justice sit in this committee, it may be the right forum to seek and obtain the necessary cooperation by the courts and the prosecution. Whereas the cooperation with the prosecution may be further enhanced by entering a MoU between the Minister of Finance and the Prosecutor General, the case with the courts may be solved by having the Minister of Justice direct court statistics in a way that FIU's needs for information would be satisfied.

Based on the arguments above PACA recommends that the effort to enhance exchange of data between the GDPML on one side and the courts and the prosecution service on the other be pursued in the following way:

- **The Minister of Finance and the Prosecutor General enter a MoU with the aim of facilitating the flow of information from the prosecution towards FIU;**

- **The Ministry of Justice tailors court statistics in a way that would fit FIU's and the Government's need for significant information in this important subject matter.**

Concerning the rest of the proposed amendments - The expert commends the rest of proposed solutions such as those aiming to enhance the role of the GDPML within the licensing process of the obliged entities, or aiming at setting up a unique database that would allow the identification of bank accounts and their owners, including beneficial owners, the revision of administrative sanctions providing for a minimum and maximum fine and the introduction of a statute of limitation (5 years) for the administrative violations.

3 DETAILED ASSESSMENT

In line with global trends and following the mutual assessment procedure in the framework of MONEYVAL, the Albanian anti-money laundering regime has developed all the main features that commonly characterize such systems. Namely it has developed a clear legal foundation that serves both the prevention of money laundering and the enforcement of anti-money laundering measures by the law enforcement agencies. Albania is now considering further reform of the AML regime with a view to raising its effectiveness.

The prevention component, centred around the FIU and the network of obliged/reporting entities is designed to deter criminals from using financial institutions (and other businesses and professions) to launder the proceeds of their crimes. The enforcement component, on the other hand, is designed to punish those criminals who are caught attempting to launder, or succeed in laundering the proceeds of their crimes.

Sections 3.1-3.2 summarize and assess the main features of the two components of the Albanian anti-money laundering regime. Section 3.3 assesses and provide recommendations on the proposed amendments to the AML/CFT.

3.1 Assessment of the prevention component of the Albanian anti-money laundering regime

Law Nr.9917 (date May 19, 2008) "On the Prevention of Money Laundering and Financing of Terrorism" (the 'AML Law') whose aim is 'to prevent laundering of money and proceeds, derived from criminal offences, as well as, the financing of terrorism' is clearly the main element of the prevention pillar.

The 2008 Law is a revision of Law No. 8610, 19.05.2000 (subsequently amended in 2003) intended to strengthen the fight against money laundering by creating and enforcing a mechanism of transparency in financial transactions. This is accomplished through stringent reporting requirements of certain businesses and professionals (the "subjects" of the law or obliged entities), who are obligated to report threshold and suspicious transactions to the General Directorate of the Prevention of Money Laundering (GDPML).

The AML law features 5 key elements:

- customer due diligence (intended to limit criminal access to the financial system and to other means of placing proceeds of crime i.e. real estate);

- reporting by the obliged entities to the responsible authority (to alert authorities to activities that may involve attempts to launders proceeds of crime):

- self regulation by the regulatory/licensing bodies of the obliged entities to implement the anti money laundering laws and specify in detail CDD measures and reporting requirements;

- supervision by the responsible authority (FIU) to ensure compliance by the obliged entities and finally;

- sanctions to punish individuals and institutions who fail to implement the prevention regime, particularly CDD measures and reporting requirements.

Failure of the obliged entities to comply is sanctioned by a comprehensive list of administrative sanctions/fines on a wide range of administrative issues such as failure to apply monitoring and identification procedures in the opening of accounts as well as noncompliance with reporting obligations.

Following recommendations by MONEYVAL, this pillar has expanded to include a growing number of activities and institutions.

3.1.1 Institutional arrangements under the AML

The General Directorate of the Prevention of Money Laundering (GDPML) exercises the function of supervisory authority under the Minister of Finance. The Directorate serves as a national centre for the collection, analysis and dissemination to other agencies of information related to money laundering and terrorist financing. As a Financial Intelligence Unit (FIU), the Directorate has access to databases and information of all state institutions and public registers, supervises reporting requirements of subjects, conducts inspections, deals with foreign counterparts, and exchanges information with law enforcement agencies and other competent authorities. It also may temporarily block or freeze financial transactions for up to 72 hours. Further, the Directorate notifies supervising authorities (for subjects)[4] concerning non-compliance with the law.

A Committee on Coordination of the Fight against Money Laundering sets national policy on the prevention of money laundering and terrorism financing. The Committee is chaired by the Prime Minister and includes the Ministers of Finance, Foreign Affairs, Defence, Interior, Justice, the General Prosecutor, the Governor of the Bank of Albania, the National Intelligence Service and the Inspector General of HIDAA.

The network of obliged entities under the reporting requirements is large, including all kinds of financial services and Designated Non Financial Businesses and Professions/DNFBPs.

[4] Many of the subjects to the law are regulated by supervising authorities. For example the Bank of Albania regulates and supervises the banking industry in Albania. Other professions, including accounting, law, construction, etc. are overseen by regulatory entities.

3.1.2 Subjects of the AML

The list of obliged institutions under the Albanian law is the following:

- Commercial banks
- Non-banking financial institutions
- Foreign exchange offices
- Postal services
- Savings-credit unions
- Every other natural or legal person who issues or manages means of payment or performs the transfer of things of value (debit and credit cards, traveller's checks, payment orders, electronic money)
- Stock markets and securities industry
- Casinos
- Lawyers, notaries etc, when they perform functions related to the transfer of ownership of property, or administration of bank accounts
- Real estate agents
- Others who deal in construction, precious metals and stones, art work purchases, money exchange, motor vehicles, travel agencies, and others.

The AML regime extends the reporting requirement on the following government structures:

- Reporting to Customs - every person entering or leaving the territory of Albania to declare the amounts of cash, negotiable instruments, metals or precious stones, other things of value from 1,000,000 lek or foreign equivalent, as well as the purpose of carrying them, as to which he should also present justifying documents. Customs officials are obligated to send to the Authority copies of the declaration documents. Customs must also report, within 72 hours, every suspicion or information having a connection to money laundering or terrorist financing.

- Reporting by Tax Authority - the tax authorities must report immediately any suspicious transactions related to money laundering or terrorist financing.

- Reporting by the IPRO - the Immovable Properties Registration Office must report within 72 hours the registration of a contract for the sale of property of a value of 6,000,000 lek or more or equivalent in foreign currency. The IPRO is also obligated to report any suspicious transactions or data.

3.1.3 Activities covered by AML

In terms of activities the AML/CFT has the following coverage:

- Due diligence - subjects under the due diligence requirements of the law must identify and verify the identity of persons who perform transactions above the legal threshold.

- Registration requirements - Subjects must register and maintain data on clients, including, for natural persons, names and family names, date of birth, residence address, employment, type and ID document number; and for natural persons and businesses which engage in for- profit activity, the date of decision of registration in National Registration Centre, the tax ID no., and other data.

- Monitoring – the subjects must continually monitor the business relationship with the client, knowing the clients' activities.

- Enhanced due diligence - an "extended diligence" to clients who are "politically exposed persons", defined in Article 28 as persons identified semi-annually as such by the Inspector General of the High Inspectorate for the Declaration of Assets- that is, certain elected and public officials.

- Preventive measures/self regulation – the subjects must undertake preventive measures – that is internal rules and controls and employee training- that lessen the risk of money laundering and terrorist financing.

- Reporting to the responsible authority – the subjects to report to the "responsible authority" (GDPML) any suspicious transactions; subjects must report a request to engage in a suspicious transaction immediately to give the authority an opportunity (48 hours) to issue instructions on whether to allow the transaction to go through. The subject is further obligated to report all transactions in physical money equal to or greater than 1,500,000 lek or the equivalent in foreign money (currently approx. $ 15,200 USD), as well as all transactions not in physical money, in a sum equal to or greater than 6,000,000 lek (currently approx. $61,000 USD), performed as a single transaction or as related transactions. The only exceptions to the reporting requirement regard certain exemptions from reporting , such as interbank transactions (not in name of clients); transactions between subjects and the Bank of Albania, transactions between public institutions and obliged entities. Clearly the subjects are absolved of legal liability for the disclosure of bank or professional secrets.

- Tipping off - employees of subjects are prohibited from disclosing to client or others that the transaction has been reported.

- Record keeping – the subjects must maintain records for at least 5 years on the subject.

3.1.4 Sanctions under the AML

The supervising/licensing authorities have the power to revoke licences. The GDPML/FIU can request revocation of the licenses of those subjects who it finds have engaged in money laundering or who repeatedly perform administrative infractions.

Violations of the rules, when not a criminal offense, result in fines according to the type of infraction. Fines range from 60,000 Lek to 5,000,000 Lek and up to 50% of the value of the unreported transaction.

3.2 Assessment of the enforcement component of the Albanian anti-money laundering regime

The enforcement component of the AML regime consists of 5 key elements: the underlying predicate offences, investigation of money laundering and terrorism financing, prosecution, confiscation and punishment.

Money Laundering Predicate Offences - As regards the underlying predicate offences, it must be noted that Albania has opted for the so-called "all crimes approach" which means that the Albanian criminal law does not contain a list of money laundering predicate offences. In other words, under Albanian law it is considered that any crime may lead to the laundering of money[5]. As a consequence, the general rules for connection of crimes and unification of sentences under articles 55 and 56 of the Albanian Criminal Code are applicable as between money laundering and any criminal offence.

An important note is due here. As pointed out in PACA's March 2010 Technical Paper "Review of the Consistency of the Albanian Legislation in Respect of the Confiscation of Criminally Derived Assets in the light of Albania's International and Human Rights Obligations", the money laundering offence mentions only the proceeds of crime, and fails to mention its instrumentalities. This is particularly important, as not all elements of the confiscation of assets under article 36 of the Criminal Code are applicable to the crime of money laundering. The consequence of this may be that Albania has a softer punch on money laundering.

Investigation of Money Laundering - Concerning the investigation it must be stated that there are essentially two approaches to a money laundering investigation. One way is to investigate the crime and then attempt to trace the money. The other way is to locate the money and try to trace it back or connect it to a particular crime. Each method has its value and both are possible under Albanian law. Investigation of money laundering (just like that of any other crime) is a prerogative of prosecutors and judicial police. The growing sophistication of crime has prompted a series of organizational moves on the side of law enforcement agencies which have tried to respond by setting up specialized structures in charge of the investigation of economic and serious crime. Since money laundering falls under both serious crimes (see article 3 of the Anti-Mafia Law) and economic crime (see MoU establishing the Joint Investigative Units [JIU] with a remit on economic crime), there exist special teams of prosecutors who are trained to investigate money laundering offences in Albania (serious crimes prosecutors and JIU prosecutors). On the police side, following the latest restructuring of the Albanian State Police (ASP), under the General Department of Crime Investigation a specialized Department against

[5] Historically money laundering was linked to drug trafficking or a list of serious/organized crimes.

Organized Crime has been set up. Further down the hierarchy, a more closely specialized Section against Money Laundering has also been set up.

If the investigation of a money laundering offence would warrant the use of special investigative means, within the same department there exist a Section of Special Means and Techniques of Investigation and a Special Operations Section, which specialize on various techniques that are used to identify money laundering and relate it to the predicate offence.

Prosecution of Money Laundering – Prosecution of money laundering offences is obviously performed by the prosecution service. Both the Joint Investigative Units (specialising on economic crime) and the Serious Crimes Prosecution Office (specializing on serious and organized crime) have jurisdiction over the money laundering offence.

Confiscation of Laundered Money – A successful investigation of money laundering leads to the conviction of the money launderer by the court. Under the Albanian criminal law, the authorities have ample opportunity not just to convict the launderer (fine or prison term) but also to forfeit the crime proceeds that the offender was attempting to launder or laundered. A temporary seizing of the proceeds, awaiting final court ruling, is also possible under the law.

In the case of Albania both the Criminal Code and the Anti-Mafia Law provisions on forfeiture can be used with the criminal offences of money laundering and terrorism financing.

3.2.1 The Criminal Forfeiture Law:

The Criminal Code can be obviously utilised to forfeit the laundered crime proceeds because article 36 of the Criminal Code, which provides the legal framework for the criminal forfeiture of assets (the title of that article is "Confiscation of Means for Committing the Criminal Offense and Criminal Offense Proceeds**")** is a general rule that can be applied to any action established as criminal by the Laws of Albania (including money laundering).

Article 36 states as follows:

> 1. Confiscation is imposed necessarily by the court[6] and has to do with reception and transfer in the state's favour:
>
> a) of the instrumentalities that have served or are specified as means for committing the criminal act;

[6] If the criminal offence presented by the prosecutor is proven in the course of the judicial proceeding the judge has no discretion whether to impose or not the confiscation. Confiscation follows automatically.

b) of criminal act proceeds, where it is included any kind of asset, as well as legal documents or instruments verifying other titles or interests in the asset waiting upon or gained directly or indirectly form the commission of the criminal act;
c) of the promised or given remuneration for committing the criminal act;
ç) of any other asset, whose value corresponds to the criminal act proceeds;
d) of objects, whose production, use, holding or their alienation make a criminal act crime, and when the sentence decision is not given;

2. If the criminal act's proceeds are transformed or partly or fully converted into other assets, the latter is subject to confiscation;

3. If criminal act's proceeds are merged with assets gained legally, the latter are confiscated up to the value of the criminal act proceeds;

4. Also subject to confiscation are other income or profits from the criminal act proceeds, from assets that are transformed or altered to criminal act proceeds, or from assets with which these proceeds are involved, in the same amount and manner as the criminal act proceeds.

Also related to the criminal forfeiture is Article 274 of the Criminal Procedure Code. This Article permits the pre-trial sequestration (seizure) of proceeds if the prosecutor can show that there is a danger that the proceeds will be dissipated.

In the context of a criminal proceeding (under article 274), forfeiture of crime proceeds begins with their seizure. At the end of the court proceeding, the assets (movable or immovable properties) that are linked to the commission of the criminal offence are forfeited through the final court verdict. The notification of charges need not specify concrete property or contain a notice to the defendant that the prosecution is seeking forfeiture of property as part of the sentence. In other words, the forfeiture of assets is not a goal in itself in the classical criminal proceeding. It may be decided on a case by case basis, at any stage of the judicial proceeding, whenever a reasonable doubt (based on evidence) exists that the assets are related to the criminal offence. The court makes an interim decision on seizure. The court's decision on seizure may be appealed by the defendant, as well as other persons who claim ownership over the seized assets. Third parties may also complain against the final confiscation decision on the ground that the confiscated assets do not belong to the defendant or are not derived from crime.

3.2.2 The Civil Forfeiture Law:

The anti-mafia law and its civil forfeiture regime can also be used because article 3 specifies that "it [the anti-mafia law] applies to ……crimes committed for purposes provided in articles …..and 287 of the Criminal Code [money laundering]."

Civil forfeiture laws have been accepted by governments world wide as an effective tool against organized crime and terrorism. Additionally, the European Court of

Human Rights has found that such laws do not necessarily infringe human rights because they are considered to deal with property and not the individual. Accordingly, in December 2009, the Assembly of the Republic of Albania passed Law 10 192 "On Preventing and Striking at Organized Crime and Trafficking Through Preventive Measures Against Assets." This law, commonly known as the "Anti-Mafia Law," became effective on January 24, 2010.

Although the main focus of the Anti-Mafia law relates to the confiscation of assets from organized crime, trafficking and terrorism related offenses, it must be noted here that the reach of the law includes the forfeiture of assets derived from money laundering under Article 287 of the Criminal Code. In other words, if in the process of investigating a crime which is not considered serious (not included in the list of article 3 of the Anti-Mafia Law), the normal prosecutor (as opposed to the serious crimes prosecutor) finds evidence of money laundering, he/she could ask colleagues from the Serious Crimes Prosecution Office to use the Anti-Mafia law to initiate seizure of the defendant's property in civil proceedings.

Provisions of the Anti Mafia Law which are of particular note as regards the pursuit of the offence of money laundering include the following:

Article 3.1: The law is applicable against a person (subject) for whom there exists a "reasonable suspicion" that the subject is a participant in certain criminal organizations or structures or terrorist organizations or otherwise engaged in certain offenses – including money laundering.

Article 3.2: The provisions of the law are also applicable to assets of "close persons" of the subject (to include immediate family members as well as aunts, uncles, nieces, nephews, and in-laws), to whom there is a "sufficient data" that indicates their property is possessed as a result of certain criminal activity (including money laundering).

Article 3.4: Specifies that the law is applicable to assets of persons accumulated before the law has gone into effect- meaning that the State can bring an action today for wealth accumulated in the past as the result of money laundering.

Article 5.1: The proceedings under this law are independent of the criminal proceedings that may be held against persons who are subjects of this law.

Article 7: The court of competency is, at the first level, the First Instance Court for Serious Crimes and at the second level, the Court of Appeals for Serious Crimes. Requests for sequestration are handled by a single judge, while requests for confiscation are handled by a 3 judge panel. Other prosecutors (other than the serious crimes prosecutors) who find evidence of laundering of money derived from a criminal activity that is not listed as a serious crime may still be able to use the Anti-Mafia Law civil forfeiture regime by bringing into the play their colleagues from the Serious Crimes Prosecution Office.

Article 8: Authorizes prosecutors and judicial police to carry out investigative actions based upon information furnished by third parties or upon their own initiative. This includes a full financial investigation, to include the person's financial means and activities, his sources of income and his assets. Clearly, this kind of investigation is crucial to prove the commission of the offence of money laundering.

Article 11: Permits the prosecutor to seek the sequestration of assets when there is a "reasonable suspicion based on indicia" that 1) shows that the person may be involved in criminal activity and has assets or income that do not respond to the level of income profits or declared lawful activities and 2) a real danger exists that the assets may be lost or alienated or that the possession of the assets cause danger to economic, or other activities or may facilitate criminal activities.

Article 21: Once the prosecutor requests the confiscation of assets under this law, the burden of proof to prove that the assets were gained in a lawful manner belongs to the person against whose assets the confiscation is sought.

Article 22: The provisions of the Code of Civil Procedure are applicable to proceedings under this law. Additionally, when the whereabouts of the person against whom confiscation of assets is sought is unknown, the court may designate a lawyer for him and proceed. If 3rd parties are found to have a potential interest in the property, they will be advised and allowed to intervene in the proceedings.

Article 24: The court will find in favour of confiscation when all of the following are met: a) when there are "reasonable suspicions based on indicia" that the person participated in one of the enumerated criminal activities (under Article 3); b) when it is not proven that the assets have a lawful source or the person failed to justify the possession of the assets based upon lawful income or activities and c) when the assets are directly or indirectly in the full or partial ownership of the person. Further, the court may reach this decision even when criminal proceedings against the person were dismissed by the proceeding authorities due to insufficiency of the evidence, the death of the person or other legal reasons why the criminal case could not proceed, and even if the person was declared criminally innocent.

It should be emphasized that, because the Court of First Instance is the Serious Crimes Court, civil forfeiture matters are to be handled by the prosecutors of the Serious Crimes Court. Therefore, the other prosecutors must work closely with the serious crimes prosecutors in determining whether and when to pursue a civil forfeiture action. This is a mutually beneficial situation because also the serious crimes prosecutors will often be reliant upon the investigative efforts that have been carried out by the normal prosecutor and judicial police. This kind of cooperation has the potential to be very helpful in the investigation of the money laundering offence.

3.2.3 The interplay between the Criminal and Civil Forfeiture Regimes:

Once the applicability of both the criminal and civil forfeiture regimes to the assets

derived from money laundering is established, it seems of practical value to discuss in brief the approach to confiscation by the two different forfeiture regimes.

It must be noted immediately that it is quite different in nature. Article 36 of the Criminal Code depends upon a final criminal judgement that is non-appealable. Moreover, the confiscation under the Criminal Code depends on a higher threshold of evidence to attain the confiscation, as well as a higher threshold to reach the conviction of the defendant.

On the other hand, the Anti-Mafia Law allows the civil forfeiture of assets with no need of criminal conviction. The legal threshold for obtaining evidence (with the exception of search and seizure of documents) does appear to be lower than that of the Criminal Code, as is the decision to confiscate the assets.

Article 36 of the Criminal Code provides for the confiscation of proceeds of crime, its instrumentalities, intermingled (criminal and legal) property, transformed property as well as value based confiscation. The Anti-Mafia Law, on the other hand, is not clear as to which property is to be subject to its preliminary investigation, seizure and confiscation. That law does not specify whether the assets to be confiscated include instrumentalities, profits and transformed proceeds, as well as intermingled assets.

Most importantly, confiscation under article 36 of the Criminal Code does not permit a reversal of the burden of proof, which is assumed possible in the Anti-Mafia Law. Also, the criminal confiscation under the Criminal Code may take longer, as it requires the conviction of the defendant.

In essence, the Criminal Code and the Anti-Mafia Law both seek to address the same object, but adopting different strategies to reach the desired end.

3.2.4 Punishment of Money Laundering

A successful investigation of money laundering leads to the conviction (fine or prison term) of the money launderer by the court. Money laundering is criminalized by article 287 of the Albanian Criminal Code, entitled "Laundering of Crime Proceeds". It reads as follows:

1. Laundering of proceeds of crime committed through:

a) exchange or transfer of an asset that is known to be a proceed of crime, for hiding or concealing the origin of the asset or for providing help to evade the legal consequences related with the committal of the crime;
b) concealment or disguise of the nature, source, location, position, shift of ownership or other rights related to the asset that is proceed of crime;
c) performance of financial activities and fragmented/structured transactions to avoid reporting according to the money laundering law;
ç) *abrogated*

d) counselling, incitement or public call to commit any of the offences specified above;
dh) use and investment in economic or financial activities of the money or objects that are proceeds of crimes,

is punishable by three to ten years of imprisonment and by 500,000 to five million Lek fine.

2. When this 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 by a fine of 800 000 to eight million lek, while when the offence caused grave consequences, it is punishable by not less that fifteen years of imprisonment and by a three to ten million Lek fine.

Two possible discrepancies may need to be considered by the Albanian legislator with regard to the criminalization of money laundering under article 287 of the criminal code.

The first, already stated above, is that it appears that only the laundering of proceeds of crime is punishable under Albanian criminal law. The legislator may want to consider extending punishment on the laundering of instrumentalities of crime, the laundering of the profits gained from the investment or any other use of proceeds of crimes. Of course case law could go a long way and cover these loopholes by way of interpretation, but legal amendments seem the best way to achieve result, also given Albania's legal culture of over dependency on the letter of the law.

The second discrepancy relates to what appear to be two different evidence thresholds within article 287 that criminalizes money laundering. Namely, under 287/1/a, to establish commission of money laundering, the following facts or elements must be proven:

1) there was an exchange or transfer of an asset;
2) the asset was the proceeds of crime;
3) the defendant knew the asset was the proceeds of crime, and
4) the exchange or transfer was done for the purpose of hiding or concealing the origin of the asset or to help avoid the legal consequences related to the commission of crime. This is quite an elevated threshold.

On the other hand, under Article 287.1b, which prohibits concealment or disguising the nature, source, location, position, shift of ownership, or other rights related to the asset, and Article 287.1c which prohibits the structuring[7] of transactions to avoid a reporting requirement, it would appear that the State does not need to prove that the defendant was aware of the criminal origin of the funds. Even though the structure of the article echoes that of the article 6 of the Palermo Convention, the latter applies

[7] Structuring refers to breaking up a larger transaction into smaller ones, usually to avoid arousing suspicion or triggering the requirement that the bank or facility file a report with the FIU.

the same evidence threshold regardless of the method used to perform the laundering. Both under article 6/1/a/i of the Palermo Convention which asks the state parties to criminalize money laundering through conversion or transfer and under 6/1/a/ii which asks the state parties to criminalize money laundering through concealment or disguise it is required that the perpetrator has acted intentionally ("knowing that such property is the assets of crime").

Further, under 287.1c, the State does not even have to show that the funds were the proceeds of crime, only that the defendant structured transactions to avoid reporting requirements. Of course proof that the money was the proceeds of crime would still be helpful in refuting a defendant's claim that there was a legitimate purpose to the multiple transactions.

Also article 9 of the CoE Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and Financing of Terrorism requires the parties to " adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

> a the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
>
> b the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

Clearly, the intention of the offender is required here too.

While the current multiple threshold of evidence under article 287, on the face of it , may seem like an opportunity for Albania to effectively tackle money laundering (the state may choose 287.1b or 287.1c as an easier route to a conviction than under 287.1a), it entails possible human rights considerations which need to be taken into account as it infringes the principle of equality under the law sanctioned *inter alia* by article 1.c of the Criminal Code. which need to be looked at by the legislator.

In other words if a person would be accused of laundering the proceeds of crime through "exchange or transfer of an asset……"(287.1.a) the prosecutor would have to show beyond reasonable doubt that 1) there was an exchange or transfer of an asset; 2) the asset was the proceeds of crime; 3) the defendant knew the asset was the proceeds of crime; and 4) the exchange or transfer was done for the purpose of hiding or concealing the origin of the asset .
If another person would be accused of laundering the proceeds of crime through concealment or disguising…." (287.1.b), the state doesn't have to show that the defendant was aware of the criminal origin of the funds, just that the funds were, in fact, proceeds of crime.
If a person would be accused of laundering money by structuring transactions in

order to avoid reporting according to the money laundering law (287.1.c) the state has the lowest possible threshold. It seems as if article 287.1.c criminalizes the structuring of transactions to avoid reporting under the anti-money laundering law and not money laundering as such. Therefore the expert suggests that 287.1.c be cut of the rest of 287 and be conceived a separate article (criminalizing the structuring of transactions) which could then serve as predicate offence for money laundering. .

3.3 Assessment of the proposed Amendments to the Law no. 9917 "On the Prevention of Money Laundering and Terrorism Financing"

On September 1, 2010 the Government of Albania adopted Council of Ministers Decision No. 720, which proposes to the Assembly to amend Law No. 9917 "On the Prevention of Money Laundering and Terrorism Financing". The bill was submitted to parliament on September 6, 2010 and should be considered by the Assembly's Legal Committee during November 2010. The proposed amendments intend to achieve the following outcomes:

- confer to the General Department for the Prevention of Money Laundering (henceforth GDPML or FIU) the status of judicial police;
- enhance the exchange of data between GDPML on one side and the courts and the prosecution on the other;
- strengthen GDPML's role/standing in the procedures for the suspension/revocation of licenses of the obliged entities by their supervisory authorities;
- set up a unique database of bank accounts and their owners;
- introduce a range of fines (as against the so far fixed ones) in cases of failure of obliged entities to report, distinguishing between the different types of violators (physical or legal persons) and the different kinds of the unreported transactions;
- introduce a 5 years statute of limitation for the investigation of administrative contraventions under the AML/CFT.

3.3.1 Judicial Police Status for the GDPML

Plainly, the most important item in the proposed amendments concerns the acquisition by the GDPML of judicial police status in addition to its current analytical role.

FIU's current mandate includes the collection of financial data from the financial institutions and other obliged entities under the AML/CFT, the analysis of such data and, eventually, the production of financial intelligence that is consequently disclosed to law enforcement agencies and the prosecution service for criminal

investigations proper. Also based, both on treaty law and the Albanian AML/CFT, the FIU plays an important role in the exchange of information between jurisdictions by communicating directly with foreign counterparts.

The proposed judicial police status would empower the GDPML to gather evidence on ML/FT offences as a formal actor in the criminal prosecution, engage in the criminal investigation of these offences and perform all kinds of investigative actions such as protecting the evidence, identifying the suspect and possible witnesses, use special investigative techniques and other related tasks as specified in the Albanian Criminal Procedure Code.

Worldwide, two main models of FIU seem to have been developed, although a few example of judicial or hybrid models also appear to exist. The first model (the so called administrative model) sees FIU as central administrative authority (a degree of independence is necessarily involved even though such organizations remain firmly within the executive branch) which receives and processes information from the financial sector and transmits disclosures to law enforcement agencies or the prosecution service for criminal investigation and, eventually, prosecution. This kind or FIU serves as a buffer between the financial sector (and the DNFBPs) and law enforcement agencies.

In the other model (the so called law enforcement one), FIU implements itself anti-money laundering investigation measures alongside the police with concurrent or sometimes competing jurisdictional authority.

In the proposed amendments it seems Albania is prepared to go down the path of the law enforcement model by conferring to its FIU criminal investigation power. This should lead to a situation of competing jurisdiction with police unless steps are taken towards trimming accordingly the functions of the ASP's Department against Organized Crime, Terrorist Acts and Economic Crime/Anti Money Laundering sector.

Even though the proposed model is a recognized one and stands to bring about some gains (i.e. continuity between the administrative and criminal investigation of money laundering), the expert notes that the proposed acquisition of judicial police powers runs against a specific recommendation by the 2009 MONEYVAL progress assessment of Albania which supports the option that GDPML be confined to an analytical body generating possible ML and FT cases for further review, and eventually prosecution by the police and prosecutorial bodies.

The Egmont Group, to which the Albanian FIU is a member, defines a FIU primarily as "a central office that obtains financial information, processes it in some way and then discloses it to an appropriate government authority in support of a national anti-money laundering program".

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (Warsaw Convention)

defines FIU as a central, national agency responsible for receiving (and as permitted requesting) analysing and disseminating to the competent authorities, disclosures of financial information

Based on such understanding, as enshrined in the above mentioned documents, the 2008 Law "On the Prevention of Money Laundering and Terrorism Financing" has conceived the Albanian FIU to be an important instrument able to secure a rapid exchange of information between the financial institutions (and other obliged entities) and law enforcement agencies.

In addition to the formal finding that the proposition conflicts with the MONEYVAL recommendation and the Warsaw Convention's understanding of the FIU's role, the expert points out that judicial police status for the GDPML is not justified on the following grounds:

- Criminal investigation powers in Albania are constitutionally vested with the prosecution service.

- Certain criminal investigation powers are also conferred by statute (Criminal Procedure Code, Law on Prosecution Service, Law on Judicial Police etc) to police.

- In those rare cases when criminal investigative powers are awarded to administrative agencies (most notably in Albania the case of the tax authority and the customs authority), this is done to enable such bodies collect perishable evidence on the spot, bearing in mind that evidence of commission of crime in these cases is traced in the course of routine administrative process (unlike in the case of murder, theft, car accident etc). This is not to say however, that it is not possible under Albanian law to confer judicial police status to administrative bodies such as FIU. Quite on the contrary, the case of the Customs and Tax Authorities and the combined interpretation of articles 31 and 32 of the Criminal Procedures Code show that indeed it is possible for an administrative structure such as FIU to be conferred judicial police status. The issue here is one of effectiveness (FIU needs to improve in continuity its current function) rather than of legality.

- Money laundering and terrorism financing are derivate crimes which originate in other crimes whose investigation is already under the remit of the various existing police departments and, of course, the prosecution.

- Flagrance is never involved in ML and FT crimes. Evidence only surfaces in later financial transactions and is always of a documentary type. Such evidence is already reported to GDPML by the numerous obliged entities.

- The acquisition of judicial police status could have been acceptable if GDPML would have had a broader mandate on serious and organized crime (like the UK SOCA for example) which would give it first hand exposure to evidence

of the original crimes such as illegal traffics, and then spot correlation with certain banking operations aimed at laundering the proceeds of the original crime.

- Lack of law enforcement capacity by the FIU so far does not seem to have compromised the enforcement of the AML regime by any means. The provisions in the AML Law in relation to reporting obligations, to information sharing amongst the various government agencies, as coupled with the increasing ability of FIU to analyse the data before referring them to law enforcement, have secured the effective use of the Penal Code (and possibly in the future the Anti- Mafia Law) to freeze and confiscate laundered assets. To illustrate the point the 2009 MONEYVAL Progress Report cites an increased number of referrals to the Prosecutor's Office and, more impressively, the freezing of 1,192,721 Euros (in 2008), whilst for the first half of 2009 the total amounts frozen stood at 2,250,000 Euros with the amount seized standing at 2 million Euros. Clearly, the so-called fragmentation of the AML regime (collection of financial data and their analysis at the hands of FIU, investigation at the hands of police and prosecutions by the prosecution, on top of vital involvement of the private sector) does not seem to have compromised the efficiency of the regime as demonstrated by the increasing number of referrals to the Prosecutors who have undoubtedly been utilising their penal code powers to secure freezing orders on criminal assets and proceeds.

- The new Law on Judicial Police and the recent restructuring of the ASP, which has empowered the Department for the Investigation of Organized and Serious Crime (including money laundering) suggest that the long term policy option of the Albanian Government in the area of investigating money laundering is to empower the ASP perform this task rather than decentralize the investigation capacity to other entities such as FIU.

- Finally, the recent creation of the Joint Investigative Teams against economic crime and corruption attached to the Prosecutors Office (FIU representatives sit in the JIUs), is also a promising development which has the potential to further improve the criminal investigation of money laundering.

Based on the arguments above, PACA recommends that GDPML/FIU should not be conferred judicial police status at this time.

3.3.2 Exchange of Data with the Courts and the Prosecution

The second most important proposal involves an effort to enhance the cooperation and exchange of data between the GDPML on one side and courts and the prosecution on the other. Whereas this proposal may have originated in actual difficulties faced by FIU in getting information by the latter, the expert is of the opinion that the proposed regulation is dubious from a constitutional viewpoint as it stipulates the obligation of independent agencies to report to the executive. The

expert favours a solution whereby the proposed regulation would go into a Memorandum of Understanding between the concerned agencies.

Additionally, the experts believes that the GDPML should explore the potential of article 23 of the law that establishes the Coordination Committee for the Fight against Money Laundering. Bearing in mind that both the Prosecutor General and the Minister of Justice sit in this committee, it may be the right forum to seek and obtain the necessary cooperation by the courts and the prosecution. Whereas the cooperation with the prosecution may be further enhanced by entering a MoU between the Minister of Finance and the Prosecutor General, the case with the courts my be solved by having the Minister of Justice direct court statistics in a way that FIU's needs for information would be satisfied.

Based on the argument above PACA recommends that the effort to enhance exchange of data between the GDPML on one side and the courts and the prosecution service on the other be pursued by a MoU in the case of the Prosecution Service and tailoring court statistics to fit FIU's needs in the case of courts.

3.3.3 The Other Amendments

The expert commends the rest of proposed solutions such as those aiming at setting up a unique database that would allow the identification of bank accounts and their owners, including beneficial owners, the revision of administrative sanctions providing for a minimum and maximum fine and the introduction of a statute of limitation (5 years) for the administrative violations.

4 CONCLUSION

The current Albanian AML regime in both its components (prevention and enforcement) is largely compliant with the key requirements of United Nations Convention Against Transnational Organized Crime (UNTOC) as it duly criminalizes the participation in an organized criminal group, the laundering of proceeds of crime and establishes a functioning domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering. All of this is clearly provided by the various laws that make up the Albanian AML regime.

The same positive evaluation goes as far as compliance with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism is concerned. Just to cite a few examples of compliance, the Albanian FIU has been modelled in conformity with article 12 of the Convention. The law on Prevention of Money Laundering details the Convention's requirements regarding measures to prevent money laundering [(Article 13), banking details, transactions and monitoring for foreign investigators (Articles 17-19)

The pertinent regulation of the Criminal Code relevant to provisional measures (in relation to freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request) and confiscation (Articles 22-26) clearly provide the necessary legal framework to effectively seize and confiscate proceeds of money laundering.

Despite this positive overview, further legislative action on the law enforcement component of the AML regime, as identified by this paper and the 2009 MONEYVAL report, needs to be undertaken to fully bring Albania into line with the most advanced best practices in this area.