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Technical Paper

Expert opinion on the draft amendments to the Law 9917 on the “Prevention of Money Laundering and Financing of Terrorism” of 19 May 2008 as last amended through Law 10 391 on 3 March 2011

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April 2012***

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EXECUTIVE SUMMARY

This Technical Paper has been compiled within the framework of the Project against Corruption in Albania (PACA). It provides an expert opinion on the proposed law (Annex I) amending Law 9917 of 19 May 2008, as last amended by Law 10391 on 3 March 2011 on the Prevention of Money Laundering and the Financing of Terrorism. The expert opinion is limited to the conformity of the amending provisions with the relevant Recommendations of the Financial Action Task Force and their compliance with recommendations in the MONEYVAL 4th Round Mutual Evaluation Report. However, since in February 2012 the Financial Action Task Force published its revised Recommendations under the new FATF Standards, this Technical Paper also carries a general assessment against major changes in the relevant Recommendations and makes further proposals for changes as may be necessary.

This Technical Paper:

- lays down the basis of the opinion and approach adopted;
- carries out an assessment of the entire Law 9917¹ against the relevant FATF Recommendations (Appendix 1). To this effect Recommendations 4 – 26, 29, 31 – 32, and 20 and Special Recommendations IV – VII, and IX were reviewed, comprising the majority of the current Core and Key Recommendations falling within the governance of Law 9917;
- carries out an assessment of the entire Law 9917 against the established relevant recommendations under the MONEYVAL 4th Round Mutual Evaluation Report of Albania (Appendix 2);
- carries out an assessment of the entire Law 9917 against the new FATF Standards as published in February 2012 (Appendix 3);
- makes recommendations for amendments to both the Amending Law and the current Law 9917 (as amended) and presents drafting proposals (Annex II).

The comprehensive assessment of the entire Law 9917 against the FATF 40+9 Recommendations and the recommendations of the MONEYVAL 4th Round Mutual Evaluation Report for Albania² finds that a number of essential criteria for the relevant FATF Recommendations and some of the recommendations in the 4th Round Mutual Evaluation Report have not been entirely addressed. It may be the case, as the Paper finds, that some provisions required by law are covered by legislation other than Law 9917 and therefore there is no need for further amendments to the Law 9917. In other cases either the proposed amendments lacked full compliance with the relevant essential criteria or an FATF Recommendation was not adequately addressed.

The draft text to reflect the proposed changes that are required for better conformity and harmonisation with the FATF obligations is included in Annex II which, together with Annex I and the three Appendices, forms an integral part of the Technical Paper.

However there remain some issues that need to be addressed separately:

¹ The entire Law 9917 comprises the current law with the amendments of March 2011 and the draft Amending Law in Annex II.

² As adopted by the MONEYVAL Committee at its 35th Plenary.

- (i) With respect to Article 11(1) paragraph (dh): Are financial institutions bound by any other law to have an internal audit function?
- (ii) With respect to Article 24(1) paragraph (dh): the Albanian Authorities may wish to consider specifying the supervisory authority for each category of subjects.
- (iii) With respect to Article 27: Notwithstanding the proposed amendments to the Law 9917, the Albanian Authorities may wish to reassess the issue of the availability and application of sanctions in a graduated manner and the possible duplication between Law 9917 and the relevant financial legislation.
- (iv) With respect to Recommendation 20: in particular EC 20.1 to encourage techniques or measures for conducting financial transactions that may be less vulnerable to money laundering, the Albanian Authorities may wish to ensure such remit lies with the Bank of Albania.
- (v) With respect to the 4th Round Mutual Evaluation Report in relation to Recommendation 5: to amend Articles 1025 and 1026 of the Civil Code and/or pass legislation to prohibit the issuing of bearer passbooks – further to the proposed new Article 4/1 paragraph (14), Albanian Authorities may wish to review the Articles of the Civil Code, unless already done;
- (vi) With respect to the 4th Round Mutual Evaluation Report in relation to Recommendation 26, to clarify the GDPML's authority to exchange information with non law enforcement authorities. Current Article 22(e) still refers to law enforcement authorities. Albanian Authorities may wish to consider this recommendation further but within the principles of the Egmont Group as such information is not normally exchanged with any competent authority;
- (vii) With respect to the 4th Round Mutual Evaluation Report, in relation to Recommendation 26, to include the GDPML and other supervisory bodies in the Coordination Committee for the Fight against Money Laundering to ensure that supervisory concerns are properly reflected in the national strategy. This goes beyond the scope of this Technical Paper. The Albanian Authorities may wish to consider this separately.
- (viii) With respect to the new FATF Recommendation 16 (previously SR VII): requiring freezing powers for financial institution for wire transfers - No amendments are proposed at this stage as this new inclusion calls for a considered assessment by the Albanian Authorities to empower financial institutions to take freezing actions since freezing powers are not provided for by Law 9917 to any competent authority as these are presumably governed by other legislation.

INTRODUCTION

In February 2012 the Financial Action Task Force published its revised Recommendations under the new FATF Standards. This Technical Paper also carries a general assessment against major changes in the relevant Recommendations and makes further proposals for changes as may be necessary.

It should be mentioned at the outset that this is not an evaluation for compliance purposes for a mutual evaluation process. As stated, this Technical Paper is an assessment of the conformity of the domestic legislative provisions with the relevant FATF Recommendations but with proposed amendments.

This Technical Paper is drawn up as follows. It first lays down the basis of the opinion and the approach adopted. Next it presents recommendations and proposals for further amendments following an evaluation and assessment of the Essential Criteria for the FATF relevant Recommendations against the proposed amendments to the Albania Law No 9917 of 19 May 2008 on the Prevention of Money Laundering and Financing of Terrorism, as amended, and against the entire provisions of the Law that are not proposed for amending. For this purpose a similar assessment is then undertaken against the recommendations in the 4th Round Mutual Evaluation Report as adopted by the MONEYVAL Committee. On the basis of the foregoing the Paper next assesses the provisions of the Law 9917 and the draft Amending Law against major changes identified in the new FATF Standards published in February 2012. The Appendices provide tables indicating conformity with the relevant FATF Recommendations for the respective assessments as aforementioned. Annex II to the Paper provides a revised version of Law 9917 which includes the amendments proposed by the Amending Law (Annex I) and those suggested by this Technical Paper, including side comments explaining the rationale for the inclusion of the suggested amendments.

BASIS OF OPINION AND APPROACH ADOPTED

The opinion is provided on the basis of the English version of the proposed Amending Law (Annex I) to Law 9917 of 19 May 2008 as amended in 2011 provided by the Council of Europe. Since the English version is not an official version, proposed amendments may include comments or proposed amendments which could be language related.

The approach adopted for the assessment of the Amending Law involved the insertion of the proposed amendments into the Law 9917 (indicated in blue print) and the strikethrough of the deleted parts (indicated in brown print). The entire Law was then evaluated against the Essential Criteria for the relevant Recommendations highlighting any shortcomings and suggesting amendments. The approach included an evaluation of the recommendations of the MONEYVAL Fourth Round Mutual Evaluation Report, ensuring that the revised version of Law 9917 address these recommendations. Finally Law 9917 was reviewed against the new Standards of the Financial Action Task Force published in February 2012.

The proposed amending text is provided through a restructured revised version of Law 9917, including the draft Amending Law, with relevant comments in this Paper – see Annex II (in track changes) and Appendices 1-3. The Technical Paper includes other comments and

observations as appropriate where the required amendments go beyond the provisions of the Law no. 9917 of 19 May 2008 and should be governed by other legislation.

The following Recommendations of the FATF 40+9, which cover the majority of the Core and Key Recommendations, have been reviewed against the Law 9917 and the proposed amendments, including the 4th Round Mutual Evaluation Report:³

- Recommendations 4 – 26, 29, 31 – 32, and 20
- Special Recommendations IV – VII, and IX

LAW NO 9917, DRAFT AMENDING LAW AND THE ESSENTIAL CRITERIA

Having inserted the proposed amendments of the Amending Law into the current version of Law 9917, an assessment was undertaken to ensure that the entire Law including the proposed amendments conform with the relevant Essential Criteria for the FATF 40+9. The assessment also included a review of those FATF Recommendations that were not being addressed by the Amending Law but were also not addressed or inadequately addressed by the present Law. This has resulted either in the inclusion of further amendments or in amendments to the proposed Amending Law.

Appendix 1 provides a conformity table indicating the relevant FATF Recommendation, its Essential Criteria, the relevant provisions of Law 9917 and comments concerning proposed changes. More detailed information on the rationale for the proposed changes is included in the revised proposed version of Law 9917 in Annex II.

LAW NO 9917, DRAFT AMENDING LAW AND THE 4TH ROUND MUTUAL EVALUATION REPORT

Law 9917 with the draft Amending Law were next assessed against relevant recommendations made in the 4th Round Mutual Evaluation Report on the Republic of Albania adopted by the MONEYVAL Committee at its 35th Plenary. The assessment has identified the recommendations made in the Report for each FATF Recommendation under consideration extracting those recommendations that refer to legal amendments to the Law on the Prevention of Money Laundering and Financing of Terrorism. Where these recommendations have not been addressed either in the current Law 9917 or through the draft Amending Law, additional amendments are being proposed.

Appendix 2 provides a compliance table indicating the 4th Round Mutual Evaluation Report recommendations to the relevant FATF Recommendation and the relevant Article of the Law. More detailed information on the rationale for the proposed changes is included in the revised proposed version of Law 9917 in Annex II.

³ Core Recommendations R.1 and SR.2 and Key Recommendations R.3, R.35, R.36 and SR I and SR III have not been assessed as these are not covered by Law 9917 but by other legislation.

LAW NO 9917, DRAFT AMENDING LAW AND THE NEW FATF STANDARDS

It has been deemed that the exercise would be incomplete without a general review of the Law 9917 and the Amending Law against major changes in the FATF Recommendations. Due to the circumstances where the FATF Recommendations have just been reviewed, it automatically follows that, for continuity and consistency, such major changes should be highlighted and, where necessary, further amendments to the Law 9917 be proposed. Such changes are few and concern the following Articles of Law 9917:

- (i) New Recommendation 10 on 'Customer Due Diligence' (previously Recommendation 5) – Article 7(1) and Article 4/1 paragraph 13;
- (ii) New Recommendation 14 on 'Money or Value Transfer Services' (previously Special Recommendation VI) – Article 10(4);
- (iii) New Recommendation 15 on 'New Technologies' (previously Recommendation 8) – Article 6(1)
- (iv) New Recommendation 18 on 'Internal controls and foreign branches and subsidiaries' (previously Recommendations 15 and 22) – Article 2 and Article 11.

Appendix 3 provides a conformity table indicating the new FATF Standards and the previous Recommendations with indications to proposed amendments, where necessary, to the relevant provisions of the Law 9917 and the draft Amending Law. More detailed information on the rationale for the proposed changes is included in the revised proposed version of Law 9917 in Annex II.

PROPOSED AMENDMENTS TO LAW 9917 AND THE DRAFT AMENDING LAW

The paragraphs that follow provide information on the proposed changes to the Law 9917 and the Amending Law consequent to the three aforementioned assessments, but exclude minor changes which at times may be of a linguistic nature and which can be found in Annex II. The paragraphs that follow should therefore be read in conjunction with the text and the side comments provided in the Annex.

Article 2 - Definitions

- (i) Proposed to replace the definition of 'Bearer negotiable instruments' (paragraph 5) through the adoption of the FATF definition, adjusted to reflect aspects in the current definition. This also meets the relevant recommendation in the 4th Round Mutual Evaluation Report.
- (ii) A slight amendment to the definition of 'Politically Exposed Persons' (paragraph 10) is proposed through the inclusion of the words 'but including family members and close associates' for better harmonisation with the FATF definition and the recommendations in the 4th Round Mutual Evaluation Report.
- (iii) Amending the definition of 'Beneficial owner' (paragraph 12) to indicate that the beneficial owner of a legal person must be a 'natural' person while the person on whose behalf a transaction is undertaken can be either a natural or legal person. Moreover it is suggested to include reference to the beneficial owner of a 'legal arrangement', a term which is now also being defined. This amendment provides

better harmonisation with the FATF Recommendations and meets the relevant recommendation made in the 4th Round Mutual Evaluation Report in connection with Recommendation 5 on customer due diligence.

- (iv) Inserting a new paragraph (24) defining the term 'legal arrangement' to be used throughout the Law in replacement to the text 'trust' as applicable – trust being a form of legal arrangement. The definition is inspired by the FATF terminology.
- (v) Inserting a new paragraph (25) defining the term 'financial group', inspired from the new FATF Standards of February 2012 and more specifically the new Recommendation 18 (comprising previous R.15 and R.22) and which now provides for group level compliance. Consequent amendments are being proposed in the Law accordingly.

Article 3 – Entities subject to this Law

- (i) Under Article 3 the Law refers to 'entities' and this word is used in the current version of the text of the Law. However the Amending Law is now referring to the 'entities' subject to this Law' as 'subjects'. For the sake of consistency the introduction to Article 3 is being amended by the inclusion of the text in brackets '(hereinafter referred to as 'subjects') immediately following the word 'entities' and the reference to 'entities' throughout the whole Law being amended accordingly for consistency.
- (ii) Paragraph (a) is being amended by the inclusion of the words 'including branches in Albania of foreign banking entities' thus ensuring that such entities operating in Albania are included for AML/CFT purposes.
- (iii) In paragraph (gj) as amended by the Amending Law there is a reference to 'financial consulting office' while the current paragraph already includes reference to 'regulated professions that offer financial consulting services'. It is not clear whether these are referring to the same category of professionals in which case there might be duplication. The Albanian Authorities may wish to consider.

In paragraph (gj) under item (iv) it is suggested to include the words 'and legal arrangements' for better harmonisation to the FATF Recommendations and in consistency with the definition of the term accordingly.

- (iv) The Amending Law is proposing the deletion of paragraph (i) of Article 3 and its inclusion under paragraph (gj). Although this is acceptable and in line with the FATF Recommendations and it is proposed to be retained, the deletion of paragraph (i) renders this part of the Law not compliant with the EU Third Money Laundering Directive.⁴ It is therefore suggested that, further to the inclusion of paragraph (i) into paragraph (gj) as proposed by the Amending Law, a new paragraph (i) is inserted capturing the accountancy profession in its normal professional activities as currently is the case. The Albanian Authorities are however requested to consider whether as drafted this captures 'auditors'. Moreover reference to 'financial consulting offices' has been retained for consideration as per (iv) above.
- (v) Although trusts are not available in Albania yet the Law rightly makes references to trusts as financial institutions may be handling transactions on behalf of foreign trusts. The 4th Round Mutual Evaluation Report had concluded that item (i) of paragraph (k)

⁴ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. *OJ L 309, 25.11.2005, p 15*

covers Trust and Company Service Providers (TCSP), a service mostly provided by the legal and the accountancy professions. This may not be the case as the activities of TCSP are not necessarily those mentioned in item (i). It is therefore suggested to include a new item (ii) for paragraph (k) capturing TCSP where such activity is not being provided by the legal and accountancy professions.

- (vi) Prior to the changes to Article 4 proposed by the current Amending Law the highest amount for identification purposes stood at 1,500,000 Lek. This is now being proposed to go down to 1,000,000 Lek. It is advised that the amount in item (vii) of paragraph (k) is likewise reduced to this amount for consistency.

Article 3/1 – Customer Due Diligence

- (i) The Law makes various references to ‘customer due diligence’ but retains the possibility of interpretation that customer due diligence means identification and verification of the customer. Although the definition of the concept of CDD has been included in the Instructions 20 and 21, it is important that this is established in Law since the following articles of the Law define the requirements of subjects to comply with this concept. What constitutes the concept of customer due diligence under the new Article 3/1 is inspired from the FATF 40 Recommendations and requirements of the Law itself.

Article 4 – Cases when due diligence is required

Article 4 has been redrafted through the draft Amending Law. The following proposed amendments to Article 4 are therefore amending the draft Amending Law.

- (i) In sub-article (1)(ç) the inclusion of the words ‘notwithstanding any thresholds indicated in this Article’ after the words ‘In all cases’ and the replacement of the words ‘adequate data or doubts about’ by the word ‘suspicion of’ harmonises this provision with EC 5.2 and meets the recommendation made in the 4th MER.
- (ii) Remove sub-article (2) as this is now included under the new Article 4/1 as proposed by the draft Amending Law.

Article 4/1 – Due diligence measure

Article 4/1 is a new Article proposed by the draft Amending Law. The following suggested amendments to Article 4/1 are therefore amending the draft Amending Law.

- (i) Some minor changes to sub-article (1) and the inclusion of a reference to ‘legal arrangements’ as now defined in the Law replacing reference to ‘trust’ in sub-articles (1), (2), (5) and (6);
- (ii) Minor change to sub-article (3) as at this stage the subject needs to confirm not to establish the identity;
- (iii) Sub-article (4) is being amended to ensure that verification whether a person is acting on behalf of another is done before establishing the business relationship and not in the course of monitoring the established relationship. Also to provide for the verification of the identity of the third party;

- (iv) Amendment to sub-article (7) is to link the purpose and intended nature of the business relationship to the development of the customer business and risk profile;
- (v) For continuity and completeness, the second part of sub-article (11) is being transposed to sub-article (10) which deals with the verification process;
- (vi) Further to (v) above, sub-article (11) is being amended to clarify that the requirement for risk management procedures are for instances where the relationship is utilised prior to completion of the verification and not the identification process – two separate but complementary processes;
- (vii) In sub-article (13) it is proposed to remove reference to specific Articles for customer due diligence and link this to Article 3/1 (definition of CDD) and the relevant provisions of the Law in general. This would be reflecting the change for Recommendation 5 (now Recommendation 10) in the new FATF Standards of February 2012;
- (viii) Sub-article (14) dealing with anonymous accounts is being amended for two reasons. First to make it easier to implement in practice and second to implement recommendations made in the 4th Round Mutual Evaluation Report;
- (ix) A sub-article (15) is being added by the transposition of the current Article 7(2) with amendments. This establishes the principle that in the normal course of business relationships subjects should require the physical presence of the customer – although the new Article 6(2) of the Amending Law appears to provide for instances where the customer is not physically present, but refer to new proposed Article 9(6).

Article 5 – Required documents for customer's identification

The Amending Law is not proposing amendments to Article 5. The following minor amendment is being suggested.

- (i) The words 'as a minimum' are being inserted in sub-article (1) as the circumstances of each case will determine additional documents that may be necessary for customer identification and should therefore also be retained.

Article 6 – Technological development and third parties

Article 6 has been redrafted through the draft Amending Law. The following proposed amendments to Article 6 are therefore amending the draft Amending Law.

- (i) Various amendments are being proposed to sub-article (1). The suggested changes meet the requirements of the EU Third Directive (through paragraph (a)) and better reflect the new FATF Standards under Recommendation 15 (previously Recommendation 8);
- (ii) The new sub-article (2) implies that there may be circumstances where the customer is not physically present (see comment (ix) for Article 4/1 above). To this effect changes are suggested to link such a situation to the enhanced due diligence as introduced under the new sub-article 6 to Article 9.

Article 7 – Enhanced due diligence

- (i) The draft Amending Law proposes a new sub-article (1) dealing with the identification of higher risk customers. The new FATF Standards make the application of a risk based approach mandatory. The proposed changes, consisting of the inclusion of the words ‘which, on a risk sensitivity basis, pose a higher risk and’ are meant to better meet the new FATF Standards;
- (ii) The current sub-article (2) is being moved as sub-article (15) to Article 4/1 and amended;
- (iii) A new sub-article (2) is proposed through the transposition and amendment of the current paragraph (1)(a) of Article 11. Thus it becomes more complementary to sub-article (1) which is obliging subjects to identify categories of business that pose higher risks;
- (iv) A new sub-article (3) is proposed through the transposition of sub-article 6 of Article 9 as proposed by the draft Amending Law in order to be generally applied. To an extent this sub-article may be superfluous since the obligation is already included under sub-article 13 of Article 4/1. If it is to be retained in so far as enhanced due diligence is concerned, it should therefore be better linked to Article 4/1 sub-article 13 directly.

Article 8 - Categories of customers to which enhanced due diligence applies

Article 8 has been redrafted through the draft Amending Law. The following proposed amendments to Article 8 are therefore amending the draft Amending Law.

- (i) Sub-article (1)(a) is being amended first to link it to Article 7(2); second to refer to ‘beneficial owner’ as defined in the Law as opposed to ‘beneficiary owner’ and third to cover eventualities when a customer becomes a PEP;
- (ii) The changes to paragraphs (c) and (ç) of sub-article (1) could be linguistic;
- (iii) Sub-article (2) is being amended to give some guidance on what constitutes enhanced monitoring;
- (iv) A minor amendment to sub-article (3)(ç) to link it to sub-article (2) to ensure that the enhanced monitoring applied is consistent for higher risk customers;
- (v) Sub-article (4) is being extensively amended. The objective is to continue the link for non face-to-face relationships as defined above and to meet the recommendations in this regard made in the 4th Round Mutual Evaluation Report;
- (vi) Sub-article (5) is likewise being extensively amended to better reflect Recommendation 21 and the essential criteria.

Article 9 - Categories of transactions and business relations to which extended due diligence is implemented

Article 9 has been redrafted through the draft Amending Law. The following proposed amendments to Article 9 are therefore amending the draft Amending Law.

- (i) Proposed amendments to sub-article (1) reflect better the essential criteria for Recommendation 11 while ensuring that the information is made available to all relevant competent authorities, as may be appropriate;
- (ii) Proposed amendments to sub-article (2) link the due diligence procedures to the new Article 4/1 and implement the recommendations in the 4th Round Mutual Evaluation Report;
- (iii) Sub-article (6) has been amended and moved to Article 7 as sub-article (3). This will avoid the interpretation that the provision is applicable only to correspondent banking relationships and not to all instances where enhanced due diligence cannot be applied;
- (iv) A new sub-article (6) is being proposed dealing with situations where the customer is not physically present either for establishing the relationship or for undertaking a transaction. Sub-article 6, inspired from Article 13(2) of the EU Third Directive, ensures consistency of enhanced due diligence for non face-to-face situations.

Article 10 - Obligations for money or values transfer service

The draft Amending Law proposed the removal of the words 'or from the beneficiary' from paragraph (3) in accordance with the recommendations of the 4th Round Mutual Evaluation Report.

- (i) Changes are proposed to sub-article (1) – (3) to include references to the beneficiary institution and to ensure that the identification data is verified in accordance with the provisions of the Law 9917;
- (ii) A new sub-article (4) is being proposed on the assumption that MVT service providers can appoint agents and that the requirement is not already included elsewhere in other laws. Sub-article (4) as proposed meets the new provisions for SR VI (now Recommendation 14) and the previous essential criterion EC VI.4.

Article 11 - Prevention measures to be undertaken by entities

The draft Amending Law is not proposing amendments to Article 11 except the transposition of sub-article 2 on anonymous customers, and the removal of the words 'and a deputy' from sub-article 1(b).

- (i) As Article 11 provides for additional preventive measures it is recommended to include the word 'Other' at the beginning of the title;
- (ii) As the provisions of sub-article (1)(a) are more related to the enhanced due diligence for higher risk customer, it is proposed to transpose this paragraph of sub-article (1), with amendments, as sub-article (2) to Article 7 – see above re amendments to Article 7;
- (iii) A new paragraph (aa) to sub-article (1) is proposed. The Law lacks a direct obligation for subjects to develop their internal preventive policies and procedures in accordance with Recommendation 15. Further changes are included to reflect the new FATF Standards of February 2012 and more specifically the new Recommendation 18 which incorporates the previous Recommendation 15 and Recommendation 22;

- (iv) Two changes are proposed for paragraph (b) of sub-article (1). First to ensure that appropriate procedures are put in place for co-ordination between respective compliance officers in subsidiaries/offices of the same institution. Second to ensure that the compliance persons have full access to all relevant information even if not included under Article 16;
- (v) A new paragraph (cc) to sub-article (1) is suggested to place the responsibility on subjects to maintain statistics and make them available to the Responsible Authority to fulfil its responsibilities under the Law. This will meet the requirements for the current Recommendation 32 (now new Recommendation 33). The paragraph is cross referred to the new proposed paragraph (m) to Article 22;
- (vi) Paragraph (d) of sub-article (1) is being amended to indicate the type of training and the inclusion of legislative awareness and understanding of the internal procedures established under the new paragraph (aa) of the same sub-article (1);
- (vii) The objectives for the amendments to paragraph (e) of sub-article (1) are twofold. First by striking out the words 'inside or' ensures that the provisions are applicable to overseas establishments only as domestic ones automatically fall within the Law 9917. Second for better conformity with Recommendation 22 and the EU Third AML Directive.

Article 12 - Reporting to responsible authority

Article 12 has been redrafted through the draft Amending Law. The following proposed amendments to Article 12 are therefore amending the draft Amending Law.

- (i) Sub-article (2) is addressing the delaying or suspension of the execution of a suspected transaction – not specifically addressed by the FATF Recommendations but specifically addressed by Article 24 (1) of the EU Third Directive and the Council of Europe AML/CFT Convention. As drafted this paragraph can be difficult to apply in practice and may create difficult situations – particularly since it gives no time limit for the suspension. The objectives of the proposed amendments are:
 - to set a time period when the Responsible Authority should reply that is linked to the period for the execution of the transaction;
 - to set a time period for the suspension of the execution in accordance with the provisions of paragraph (g) of Article 22;
 - to provide that the Responsible Authority may, within the stipulated period, stop the execution totally;
 - to provide legal ways for the subject to proceed if the Responsible Authority fails to respond within the stipulated period.
- (ii) A new sub-article (3) is being inserted to complete the process of the suspension of execution of transactions as per sub-article (2) and to provide better practicability for its implementation. It is inspired by Article 24(2) of the EU Third Directive.

Article 13 - Protection of the reporting subject identity

Article 13 is a new article proposed by the draft Amending Law. No amendments are suggested.

Article 14 - Exemption from legal liability of reporting to the responsible authority

- (i) Since the Law requires other entities, such as Customs and Tax Authorities, to report to the Responsible Authority, the exemption is being extended accordingly for consistency.

Article 15 - Requirements for non-declaration

Article 15 has been redrafted through the draft Amending Law. The following proposed amendments to Article 15 are therefore amending the draft Amending Law.

- (i) Article 15 deals with the ‘tipping off’ principle. The proposed amendments render the Article more in conformity with the essential criteria for the current FATF Recommendation 14 and Article 28(1) of the EU Third Directive. Similar to Article 14, the proposed amendments cover all reporting persons.

Article 16 - Obligations to maintain data

- (i) Sub-articles (1) and (2) are being amended to make reference to the retention of identification and transaction records obtained for Article 10 for money and value transfer services;
- (ii) Sub-article (3) is being amended to require the retention of records for the reconstruction of both individual and collective chains of transactions;
- (iii) The changes proposed to sub-article (4) ensure that subjects have in place adequate systems for retrieving the retained data required under this Article in order to make it available to the Responsible Authority in a timely manner. Moreover it is being included so that this applies to requests by other competent authorities as allowed by this law – in conformity with EC 10.4 for Recommendation 10.

Article 17 - Reporting from Customs authorities

- (i) The addition of the word ‘bearer’ before ‘negotiable instruments’ in sub-article (1) is proposed in conformity with the new definition and the essential criteria for SR IX;
- (ii) Since the Customs Authorities are not considered as a ‘subject’ in terms of Article 3 of Law 9917 and most of the requirements under Article 11 may not be applicable to the Customs Authorities, it is proposed to insert the words ‘as may be applicable in consultation with the “Responsible Authority”’ in sub-article (2). The Responsible Authority would then have the power and the flexibility to decide in a consistent way which requirements are to be met by the Customs Authorities.
- (iii) A new sub-article (3) is being proposed. The objective of the new sub-article is to place a responsibility on the Customs Authorities to maintain and provide statistics required by the Responsible Authority in accordance with the proposed Article 22(m).

Article 18 - Tax authorities reporting

- (i) Reference to Article 4 should now also include Article 4/1. In any case in practice this obligation together with the reporting obligation under this Article basically renders the Tax Authorities a ‘subject’ in terms of the Law – although not considered so for the purposes of Article 3. Once the Tax Authorities are required to apply the due

diligence under Article 4 it becomes debatable and arguably correct to oblige the Tax Authorities also to the enhanced due diligence under Articles 7 – 9. This may not be necessary if the Tax Authorities, similar to the Customs Authorities, are mainly obliged to report suspicions or other information related to money laundering or terrorism financing. The Albanian Authorities may wish to consider therefore removing the identification obligation - in any case the Tax Authorities will have all the information necessary on the tax payer - and leave only the reporting obligation as is being amended;

- (ii) Similar recommendations for amendments for sub-article (2) are being made as for sub-article (2) of Article 17 and for the same reasons.
- (iii) A new sub-article (3) is being proposed. The objective is to place a responsibility on the Tax Authorities to maintain and provide statistics required by the Responsible Authority in accordance with the proposed Article 22(m).

Article 19 - Central Immovable Properties Registration Office Reporting

- (i) It is proposed to amend sub-article (3) on the same lines and for the same reasons as for sub-article (2) of Article 17.
- (ii) A new sub-article (4) is being proposed. The objective of this sub-article is to place a responsibility on the Central Immovable Properties Registration Office to maintain and provide statistics required by the Responsible Authority in accordance with the proposed Article 22(m).

Article 20 - Non-profit Organizations

Due to the insertion of a new sub-article, Article 20 has been subdivided into two sub-articles.

- (i) Sub-article (1), being the current article, is being amended to include a time limit for the reporting obligation consistent with the previous Articles for the Tax and Customs Authorities;
- (ii) A new sub-article (2) is being proposed. The objective is to place a responsibility on those authorities that register non-profit organisations to maintain and provide statistics required by the Responsible Authority in accordance with the proposed Article 22(m).

Article 21 - Organization of the Responsible Authority

- (i) In sub-article (1) it is proposed to insert the word 'independently' in the second sentence following the words 'is empowered to' in order to emphasise the independence of the Directorate in its functions in accordance with EC 26.6.
- (ii) Likewise, and for the same reasons, in sub-article (2) it is proposed to insert the words 'an operationally independent' before the words 'specialised financial' and the word 'intelligence' before the word 'unit'. Moreover, since the Law places the Unit within certain government structures, it is proposed that sub-article (2) starts with the words 'Without prejudice to the provisions of this Article,'.

Article 22 - Duties and functions of the Responsible Authority

The draft Amending Law has proposed the following new paragraphs (ç), (ë), and (l). Further amendments are being suggested below to paragraph (ç).

- (i) In paragraph (a) it is proposed to insert the word 'suspected' before the words 'money laundering and terrorism financing' for better conformity with the essential criteria for Recommendation 26.
- (ii) A new paragraph (aa) is being proposed to ensure the confidentiality of information received by the FIU except for dissemination in accordance with the law. This paragraph covers essential criterion 26.7 for FATF Recommendation 26.
- (iii) In paragraph (c) it is proposed to replace the word 'entities' with the words 'subjects and other persons and authorities'. This amendment will ensure that the FIU has a right to demand information from other parties, such as Tax and Customs Authorities, which are not 'subjects' for the purposes of Article 3 of the Law but have a reporting obligation and, as proposed, the maintenance of statistics.
- (iv) The new paragraph (ç) giving supervisory powers to the Responsible Authority creates a conflict within the Law as similar powers are given to the supervisory authorities without any provisions for co-ordination. According to the 4th Round Mutual Evaluation Report it appears that the powers of supervision of the Responsible Authority are interpreted by the Authorities to be with reference to the reporting obligation only. On this pretext extensive changes are being proposed to paragraph (ç). Moreover, as indicated later in this Technical Paper, amendments are proposed to create links for supervisory co-ordination.
- (v) Extensive amendments are proposed for paragraph (d) dealing with the exchange of information. The objective of the proposed amendments are:
 - a. better harmonisation with and compliance to SR V;
 - b. to better clarify the powers of the Responsible Authority to exchange information spontaneously or upon request in accordance with FATF EC 40.3;
 - c. to harmonise the article better with FATF EC 40.1.1, allowing for flexibility depending on the circumstances surrounding each request for information;
 - d. to ensure that the Responsible Authority can search for information in order to fulfil a request for assistance, in compliance with FATF EC 40.4.1;
 - e. to ensure the protection of the exchanged information. This brings paragraph (d) in conformity with FATF EC 40.9.
- (vi) It is proposed to insert the words 'for the exchange of information as provided for in paragraph (d) of this Article' after the words 'with any foreign counterpart' in paragraph (dh) to link the exchange of information process with the provisions of paragraph (d) for consistency.

- (vii) A new paragraph (dh/1) is proposed. The objective is for better conformity with FATF EC 40.7. The paragraph is inspired by Article 4(3) of the European Union Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information - *OJ L 271, 24.20.2000, p.4.*
- (viii) It is being proposed to insert the words 'on the basis of public information or other information available to it' in paragraph (f) after the initial word 'may'. Reference to Article 9 is now changed to Article 8.
- (ix) Paragraph (h) is being amended by the inclusion of indications to the type of feedback to be provided for better conformity and compliance with EC 25.2 and the FATF Best Practice Paper.
- (x) A new paragraph (hh) is proposed reading 'proposes to the Minister of Finance regulations and guidance and amendments thereto to be issued in accordance with the provisions of Article 28 of this Law'. This paragraph is being added to recognize the responsibility of the Responsible Authority to propose regulations to the Minister of Finance in accordance with Article 28.
- (xi) Paragraph (k) is being amended to provide guidance and indicative feedback in compliance with the FATF Best Practice Paper.
- (xii) A new paragraph (m) is being proposed on the collection of statistics in accordance with Recommendation 32, and in particular EC 32.1. It places a responsibility on the Responsible Authority to review the effectiveness of the system through statistics. It is suggested to retain flexibility for the "Responsible Authority" to determine the type of statistics it requires and at the same time provide indication to subjects and other authorities in the Law as to the categories under which such statistics could be collected. This paragraph is complemented by the new paragraphs to various Articles for the maintenance of statistics by subjects, supervisory authorities and other competent authorities.

Article 22/1 - Use of data

Article 22/1 is a new article proposed by the draft Amending Law. No amendments are suggested.

Article 23 - Coordination Committee for the Fight against Money Laundering

No amendments to the current Article 23 are being proposed.

Article 24 - Functions of supervisory authorities

- (i) Consequent upon the inclusion of the new sub-article (6) as indicated below it is suggested that the title to the Article be amended to include the words 'and other competent authorities'.
- (ii) A new paragraph (aa) is proposed to sub-article (4) with an obligation on the supervisory authorities to co-operate with the Responsible Authority on matters of supervision, enforcement of corrective measures and sanctions. In this regard please refer also to the corresponding Article 22(ç).
- (iii) Paragraph (b) to sub-article (4) is being amended to provide guidance for the assessments to be undertaken to prevent criminals from owning or managing a

financial institution or other subject. The proposed amendments bring this provision more in conformity with EC 23.3.1 and EC 24.1.3, and meet the recommendations for the shortcomings identified in the 4th Round Mutual Evaluation Report.

- (iv) Paragraph (d) to sub-article (4) on the maintenance of statistics by supervisory authorities is being amended to include maintenance of statistics as may be required by the Responsible Authority in terms of the proposed Article 22(m) and for the supervisory authorities to make such statistics available to the Responsible Authority upon request.
- (v) A new sub-article (6) is proposed placing an obligation on all other competent authorities with a responsibility for combating money laundering or the financing of terrorism (such as Law Enforcement Agencies, Prosecutor's Office etc) to maintain and make available to the Responsible Authority such statistics as the Responsible Authority may determine in accordance with the proposed Article 22(m).

Article 25 - Prohibition of speculation with professional secrecy or its benefits

- (i) Sub-article (2) is being amended by the inclusion of reference to the accountancy profession further to the legal profession in enjoying exemption from reporting in specific cases related to legal or profession privilege. This amendment makes the provision better aligned to the essential criteria for FATF Recommendation 16. The Albanian Authorities may wish to further consider this provision with respect to 'auditors' in the light of the comments made in relation to Article 3 under comment (v).

Article 26 - Revocation of the license

No amendments are proposed to the current Article 26

Article 27 - Administrative contraventions

Article 27 has been redrafted through the draft Amending Law. The following proposed amendments to Article 27 are therefore amending the draft Amending Law.

- (i) Notwithstanding the title for Article 27, Article 27 only provides for fines and not for a graduated system of sanctions as required under FATF Recommendation 17, EC 17.4. If a graduated system of sanctions is available under the specific financial legislation (and hence applied by the supervisor as opposed to the FIU under paragraph 8 of this Article) then the Albanian authorities may wish to positively consider the proposed provisions cross-referring for the cooperation between the supervisory authorities and the Responsible Authority and ensure the effective procedures for their application.
- (ii) Sub-article (8) is being proposed for amending to further create the link between the Responsible Authority and the supervisory authorities in the implementation of the fines contemplated under Article 27 and any other sanctions contemplated by other legislation and thus create uniformity in the application of a graduated system of sanctions. It is for this purpose that sub-article (8) is being linked to the new proposed Article 24(4)(aa).

Article 28 - Issuance of regulations

- (i) In sub-article (3), following the words 'Responsible Authority' it is proposed to insert the words 'in accordance with paragraph (hh) of Article 22 of this Law'. The purpose of this addition is to link to the new proposed Article 22(hh).

CONCLUSION

The comprehensive assessment of the draft Amending Law and the current Law 9917 against the FATF 40+9 Recommendations and the MONEYVAL 4th Round Mutual Evaluation Report for Albania finds that a number of essential criteria for the relevant FATF Recommendations and some of the recommendation in the 4th Round Mutual Evaluation Report have not been entirely addressed. It may be the case, as resulted in the assessment, that some provisions of law are covered by other legislation and therefore there is no need for further amendments in the Law 9917. In other cases either the proposed amendments lacked full compliance with the relevant essential criteria or an FATF Recommendation was not adequately addressed. It is for this reason that the entire Law 9917, including the proposed Amending Law, has been assessed against:

- (i) The relevant FATF Recommendations and the Special Recommendations covering the majority of the Core and Key Recommendations that are of a preventive nature for the financial sector, the designated non-financial businesses and professions (DNFBPs), and the relevant competent and supervisory authorities;
- (ii) The recommendations made by the evaluation team in the 4th Round Mutual Evaluation Report adopted by the MONEYVAL Committee at its 35th Plenary; and
- (iii) The new FATF Standards published in February 2012.

Further to the amendments proposed for the consideration of the Albanian Authorities as indicated in this Technical Paper, and more in detail in Annex II to this Technical Paper, the assessment identified other issues that need to be considered. These are also indicated in Annex II in the side comments but, for ease of reference, are being included below:

- (i) With respect to Article 11(1) paragraph (dh): Are financial institutions bound by any other law to have an internal audit function?
- (ii) With respect to Article 24(1) paragraph (dh): the Albanian Authorities may wish to consider specifying the supervisory authority for each category of subjects.
- (iii) With respect to Article 27: Notwithstanding the proposed amendments to the Law 9917, the Albanian Authorities may wish to reassess the issue of the availability and application of sanctions on a graduated basis and the possible duplication between Law 9917 and the relevant financial legislation.
- (iv) With respect to Recommendation 20: in particular EC 20.1 to encourage techniques or measures for conducting financial transactions that may be less vulnerable to money laundering, the Albanian Authorities may wish to ensure such remit lies with the Bank of Albania.
- (v) With respect to the 4th Round Mutual Evaluation Report in relation to Recommendation 5: to amend Articles 1025 and 1026 of the Civil Code and/or pass

legislation to prohibit the issuing of bearer passbooks – further to the proposed new Article 4/1 paragraph (14), Albanian Authorities may wish to review the Articles of the Civil Code, unless already done;

- (vi) With respect to the 4th Round Mutual Evaluation Report in relation to Recommendation 26, to clarify the GDPML's authority to exchange information with non law enforcement authorities. Current Article 22(e) still refers to law enforcement authorities. Albanian Authorities may wish to consider this recommendation further but within the principles of the Egmont Group as such information is not normally exchanged with any competent authority;
- (vii) With respect to the 4th Round Mutual Evaluation Report, in relation to Recommendation 26, to include the GDPML and other supervisory bodies in the Coordination Committee for the Fight against Money Laundering to ensure that supervisory concerns are properly reflected in the national strategy. This goes beyond the scope of this Technical Paper. The Albanian Authorities may wish to consider this separately.
- (viii) With respect to the new FATF Recommendation 16 (previously SR VII): requiring freezing powers for financial institution for wire transfers - No amendments are proposed at this stage as this new inclusion calls for a considered assessment by the Albanian Authorities to empower financial institutions to take freezing actions since freezing powers are not provided for by Law 9917 to any competent authority as these are presumably governed by other legislation.

APPENDICES

APPENDIX 1

Law No 9917 and the Essential Criteria for the FATF Recommendations

The following tables identify and compare each Essential Criterion⁵ for the relevant FATF 40+9 Recommendations against the respective provisions of the Law No 9917 on The Prevention of Money Laundering and the Financing of Terrorism of 19 May 2008 as amended including the current additional proposed amendments by the Albanian Authorities and suggested changes being made in this Technical Paper on the 'Prevention of Money Laundering and Terrorist Financing'. Recommendations 1 – 3 under Section A *Legal Systems* of the FATF 40 are not included as these Recommendations are not addressed through the Law No 9917 but through other legislation. Likewise, for the 9 Special Recommendations, Special Recommendations I – III and Special Recommendation VIII are not included in this review.

FATF 40 Recommendations

B. Measures to be taken by financial institutions and non-financial businesses and professions to prevent money laundering and terrorist financing

Recommendation 4 – Professional Secrecy

Rec 4	Subject of EC	Law 9917	Comments
EC 4.1	Financial institutions secrecy law should not inhibit the implementation of the FATF Recommendations.	Article 25	Amendments are being suggested to the current Article 25. (Normally this principle is further supported / complemented through specific provisions in the respective financial laws.)

Recommendation 5 – Customer Due Diligence

Rec 5*	Subject of EC	Law 9917	Comments
EC 5.1*	Anonymous accounts or accounts in fictitious names	Article 4/1 (14)	The new Article 4/1 is proposed by the amending law. Further amendments are being suggested
EC 5.2*	When CDD is required	Article 3/1 Article 4	A new Article 3/1 is being suggested. The new Article 4 is proposed by the amending law. Further amendments are being proposed

⁵ An (*) near an EC (Essential Criterion) number signifies that, according to the FATF Methodology that obligation or requirement should be found in law or regulation i.e. either primary or secondary legislation

EC 5.3*	Customer Identification and verification of identity	Article 4/1	The new Article 4/1 is proposed by the amending Law.
EC 5.4(a)*	Legal Persons and Legal Arrangements representative	Article 4/1(2)(a)	The new Article 4/1 is proposed by the amending law. Further amendments are suggested
EC 5.4(b)	Verification of legal status for legal persons and legal arrangements	Article 4/1(2)(b)	The new Article 4/1 is proposed by the amending law. Further amendments are suggested
EC 5.5*	Identification and verification of identity of beneficial owner.	Article 4/1 (3)	The new Article 4/1 is proposed by the amending law. Further amendments are suggested
EC 5.5.1*	Customer acting on behalf of third party	Article 4/1 (4)	The new Article 4/1 is proposed by the amending law. Further amendments are suggested
EC 5.5.2(a)	Ownership and control structure of legal person or legal arrangement	Article 4/1 (5)	The new Article 4/1 is proposed by the amending law. Further amendments are suggested
EC 5.5.2(b)*	Determination of ultimate owner or controller of legal person or legal arrangements	Article 4/1 (6)	The new Article 4/1 is proposed by the amending law. Further amendments are suggested
EC 5.6	Purpose and intended nature of business	Article 4/1/ (7)	The new Article 4/1 is proposed by the amending law.
EC 5.7*	Conduct ongoing due diligence of business relationship	Article 4/1 (8)	The new Article 4/1 is proposed by the amending law.
EC 5.7.1	Ongoing due diligence procedures: scrutiny of transactions and source of funds	Article 4/1 (8)	The new Article 4/1 is proposed by the amending law.
EC 5.7.2	Updating of customers' data, information and documents	Article 4/1 (9)	The new Article 4/1 is proposed by the amending law.
EC 5.8	Application of enhanced due diligence for higher risk customers, transactions and business relationships	Article 7	Article 7(1) is proposed by the amending law. Article 7(2) is suggested to be moved to Article 4/1 and a new Article 7(2) is transposed from paragraph 1(a) of the current Article 11.

		Article 8 Article 9	New Article 8 and Article 9 are proposed by the amending law. Further amendments are suggested
EC 5.9	Option to apply reduced or simplified customer due diligence measures	n.a.	
EC 5.10	Reduced or simplified customer due diligence – country of origin	n.a.	
EC 5.11	Reduced or simplified customer due diligence – not to be applied where there is suspicion of ML or TF	n.a	
EC 5.12	Application of the CDD process on a risk sensitivity basis	Article 7(1)	Article 7(1) is proposed by the amending law.
EC 5.13	Timing of verification of identity of customer and beneficial owner	Article 4/1 (10)	The new Article 4/1 is proposed by the amending law. Further amendments are being suggested
EC 5.14	Option to delay the verification procedures	Article 4/1 (10)	The new Article 4/1 is proposed by the amending law. Further amendments are being suggested
EC 5.14.1	Measures for delay of verification procedures	Article 4/1 (11)	The new Article 4/1 is proposed by the amending law. Further amendments, some linguistic, are being suggested
EC 5.15	Failure to complete customer due diligence	Article 4/1 (13) Article 7(3)	The new Article 4/1 is proposed by the amending law. Further amendments, some linguistic, are being suggested for Article 4/1(3). Article 7(3) is lifted from the proposed Article 9(6) as proposed by the amending law
EC 5.16	Failure to complete customer due diligence where business relationship has commenced	Article 4/1 (13) Article 7(3)	The new Article 4/1 is proposed by the amending law. Further amendments, some linguistic, are being suggested for Article 4/1(3). Article 7(3) is lifted from the proposed Article 9(6) as proposed by the amending law
EC 5.17	Application of due diligence requirements on existing customers	Article 4/1 (12)	The new Article 4/1 is proposed by the amending law.

EC 5.18	Application of due diligence measures on accounts that fall under EC 5.1 - anonymous	Article 4/1 (14)	The new Article 4/1 is proposed by the amending law. Further amendments are being suggested
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Recommendation 6 – Politically Exposed Persons

Rec 6	Subject of EC	Law 9917	Comments
EC 6.1	Appropriate risk management systems to determine politically exposed persons	Article 8(1)(a)	New Article 8 proposed by amending law. Further amendments suggested
EC 6.2	Senior management approval for establishing relations with politically exposed persons	Article 8(1)(b)	New Article 8 proposed by amending law.
EC 6.2.1	Senior management approval where customer or beneficial owner is eventually found to be a politically exposed person	Article 8(1)(c)	New Article 8 proposed by amending law. Further amendments suggested
EC 6.3	Source of wealth and source of funds	Article 8(1)(ç)	New Article 8 proposed by amending law. Further amendments suggested
EC 6.4	Conducting enhanced ongoing monitoring on such relationships	Article 8(2)	New Article 8 proposed by amending law. Further amendments suggested

Recommendation 7 – Cross border Correspondent Banking

Rec 7	Subject of EC	Law 9917	Comments
EC 7.1	Gather sufficient information on business of respondent institution	Article 9(2)(a)	New Article 9 proposed by amending law.
	Determine reputation of institution including any ML/FT investigations or regulatory actions	Article 9(2)(b)	Further amendments are being suggested to Article 9(2)(b)
EC 7.2	Assess adequacy and effectiveness of institution's AML/CFT internal controls	Article 9(2)(c)	New Article 9 proposed by amending law.
EC 7.3	Senior management approval for establishing new correspondent relationships	Article 9(2)(ç)	New Article 9 proposed by amending law.
EC 7.4	Document respective AML/CFT responsibilities	Article 9(2)(ç)	New Article 9 proposed by amending law.
EC 7.5	Relationship involves maintenance of 'payable through	Article 9(5)	New Article 9 proposed by amending law.

accounts'

Recommendation 8 – New technologies and non face-to-face relationships

Rec 8	Subject of EC	Law 9917	Comments
EC 8.1	Measure to prevent misuse of technological developments in money laundering and terrorist financing	Article 6(1)	Article 6(1) is proposed by the amending law. Further amendments are being suggested
EC 8.2	Non face-to-face relationships and transactions risk management	Article 6(2) Article 8(4)	Articles 6(2) and 8(4) are proposed by the amending law. Further amendments are being suggested
EC 8.2.1	Non face-to-face relationships customer due diligence measures	Article 9(6) Article 4/1(15)	Suggested new sub-article (6) to the new Article 9 proposed by the amending law.

Recommendation 9 – Reliance on third parties

Rec 9	Subject of EC	Law 9917	Comments
EC 9.1 to EC 9.5	Reliance on third parties	Article 6(3)	Article 6(3) is proposed by the amending law. The Article prohibits reliance on third parties.

Recommendation 10 – Record Keeping

Rec 10*	Subject of EC	Law 9917	Comments
EC 10.1*	Retention of records on transactions for 5 years following completion of transaction	Article 16(2)	Current Article with suggested amendments – some could be linguistic
EC 10.1.1	Transaction records to be sufficient to reconstruct individual transactions	Article 16(3)	Current Article with suggested amendments – some could be linguistic
EC 10.2*	Retention of identification data, account files and business correspondence for 5 years following terminations of account or business relationship	Article 16(1)	Current Article with suggested amendments – some could be linguistic
EC 10.3*	Customer and transaction records and information are available in a timely manner to competent authorities upon legitimate request	Article 16(4)	Current Article with suggested amendments – some could be linguistic

Recommendation 11 – Large complex transactions

Rec 11	Subject of EC	Law 9917	Comments
EC 11.1	To pay special attention to all complex, unusual large transactions or patterns of transactions.	Article 9(1)	Article 9(1) is proposed by the amending law. Further amendments are being suggested.
EC 11.2	To examine as far as possible their background and purpose and retain a written record of findings	Article 9(1)	Article 9(1) is proposed by the amending law. Further amendments are being suggested
EC 11.3	Findings are required to be made available to competent authorities and auditors and retained for a period of five years.	Article 9(1)	Article 9(1) is proposed by the amending law. Further amendments are being suggested

Recommendation 12 – CDD and record keeping requirements for DNFBPs

Rec 12	Subject of EC	Law 9917	Comments
EC 12.1	Circumstances for the application of customer due diligence obligations under Recommendation 5	Article 3 Article 4(1)(b) Article 4/1 Articles 7-9	The new Article 4 is proposed by the amending law. Further changes are being suggested to Article 3. The law does not distinguish between financial institutions and DNFBPs for the application of the customer due diligence – the provisions apply to all ‘subjects’
EC 12.2	DNFBPs should be required to comply with the criteria set out in Recommendations 6 and 8-11	Article 8 Article 6 Article 16 Article 9	The law does not distinguish between financial institutions and DNFBPs for the application of the requirements under the law – the provisions apply to all ‘subjects’

Recommendation 13 – Suspicious Transactions Reporting

Rec 13*	Subject of EC	Law 9917	Comments
EC 13.1*	Obligation to report transactions where funds are suspected to be related to criminal activity	Article 12(1)	The new Article 12 is proposed by the amending law.
EC 13.2*	Obligation to report extended to transactions where there are reasonable grounds or are suspected to be linked or related to or to be used for terrorism or its financing.	Article 12(1)	The new Article 12 is proposed by the amending law.

EC 13.3*	All transactions, included attempted ones, are to be reported	Article 12(1) Article 12(2) Article 12(3)	The new Article 12 is proposed by the amending law. Further amendments and additions are being suggested.
EC 13.4	Reporting applies regardless of whether they involve for example tax matters.	Article 12(1)	The new Article 12 is proposed by the amending law. Should be further clarified in subsequent guidance to the industry.

Recommendation 14 – Confidentiality protection and tipping off

Rec 14	Subject of EC	Law 9917	Comments
EC 14.1	Financial institutions and their directors, officers and employees should be protected by law from criminal and civil liability for breach of any restriction on disclosure of information in good faith in accordance with the law	Article 14	Amendments to the current Article 14 are being suggested.
AC 14.2	Financial institutions and their directors, officers and employees should be prohibited by law from disclosing ('tipping off') the fact that an STR or related information is being reported or provided to the FIU	Article 15	New Article 15 proposed by amending law. Further amendments are being suggested.

Recommendation 15 – Internal compliance procedures

Rec 15	Subject of EC	Law 9917	Comments
EC 15.1	Obligation to establish and maintain internal procedures, policies and controls to prevent ML and FT and communicate same to employees	Article 11(1)(aa) Article 11(1)(d)	A new Article 11(aa) is being suggested. Amendments are being proposed to Article 11(1)(d)
EC 15.1.1	Develop appropriate compliance management arrangements – designation of and AML/CFT Compliance Officer at management level.	Article 11(1)(b)	Current Article 11(1)(b) as amended by proposed law. Further amendments are being proposed.
EC 15.1.2	Timely access to customer identification data and other CDD information, transaction records and other relevant information	Article 11(1)(b)	Current Article 11(1)(b) as amended by proposed law. Further amendments are being proposed.
EC 15.2	To maintain an adequately resourced and independent audit	Article 11(1)(dh)	Current Article 11(1)(dh) does not oblige entities to have an

	function to test compliance with the internal procedures, policies and controls.		audit function. This obligation is normally found in other financial legislation.
EC 15.3	Financial institutions should be required to establish ongoing employee training on AML/CFT matters	Article 11(1)(d)	Amendments are being suggested to the current Article 11(1)(d)
EC 15.4	Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.	Article 11(1)(ç)	Current Article

Recommendation 16 – Reporting and compliance obligations of DNFBPs

Rec 16	Subject of EC	Law 9917	Comments
EC 16.1	Circumstances for the application of customer due diligence obligations under Recommendation 13	Article 3 Article 12 Article 25(2)	Further changes are suggested for Article 3, Article 12 in addition to those proposed by the amending law and to the current Article 25(2).
EC 16.2	Appropriate forms of co-operation between SROs and FIU where legal and accountancy professions are allowed to report to their SRO.	n.a	
EC 16.3	DNFBPs should be required to comply with the criteria set out in Recommendations 14, 15 and 21.	Article 14 Article 11 Article 15 Article 8(5)	Amendments to the current Articles 11 and 14 are being suggested. New Article 15 and Article 8(5) proposed by amending law. Further amendments are being suggested.

Recommendation 17 – Sanctions

Rec 17	Subject of EC	Law 9917	Comments
EC 17.1	Availability of effective, proportionate and dissuasive criminal, civil or administrative sanctions for non compliance with AML/CFT obligations	Article 27	New Article 27 proposed by amending law. It is not possible on paper to measure the effectiveness, proportionality and dissuasiveness of the sanctions.
EC 17.2	Designate an authority empowered to apply sanctions.	Article 27(8)	New Article 27(8) proposed by amending law – with suggested amendments

			places empowerment on the FIU to apply sanctions. It is understood that the FSA and the BoA can also impose sanctions for AML/CFT non compliance through their respective financial laws.
		Article 24(4)(aa)	The proposed Article 24(4)(aa) aims to create a link between the sanctioning powers of the Responsible Authority and the supervisory authorities under the Law. The Albanian Authorities may wish to consider this as recommended in the 4 th Round MER.
EC 17.3	Sanction should also be available to be applied to the directors and senior management of a financial institution.	Article 27(7)	New Article 27(7) proposed by amending law
EC 17.4	The range of sanctions available should be broad and proportionate to the severity of a situation.	Article 26	<p>The new Article 27 proposed by the amending law contemplates the application of fines only. The current Article 26 provides for the revocation of the licence and for the stepping up of supervision to certain subject.</p> <p>No information is available on the graduation of sanctions proportionate to the severity of the offence. If this is included in specific relevant financial legislation then cross-reference in this law would be required together with procedures on their application particularly in relation to the provision of Article 27(8).</p>

Recommendation 18 – Shell banks

Rec 18	Subject of EC	Law 9917	Comments
EC 18.1	Countries should not approve the establishment or accept the continued operation of shell banks.	n.a	Such prohibition is normally not found in the AML/CFT legislation but in the specific Banking Laws. Indeed this appears to be the case for Albania through Law 9662 of 18 Dec 2006 “On banks in the Republic of Albania” Articles 4

(definition), 5,6 and 17 including the provision of Decision 14. The 4th Round MER found these provisions adequate.

EC 18.2	Financial institutions not to enter into, or continue, correspondent banking relationships with shell banks.	Article 9(3)	New Article 9(3) proposed by amending law.
EC 18.3	Financial institutions to satisfy themselves that correspondent banks from a foreign country do not permit shell banks to use their accounts.	Article 9(4)	New Article 9(4) proposed by amending law.

Recommendation 19 – Cash Transactions Reporting

Rec 19	Subject of EC	Law 9917	Comments
EC 19.1	Implementation of a system where financial institutions report all transactions above a fixed threshold	Article 12(4)	Articled 12(4) proposed as Article 12(3) by the amending law.

Recommendation 20 – Extending the standards to other business and professions

Rec 20	Subject of EC	Law 9917	Comments
EC 20.1	Application of FATF Recommendations to non-financial businesses and professions other than DNFBPs that are at risk of being used for ML or TF	Article 3(f); (j); (k(iii)); (k(xii)). Article 17 Article 18 Article 19 Article 20	Article 3 refers to non-financial activities. Articles 17 – 19 apply to authorities (Customs, Tax and Immovable Property Registration Office). Article 20 applies to NPOs.
EC 20.2	To encourage techniques or measures for conducting financial transactions that may be less vulnerable to money laundering	n.a	Such provisions are not normally found in the AML/CFT legislation but rather in the remit of Central Banks as monetary and payment authorities. No suggestions for inclusion in law are therefore being made. Albanian authorities may wish to ensure such remit lies within the Bank of Albania.

Recommendation 21 – Countries with insufficient AML/CFT standards

Rec 21	Subject of EC	Law 9917	Comments
EC 21.1	Special attention to business relationships and transactions with persons and entities, including financial institutions, from countries with no or insufficient applications of FATF standards	Article 8(5)	New Article 8(5) proposed by amending law. Further additions and changes are being proposed.
EC 21.1.1	Effective measures to ensure that financial institutions are advised of concerns about AML/CFT weaknesses in other countries	Article 8(5) Article 22(f)	New Articles 8(5) and 22(f) proposed by amending law. Further additions and changes are being proposed.
EC 21.2	Examination of background and purpose of such transactions to the extent possible and retention of findings in writing to assistant relevant competent authorities.	Article 8(5)	New Article 8(5) proposed by amending law. Further additions and changes are being proposed.
EC 21.3	Application of appropriate counter measures where country continues not to apply of insufficiently apply international standards	Article 8(5)	New Article 8(5) proposed by amending law. Further additions and changes are being proposed.

Recommendation 22 – Application to branches and subsidiaries

Rec 22	Subject of EC	Law 9917	Comments
EC 22.1	Foreign branches and subsidiaries of financial institutions are to observe AML/CFT measures that are consistent with their home countries to the extent permitted by law	Article 11(1)(e)	Amendments are being suggested to the current Article 11(1)(e)
EC 22.1.1	Pay particular attention that this principle is observed for countries which do not or insufficiently apply the FATF Recommendations	Article 11(1)(e)	Amendments are being suggested to the current Article 11(1)(e)
EC 22.1.2	Where the minimum AML/CFT requirements of the two countries differ, the higher requirement shall apply to the extent permitted by law	Article 11(1)(e)	Amendments are being suggested to the current Article 11(1)(e)
EC 22.2	Financial institutions are to inform their home country	Article 11(1)(e)	Amendments are being suggested to the current

supervisor where they are unable to observe appropriate AML/CFT measures because this is prohibited

Article 11(1)(e)

Recommendation 23 – Regulation and supervision of financial institutions

Rec 23	Subject of EC	Law 9917	Comments
EC 23.1	Financial institutions to be subject to adequate AML/CFT regulation and supervision and that they are effectively implementing the FATF Recommendations.	Article 24(2) Article 24(4)(a) Article 28	Current Article 24 and Article 28. Minor amendments to Article 24 are being suggested
EC 23.2	Designated competent authority responsible to ensure adequate compliance with requirements to combat money laundering and financing of terrorism	Article 22(ç) Article 24(1)(a) Article 24(1)(b) Article 24(4)(a)	New Article 22(ç) proposed by amending law Current Article 24. Minor amendments to Article 24 are being suggested
EC 23.3	Prevention of ownership or management function being occupied by criminals	Article 24(4)(b)	Current Article 24(4)(b) with suggested amendments. More formal provisions are to be found in the respective financial legislation.
EC 23.1.1	'Fit and Proper' criteria to be applied to directors and senior management.	Article 24(4)(b)	Current Article 24(4)(b) with suggested amendments. More formal provisions are to be found in the respective financial legislation. Hence no amendments are being suggested
EC 23.4	Application of prudential measures that are also relevant to money laundering in a similar manner to anti-money laundering and financing of terrorism purposes.	n.a.	More formal provisions are to be found in the respective financial legislation. Hence no amendments are being suggested
EC 23.5	Licensing / registration of persons carrying out money transfers and currency exchange	n.a.	More formal provisions are to be found in the respective financial legislation. Hence no amendments are being suggested
EC 23.6	Monitoring of persons providing money transfers and currency exchange	Article 24(1)(a) Article 24(2) Article 24(4)(a)	Current Article 24 with suggested amendments.

EC 23.7	Licensing / registration and regulation / supervision of other financial institutions	Article 24(1)(a) Article 24(1)(b) Article 24(2) Article 24(4)(a)	Current Article 24 with suggested amendments. More formal provisions for licensing and registration are to be found in the respective financial legislation. Hence no amendments are being suggested
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Recommendation 24 – Regulation and supervision of DNFBPs

Rec 24	Subject of EC	Law 9917	Comments
EC 24.1	Casinos (including Internet casinos) subject to comprehensive AML/CFT regulatory and supervisory regime.	Article 24(2) Article 24(4)(a) Article 28	Current Article 24 and Article 28. Minor amendments to Article 24 are being suggested
EC 24.1.1.	Designated competent authority responsible for AML/CFT regulation and supervision of casinos with sanctioning powers	Article 22(ç) Article 24(1)(c) Article 24(2) Article 24(4)(a) Article 27(8)	New Article 22(ç) proposed by amending law Current Article 24. Some amendments to Article 24 are being suggested. Article 27(8) proposed by amending law
EC 24.1.2	Casinos should be licensed by a designated competent authority	n.a.	Licensing powers would normally be found in the specific laws on gaming not in the AML Law. Albanian Authorities may wish to ensure this is the case.
EC 24.1.3	Ownership or management function occupied by criminals	Article 24(4)(b)	Current Article 24(4)(b) with suggested amendments. More formal provisions are to be found in the respective gaming legislation.
EC 24.2	Monitoring and ensuring compliance with AML/CFT requirements for other categories of DNFBPs	Article 22(ç) Art. 24(1)(c-dh) Article 24(2) Article 24(4)(a)	New Article 22(ç) proposed by amending law Current Article 24. Some amendments to Article 24 are being suggested
EC 24.2.1	Designated competent authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements having sanctioning powers	Article 22(ç) Article 24(1)(c- dh) Article 24(2) Article 24(4)(a)	New Article 22(ç) proposed by amending law Current Article 24. Some amendments to Article 24 are being suggested.

Article 27(8) Article 27(8) proposed by amending law

Recommendation 25 – Guidance and Feedback

Rec 25	Subject of EC	Law 9917	Comments
EC 25.1	Establish guidelines to assist financial institutions and DNFBPs to implement and comply with their respective AML/CFT obligations	Article 22(hh) Article 28(1) Article 28(3)	Article 22(hh) is a new article suggested to be inserted in current Article 22 as being amended. Current Article 28
EC 25.2	Provide financial institutions and DNFBPs that are required to report suspicious transactions with appropriate and adequate feedback	Article 22(h) Article 22(k)	Current Article 22(h) and Article 22(k) with suggested amendments for better harmonisation.

C. Institutional and other measures necessary in systems for combating money laundering and terrorist financing.

Some Recommendations, for example Recommendation 27 and 28 dealing with law enforcement, are not considered under the following comparative tables as these are normally covered by other laws and not the AML/CFT Law 9917.⁶

Recommendation 26 – The Financial Intelligence Unit

Rec 26	Subject of EC	Law 9917	Comments
EC 26.1	Establishment of an FIU that serves as a national centre for receiving, analysing, and disseminating disclosures of STR and other relevant information concerning suspected ML and FT activities.	Article 21 Article 22(a)	Current Article 21 and current Article 22(a) with suggested amendment
EC 26.2	Provision of guidance on the manner of reporting and procedures to be followed	Article 22(hh) Article 28	New Article 22(hh) is suggested for inclusion in addition to other amendments proposed by the amending law. New Article 22(hh) linked to current Article 28.
EC 26.3	Direct or indirect timely access to financial, administrative and law enforcement information to properly undertake its functions	Article 22(b)	Current article
EC 26.4	Authorised to obtain additional	Article 22(c)	Current article with suggested

⁶ Recommendations 27, 28, 30,

	information from reporting parties		amendments.
EC 26.5	Authorised to disseminate financial information to competent authorities for investigation when ML TF is suspected	Article 21(2) Article 22(a) Article 22(aa) Article 22(e)	Current articles with suggested amendments. New Article 22(aa) is suggested.
EC 26.6	Independence and autonomy – free from undue influence	Article 21(1) Article 21(2)	Current article with suggested amendments
EC 26.7	Protection of FIU information and dissemination	Article 22(aa)	New proposed article
EC 26.8	Publicly releases periodic reports with statistics, typologies, and trends	Article 22(k)	Current Article 22(k) with suggested amendments
EC 26.9	Consideration of Egmont Group membership.	n.a.	GDPML is a member of the Egmont Group since July 2003
EC 26.10	Regard to the Egmont Statement of Purpose and the Principles for Information Exchange.	Article 21(1) Article 22(d) Article 22(dh)	No specific legal provisions necessary. Current articles 21 and 22 evidence the application of the Egmont principles

Recommendation 29 – Powers of supervisory authorities

Rec 29	Subject of EC	Law 9917	Comments
EC 29.1	Adequate powers to monitor and ensure compliance by financial institutions with requirements to combat ML and TF consistent with the FATF Recommendations	Article 22(ç) Article 24(2) Article 24(4)(a)	New Article 22(ç) proposed by the amending law with suggested amendments. Current Article 24 with suggested amendments
EC 29.2	Authority to conduct inspections, including on-site, to ensure compliance	Article 22(ç) Article 24(2) Article 24(4)(a)	New Article 22(ç) proposed by the amending law with suggested amendments Current Article 24 with suggested amendments
EC 29.3	Power to compel production of or to obtain access to all information and documents relevant to monitor compliance	Article 22(ç) Article 24(2) Article 24(4)(a)	New Article 22(ç) proposed by the amending law with suggested amendments Current Article 24 with suggested amendments
EC 29.3.1	Power to compel production or obtain access to information should not be predicated to a court order	Article 22(ç)	New Article 22(ç) proposed by the amending law with suggested amendments Current Article 24 with

		Article 24(2)	suggested amendments
EC 29.4	Adequate powers of sanction and enforcement against financial institutions, their directors and senior management.	Article 27(7) Article 27(8) Article 24(4)(aa)	New Article 27 proposed by the amending law. Current Article 24 with suggested amendments

Recommendation 31 – National cooperation

Rec 31	Subject of EC	Law 9917	Comments
EC 31.1	Policy makers, the FIU, law enforcement and supervisors and other competent authorities should have effective mechanism for co-operation and co-ordination in the development and implementation of AML/CFT policies and activities	Article 23	Current Article. No amendments are necessary at the legal level.

Recommendation 32 – Effectiveness and Statistics

Rec 32	Subject of EC	Law 9917	Comments
EC 32.1	Countries should review the effectiveness of their systems for combating ML and TF on a regular basis	Article 22(m)	New sub-article suggested for inclusion in the current Article 22
EC 32.2	Competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems	Article 11(1)(cc) Article 17(3) Article 18(3) Article 19(4) Article 20(2) Article 22(m) Article 24(4)(d)	New sub-article suggested for inclusion in the current Article 11(1) New sub-article suggested for inclusion in the current Article 17 New sub-article suggested for inclusion in the current Article 18 New sub-article suggested for inclusion in the current Article 19 New sub-article suggested for inclusion in the current Article 20 New sub-article suggested for inclusion in the current Article 22 Current Article 24(4)(d) with suggested amendments. New sub-article suggested for

Article 24(6) inclusion in the current Article 24.

D. International Co-operation

Recommendations 35 to 39 on the signing, ratification and implementation of international conventions and mutual legal assistance and extradition are not addressed by the present Law on the Prevention of Money Laundering and the Financing of Terrorism. These Recommendations are therefore not included in these comparative tables. Recommendation 40 on *other forms of cooperation* is relevant to the Responsible Authority and other competent authorities. However for the purpose of this exercise Recommendation 40 is only being included in these comparative tables in relation to the Responsible Authority as the FIU. In this context certain amendments are being proposed. Other competent authorities are governed by their respective legislation and hence have to be reviewed accordingly.

Recommendation 40 – Other forms of cooperation⁷

Rec 32	Subject of EC	Law 9917	Comments
EC 40.1	Competent Authorities are able to provide wide range of international cooperation to their foreign counterparts	Article 22(d) Article 22(dh)	Current Articles with suggested amendments
EC 40.1.1	Countries should be able to provide such assistance in a rapid, constructive and effective manner	Article 22(d)	Current Article with suggested amendments
EC 40.2	There should be clear, effective gateways, mechanisms or channels to facilitate prompt and constructive exchange of information	Article 22(dh)	Current Article with suggested amendments
EC 40.3	Information should be provided (a) both spontaneously and upon request, and (b) in relation to both ML and the underlying predicate offence	Article 22(d)	Current Article with suggested amendments
EC 40.4	Competent authorities should be empowered to conduct inquiries on behalf of foreign counterparts	Article 22(d)	Current Article with suggested amendments
EC 40.4.1	In particular FIUs should (a) search their own databases, and (b) search other databases to which they have direct or indirect access	Article 22(d)	Current Article with suggested amendments

⁷ The Recommendation is examined in relation to the Responsible Authority (as the FIU) only and it is for this purpose that amendments are being suggested to Article 22

EC 40.5	Law enforcement and other competent authorities are authorised to conduct investigations on behalf of counterparts	n.a.	It is presumed such powers would be provided in the respective legislation governing the particular competent authority
EC 40.6	Exchange of information should not be made subject to disproportionate or unduly restrictive conditions	Article 22(d)	Current Article with suggested amendments
EC 40.7	Request for cooperation should not be refused on the sole ground that the request could involve fiscal matters	Article 22(dh/1)	New suggested article inspired by the European Union Council Decision of 17 October 2000 on FIUs
EC 40.8	Requests for cooperation should not be refused on grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs (except for legal privilege)	Article 22(dh/1) Article 25	New suggested article inspired by the European Union Council Decision of 17 October 2000 on FIUs Current Article 25 with suggested amendments
EC 40.9	Controls and safeguards on use and confidentiality of information received.	Article 22(d)	Current Article 22 with suggested amendments

FATF 9 Special Recommendations

Special Recommendation IV – Reporting of transactions related to financing of terrorism

SR IV	Subject of EC	Law 9917	Comments
EC IV.1	Obligation for financial institutions to report to the FIU when they suspect or have reasonable grounds to suspect, that funds are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism.	Article 12(1)	The new Article 12 is proposed by the amending law.
EC IV.2	Criteria 13.3 – 13.4 also apply in relation to the obligations under SR IV	Article 12(1) Article 12(2) Article 12(3) Article 12(1)	(EC 13.3) The new Article 12 is proposed by the amending law. Further amendments and additions are being suggested. (EC 13.4)The new Article 12 is proposed by the amending law. Should be further clarified in subsequent guidance to the industry

Special Recommendation V – International Co-operation⁸

SR V	Subject of EC	Law 9917	Comments
EC V.1 to EC V.4	Application of selected criteria for Recommendations 36 - 39	n.a.	Provisions covered by other legislation than Law No 9917
EC V.2	Countries should ensure that Criteria 40.1 to 40.9 in Recommendation 40 apply also to the obligations under SR V	Article 22(d) Article 22(dh) Article 22(dh/1) Article 25	Current Articles with suggested amendments New suggested article inspired by the European Union Council Decision of 17 October 2000 on FIUs Current Article with suggested amendments

Special Recommendation VI – Alternative remittances

SR VI	Subject of EC	Law 9917	Comments
EC VI.1	Countries should designate one or more authorities to register or licence natural or legal persons who perform money or value transfer services	Article 3(a)	Only indicative to be licensed by the BoA. Relevant legal provisions should be better found in the respective legislation.
EC VI.2	Countries should ensure that all MVT service operators are subject to the FATF 40 Recommendations.	Article 3(a)(b)(d)	Current articles
EC VI.3	Countries should have systems in place for monitoring compliance by MVT service operators	Article 24(1)(a) Article 24(2) Article 24(4)(a)	Current article Current article with suggested amendments Current article
EC VI.4	Countries should require licenced or registered MVT service operators to maintain a list of their agents	Article 10(4)	Normally covered by financial legislation or regulations of supervisory authority (BoA). Article 10(4) is suggested for inclusion to cover this criterion.
EC VI.5	Countries should ensure that criteria for Recommendation 17 (sanctions) apply	Article 27	New Article 27 proposed by amending law and applicable to all subjects under the Law

⁸ As for Recommendation 40, Special Recommendation V is reviewed only in relation to the Responsible Authority as the FIU.

Special Recommendation VII – Wire Transfers

SR VII	Subject of EC	Law 9917	Comments
EC VII.1	For all wire transfers, of EUR / USD 1,000 or more, ordering financial institution should be required to obtain and maintain full originator information	Article 4(1)(b) Article 10(1) Article 16(1)	New Article 4(1)(b) proposed by amending law Current Article 10(1) with suggested amendments Current Article 16(1) with suggested amendments
EC VII.2	For cross-border wire transfers of EUR / USD 1,000 or more ordering financial institution should be required to include full originator information with message or payment form	Article 4(1)(b) Article 10(1)	New Article 4(1)(b) proposed by amending law Current Article 10(1) with suggested amendments
EC VII.3	For domestic wire transfers ordering financial institution should either comply with EC VII.2 or include only the originator's account number or unique identifier	Article 10(1)	Current Article 10(1) with suggested amendments
EC VII.4	Intermediary and beneficiary financial institutions should ensure that all originator information accompanying the wire transfer is transmitted with the transfer	Article 10(2)	Current Article 10(2) with suggested amendments
EC VII.5	Beneficiary financial institutions should be required to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information	Article 10(3)	Current Article 10(3) as proposed to be amended by the amending law and further suggested amendments
EC VII.6	Countries should effectively monitor the compliance of financial institutions with rules and regulations implementing SR VII	Article 24(2)	Current Article 24(2) with suggested amendments
EC VII.7	Countries should ensure that criteria for Recommendation 17 (sanctions) apply	Article 27(3)	New Article 27 proposed by amending law

Special Recommendation IX – Cash couriers

SR IX	Subject of EC	Law 9917	Comments
EC IX.1	Countries should implement either a declaration system or a disclosure system	Article 17(1)	Current Article
EC IX.2	Designated competent authorities should have authority to request and obtain information where they discover false or non declaration/disclosure	n.a.	According to paragraph 484 of the 4 th Round MER this is the responsibility of the Border and Migration Police (BMP) as the competent authority and Customs
EC IX.3	Where there is ML/FT suspicion or false declaration/disclosure competent authorities should be able to stop or restrain currency for reasonable time	n.a.	According to paragraph 485 of the 4 th Round MER this is the remit of the BMP (who are legally empowered to stop/restrain currency and, if needed, the person) and Customs.
EC IX.4	In case of suspicion, false declaration or exceeded threshold competent authorities should maintain information on currency and bearer(s)	n.a.	According to paragraph 486 of the 4 th Round MER this is the remit of BMP and Customs
EC IX.5	Declared/disclosed information should be made available to the FIU	Article 17(1)	Current Article
EC IX.6	At the domestic level there should be coordination among customs, immigration and other related competent authorities	Article 17	Current Article – as far as coordination with FIU is concerned
EC IX.7	At the international level countries should allow for cooperation and assistance among the competent authorities	n.a.	Governed by other Customs legislation
EC IX.8	Countries should ensure that the criteria to Rec. 17 also apply to persons who make false declarations/disclosures	Article 27(1)	Sanctions not covered by Law 9917 since breaches of the declaration/disclosure is a criminal contravention
EC IX.9	Countries should ensure that the criteria to Rec. 17 also apply to persons carrying currency or bearer instruments related to ML/TF	Article 27(1)	Sanctions not covered by Law 9917 since breaches of the declaration/disclosure is a criminal contravention
EC IX.10	Countries should ensure that the criteria to Rec. 3 also apply to persons carrying currency or bearer instruments related to	Article 27(1)	Sanctions not covered by Law 9917 since breaches of the declaration/disclosure is a

	ML/TF		criminal contravention
EC IX.11	Countries should ensure that the criteria to SR. III also apply to persons carrying currency or bearer instruments related to ML/TF	Article 27(1)	Sanctions not covered by Law 9917 since breaches of the declaration/disclosure is a criminal contravention
EC IX.12	In the case of discovery of unusual movements of gold, precious metals or precious stones countries should consider notifying country of origin or destination and should cooperate to taking appropriate actions	n.a.	According to the 4 th Round MER this is the remit of the BMP and Customs governed under the relevant laws
EC IX.13	Countries should ensure proper use and protection of data declared/disclosed	Article 22(aa)	New suggested paragraph for insertion under Article 22 – in relation to “Responsible Authority”
EC IX.14	Training, data collection, enforcement and targeting programmes should be developed and applied by all jurisdictions	n.a.	Governed by legislative provisions other than the Law 9917 which provides for AML/CFT training
EC IX.15	For a supra-national approach member states should ensure all relevant competent authorities have access on a timely basis to all supra-national information collected	n.a.	Republic of Albania does not form part of a supra-national approach for the purposes of the FATF Standards

APPENDIX 2

Recommendations made in the Fourth Round Mutual Evaluation Report

The Fourth Round Mutual Evaluation Report on the Republic of Albania was adopted by the MONEYVAL Committee at its 35th Plenary in April 2011. The Report has made a number of recommendations in relation to legal matters related to the transposition of various FATF Recommendations into the laws, regulations or *other enforceable means* of the Republic of Albania. The following tables indicate how these recommendations have been addressed by the proposed amendments to the Law No 9917 on The Prevention of Money Laundering and the Financing of Terrorism of 19 May 2008 as amended, including the current additional proposed amendments by the Albanian Authorities and the suggested changes being made in this Technical Paper on the 'Prevention of Money Laundering and Terrorist Financing'.

FATF 40 Recommendations

B. Measures to be taken by financial institutions and non-financial businesses and professions to prevent money laundering and terrorist financing

Recommendation 4 - Professional Secrecy

Rec.	Details	Law 9917	Comments
1	The authorities could consider establishing provisions to regulate specifically the procedures and scope for the exchange of information between financial institutions if reliance on third parties will be allowed and regulated.	n.a.	According to Article 6(3) as proposed by the amending law reliance on third parties is prohibited

Recommendation 5 – Customer Due Diligence⁹

Rec.	Details	Law 9917	Comments
1	Amend Articles 1025 and 1026 of the Civil Code and/or pass legislation to prohibit the issuing of bearer passbooks	Article 4/1(14)	New Article 4/1(14) proposed by the amending law with further suggested changes. The Albanian Authorities may wish to consider Civil Code provisions accordingly.
2	Pass legislation to prohibit the issuing of any other bearer instruments (e.g. certificates of deposit)	Article 4/1(14)	New Article 4/1(14) proposed by the amending law with further suggested changes.

⁹ Source: Paragraph 649 pages 171 – 173 Fourth Round Mutual Evaluation Report on the Republic of Albania

3	Extend the circumstances when “CDD” is required to all aspects of CDD, not just identification and verification	Article 3/1 Article 4/1	New Article 3/1 as being suggested. New Article 4/1 proposed by the amending law
4	Clarify or amend the term “reasonable doubt for money laundering or terrorist financing” in Article 4 of the AML/CFT Law to ensure that it fully covers cases where there is a suspicion of money laundering or terrorist financing	Article 4(1)(ç)	New Article 4(1)(ç) as proposed by the amending law with further suggested changes
5	Clarify in law or regulation the requirement to verify that a person acting on behalf of another is so authorized	Article 4/1(2)(a)	New Article 4/1 proposed by the amending law
6	Include a requirement in law or regulation to verify the identity of a beneficial owner	Article 4/1(3)	New Article 4/1 proposed by the amending law
7	Extend the requirements in relation to beneficial ownership to include beneficial ownership of legal arrangements	Article 2(12)	With suggested amendments
8	Clarify the meaning of “de facto controls the decisions made by the legal person” in the AML/CFT Law, or otherwise provide a specific requirement in law, regulation or other enforceable means (“OEM”) to understand the ownership or control structure of customers who are legal persons, and in law or regulation the requirement that obliged entities must take reasonable measures to determine who are the natural persons who exercise effective control over a legal person or arrangement	Article 4/1(5) Article 4/1(6)	New Article 4/1 as proposed by the amending law with further suggested changes
9	Establish a requirement in law or regulation to determine whether a person is acting on behalf of another	Article 4/1(4)	New Article 4/1 as proposed by the amending law with further suggested changes
10	Include a requirement in law, regulation or OEM that obliged entities obtain information on the purpose and intended nature of the business relationship	Article 4/1(7)	New Article 4/1 as proposed by the amending law with further suggested changes
11	Clarify the requirements in the AML/CFT Law on carrying out “continuous monitoring”, and on “periodically” updating client data	Article 4/1(8) Article 4/1(9)	New Article 4/1 as proposed by the amending law with further suggested changes
12	Provide further guidance on the categorization of clients deemed to require enhanced due diligence for all obliged entities	Article 8 Article 9	New Articles 8 and 9 as proposed by the amending law with further suggested changes

13	Clarify in law, regulation or OEM, or in guidance, the steps to be taken in when obliged entities are required to apply enhanced due diligence	Article 7(1)	New Article 7(1) as proposed by the amending law
		Article 7(2)	New Article 7(2) as suggested in this Technical Paper
14	Establish in law, regulation or OEM requirements for all obliged entities not to open accounts and to consider submitting an SAR when they are unable to comply with criteria 5.6, and additionally for all obliged entities not supervised by the Bank of Albania when they are unable to comply with criteria 5.1 to 5.5	Article 7(3)	New Article proposed by the amending law as Article 9(6) with suggested amendments
		Article 4/1(13)	New Article proposed by the amending law with suggested amendments
15	Set out in law, regulation or OEM a requirement to apply CDD measures to existing clients on the basis of materiality and risk	Article 4/1(12)	New Article 4/1 as proposed by the amending law

Recommendation 6 – Politically Exposed Persons

Rec.	Details	Law 9917	Comments
1	Extend the requirements relating to PEPs to foreign PEPs	Article 2(10)	Current Article as amended in March 2011 with further suggested changes
2	Extend the definition of PEPs to include family members and close associates of PEPs	Article 2(10)	Current Article as amended in March 2011 with further suggested changes
3	Require obliged entities to have appropriate risk management systems to determine whether a customer is a PEP/becomes a PEP, rather than relying solely on a list produced by the authorities	Article 8(1)(a)	New Article 8(1)(a) as proposed by the amending law with further suggested changes
4	Provide a clear requirement to obtain on source of wealth and source of funds of PEPs;	Article 8(1)(ç)	New Article 8(1)(ç) as proposed by the amending law with further suggested changes
5	Clarify what is meant by the requirement in the AML/CFT Law to perform “an increasing and continuous monitoring” of business relationships with PEPs.	Article 8(2)	New Article 8(2) as proposed by the amending law with further suggested changes

Recommendation 7 – Cross border Correspondent Banking

Rec.	Details	Law 9917	Comments
1	Include a requirement for obliged entities to obtain information on whether a respondent institution has been subject to a ML/TF investigation.	Article 9(2)(b)	New Article 9(2)(b) proposed by amending law with suggested changes

Recommendation 8 – New technologies and non face-to-face relationships

Rec.	Details	Law 9917	Comments
1	Take steps to require FIs to manage the risks of non-face to face transactions.	Article 6(2) Article 8(4)	As proposed by amending law with suggested changes

Recommendation 9 – Reliance on third parties

Rec.	Details	Law 9917	Comments
1	<i>Either</i> : expressly prohibit the practice of third party reliance in law, regulation or OEM; <i>or</i> : establish a system for allowing third party reliance in accordance with Recommendation 9.	Article 6(3)	Article 6(3) is proposed by the amending law. The Article prohibits reliance on third parties.

Recommendation 10 – Record Keeping

Rec.	Details	Law 9917	Comments
1	Amend the record keeping requirement for “account files and business correspondence” in the AML/CFT Law so that the five year period is calculated “following the termination of an account or business relations”, as required by the FATF standard.	Article 16(1) Article 16(2)	Current Article 16 with suggested amendments.
2	Clarify the scope of “financial transactions” ensuring that it covers all types of transactions linked with the FI’s customer operations.	Article 16(2)	Current Article with suggested amendments
3	Consider clarifying the term “financial” transactions in the AML/CFT Law to ensure that it fully covers all the types of FIs customer transaction records.	Article 16(2)	Current Article with suggested amendments

Recommendation 11 – Large complex transactions

Rec.	Details	Law 9917	Comments
1	Impose a specific requirement for FIs to pay special attention to all complex, unusual large transactions and unusual patterns of transactions which have no apparent economic or visible lawful purpose.	Article 9(1)	New Article proposed by the amending law with further suggested changes

2	Require obliged entities to record the findings of their examination of complex and unusual transactions in law, regulation or OEM.	Article 9(1)	New Article proposed by the amending law with further suggested changes
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Recommendation 12 – CDD and record keeping requirements for DNFBPs

Rec.	Details	Law 9917	Comments
1	Extend requirements to all TCSP activities defined by the standard	Article 3(k)(ii)	New suggested Article
2	Prescribing additional high risk situations where enhanced due diligence should be applied.	Article 7(1) Article 8 Article 9	New Article proposed by the amending law with further suggested amendments

Recommendation 13 – Suspicious Transactions Reporting

Rec.	Details	Law 9917	Comments
1	Ensure that the SAR requirement extends to all categories of offences required in the FATF standards	Article 12(1) Article 12(2)	New Articles proposed by the amending law with further suggested changes
2	Extend the definition of STR (Article 12 para 2) to include the proceeds of criminal activity	Article 12(2)	New Article 12(2) proposed by the amending law with further suggested changes
3	Set out an explicit requirement in law or regulation that attempted transactions should be reported	Article 12(1)	New Article 12(1) proposed by the amending law
4	Remove the exemptions in Article 13 of the AML/CFT Law that relate to SARs	n.a.	Removed by Article 12 of the proposed amending law.

Recommendation 14 – Confidentiality protection and tipping off

Rec.	Details	Law 9917	Comments
1	Clarify the AML/CFT law so that the prohibition against tipping off explicitly applies to directors and officers as well as employees	Article 15	New Article proposed by the amending law with further suggested changes

Recommendation 15 – Internal compliance procedures

Rec.	Details	Law 9917	Comments
1	Clarify that the ‘compliance officer’ should be at management level	Article 11(1)(b)	Current Article with suggested amendments
2	Specifically include FT among the responsibilities of the compliance officer	Article 11(1)(b)	Current Article with suggested amendments
3	Specify that the FIs internal regulations should include procedures to detect unusual and suspicious transactions.	Article 11(1)(aa)	New suggested paragraph to be inserted in Article 11
4	Require that compliance officer has timely access to the data he/she may need	Article 11(1)(b)	Current Article with suggested amendments
5	Ensure that FIs put in place screening procedures to follow high standards when hiring employees	Article 11(1)(ç)	Current Article

Recommendation 16 – Reporting and compliance obligations of DNFBPs

Rec.	Details	Law 9917	Comments
1	Consider a more prescriptive approach to internal control requirements, specifically defining high risk situations	Article 7(1) Article 8 Article 9	New Article proposed by the amending law with further suggested amendments

Recommendation 17 – Sanctions

Rec.	Details	Law 9917	Comments
1	Review the existing process to impose sanctions in order to remove any repetition of inspections and the possibility to sanction twice for the same violation	Article 22(ç) Art. 24(2)(aa) Article 27(8)	New Article proposed by the amending law with further suggested changes New suggested paragraph for insertion in Article 24(2) New Article proposed by the amending law with further suggested changes.
2	Introduce a unified administrative sanctions regime for ML/FT violations in order to avoid possible “supervisory arbitrage”.	n.a.	Beyond the scope of this Technical Paper.
3	Introducing a graduated scale of sanctions which includes an early warning system of notifications	n.a.	Beyond the scope of this Technical Paper

Recommendation 18 – Shell banks

Rec.	Details	Law 9917	Comments
1	The authorities are recommended to amend the AML/CFT Law forbidding FIs specifically from operating with shell banks (either as a customer or as a correspondent).	Article 9(3) Article 9(4)	New Article 9 proposed by the amending law

Recommendation 19 – Cash Transactions Reporting

Rec.	Details	Law 9917	Comments
1	<i>Recommendation is fully met</i>		

Recommendation 20 – Extending the standards to other business and professions

Rec.	Details	Law 9917	Comments
1	<i>No recommendations concerning the AML Law</i>		

Recommendation 21 – Countries with insufficient AML/CFT standards

Rec.	Details	Law 9917	Comments
1	Require obliged entities to examine and make written findings of business relationships and transactions with persons in countries with poor AML/CFT controls, if they have no apparent economic or visible lawful background.	Article 8(5)	New Article 8(5) proposed by the amending law with further suggested changes
2	Give guidance as to the factors to be taken into consideration when determining if a country is not applying or is insufficiently applying the FATF Recommendations.	Article 22(f)	Current account with suggested changes
3	Specify the counter-measures to be taken in cases where an FI deals with a person in or from such a country.	Article 8(5)	New Article 8(5) proposed by the amending law with further suggested changes

Recommendation 22 – Application to branches and subsidiaries

Rec.	Details	Law 9917	Comments
1	Introduce a specific requirement for FIs to pay particular attention to the principle of the application of the domestic legislation to foreign branches/subsidiaries that operate in countries which do not or insufficiently apply the FATF Recommendations.	Article 11(1)(e)	Current Article with suggested changes

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| 2 | Introduce a specific requirement to FIs adopt the highest AML/CFT in case of branch subsidiaries or branches in foreign countries. | Article 11(1)(e) | Current Article with suggested changes |
|---|--|------------------|--|

Recommendation 23 – Regulation and supervision of financial institutions

Rec.	Details	Law 9917	Comments
1	Ensure that all the Albanian financial activities are subjected to adequate AML/CFT regulation and supervision.	Article 3 Article 24(1)(a) Article 24(1)(b)	Current Article with suggested amendments
2	Establish legal requirements for fit and proper tests for all the FIs that are subject to the Core Principles.	Article 24(4)(b)	Current Article 24(4)(b) with suggested amendments. More formal provisions are to be found in the respective financial legislation. Hence no amendments are being suggested

Recommendation 24 – Regulation and supervision of DNFBPs

Rec.	Details	Law 9917	Comments
1	Designate a supervisor for real estate, accountants, and DPMS. The AML/CFT Law currently allows for designations of supervisors to be reassigned without a legislative change.	Art. 24(1)(dh)	Current Article. Albanian Authorities may wish to consider specifying supervisory authority for each category of subjects.
2	Require designated supervisory authorities to develop an action plan on how AML/CFT supervision will be integrated into their existing activities	Article 24(2)	Current Article with suggested amendments
3	Strengthen measures to prevent criminals or their associates from holding a controlling interest in casinos or games of chance	Art. 24(4)(b)	Current Article with suggested amendments
4	Clarify in the AML/CFT law the authority of the GDPML to conduct inspections related to compliance to AML/CFT requirements other than non-reporting requirements.	Article 22(ç)	New Article proposed by the amending law with further suggested changes

Recommendation 25 – Guidance and Feedback

Rec.	Details	Law 9917	Comments
1	Authorities should establish guidelines which assist FIs with the AML/CFT obligations.	Article 22(hh)	New paragraph suggested for inclusion in Article 22
2	Enhance feedback to reporting entities having regard to the FATF Best Practices Guidelines on Providing Feedback to Reporting Financial Institutions and other Persons.	Article 22(h) Article 22(k)	Current articles with suggested amendments

C. Institutional and other measures necessary in systems for combating money laundering and terrorist financing.

Recommendation 26 – The Financial Intelligence Unit

Rec.	Details	Law 9917	Comments
1	Expand the GDPML's authority to request additional information by specifically allowing it to request non-financial information that could assist in its functions.	Article 22(c)	Current Article with suggested amendments
2	Clarify the GDPML's authority to exchange information with non law enforcement authorities.	Article 22(e)	Current Article still refers to law enforcement authorities. Albanian Authorities may wish to consider this recommendation further
3	Specify the autonomy and independence of the GDPML in legislation	Article 21(1) Article 21(2)	Current Article 21 with suggested amendments
4	Maintain consistent and comprehensive statistics on SAR reporting and the number of FIU disseminations that have resulted in convictions, seizures or confiscations.	Article 11(1)(cc) Article 22(m) Article 24(4)(d) Article 24(6)	New paragraph suggested for insertion in Article 11 New paragraph suggested for insertion in Article 22 Current Article 24 with suggested amendments New paragraph suggested for insertion in Article 24

5	Amending Article 22 of the AML/CFT Law to clarify the power to disseminate information concerning suspected ML/FT activities.	Article 22(d)	Current Article with suggested amendments
		Article 22(dh)	Current Article with suggested amendments
		Article 22(e)	Current Article

Recommendation 29 – Powers of supervisory authorities

Rec.	Details	Law 9917	Comments
1	Enhance the channels of communication and information exchange between the GDPML and the supervision authorities. In particular the GDPML should share in a timely fashion the findings of the inspections it undertakes with the BoA and the FSA so that these findings can be used to inform their supervisory activities.	Article 22(ç)	New Article proposed by the amending law with further suggested changes
		Art 24(4)(aa)	New suggested paragraph to be inserted in Article 24
2	Consider whether the current practice of the GDPML's conducting inspections on compliance with the whole range of AML/CFT requirements is appropriate and, if it is, consider amending the AML/CFT law.	Article 22(ç)	New Article proposed by the amending law with further suggested changes

Recommendation 31 – National cooperation

Rec.	Details	Law 9917	Comments
1	Include the GDPML and other supervisory bodies in the Committee to ensure that supervisory concerns are properly reflected in the national strategy.	n.a.	Beyond the scope of this Technical Paper. The Albanian Authorities may wish to consider this separately.

Recommendation 32 – Effectiveness and Statistics

Rec.	Details	Law 9917	Comments
1	Designate an authority responsible for the collection of statistics related to AML/CFT.	Article 22(m)	New paragraph suggested for insertion in Article 22

D. International Co-operation

Recommendation 40 – Other forms of cooperation¹⁰

Rec.	Details	Law 9917	Comments
1	<i>No recommendations concerning the AML Law and the FIU</i>		

FATF 9 Special Recommendations

Special Recommendation IV – Reporting of transactions related to financing of terrorism

Rec.	Details	Law 9917	Comments
1	Ensure that the SAR requirement extends to all categories of TF required in the FATF standards, and that it applies to situations beyond intended terrorist financing.	Article 12(1) Article 12(2)	New Articles proposed by the amending law with further suggested changes

Special Recommendation V – International Co-operation¹¹

Rec.	Details	Law 9917	Comments
1	<i>No recommendations concerning the AML Law and the FIU</i>		

Special Recommendation VI – Alternative remittances

Rec.	Details	Law 9917	Comments
1	Impose a direct requirement for MVT service operators to maintain a current list of agents	Article 10(4)	Normally covered by financial legislation or regulations of supervisory authority (BoA). Article 10(4) is suggested for inclusion to cover this criterion.

¹⁰ The Recommendation is examined in relation to the Responsible Authority (as the FIU) only.

¹¹ As for Recommendation 40, Special Recommendation V is reviewed only in relation to the Responsible Authority as the FIU for other forms of international cooperation.

Special Recommendation VII – Wire Transfers

Rec.	Details	Law 9917	Comments
1	Remove the option of requesting missing wire transfer-related information from the beneficiary of the transaction.	Article 10(3)	As amended by proposed amending law

Special Recommendation IX – Cash couriers

Rec.	Details	Law 9917	Comments
1	Define the notion of “negotiable instruments”, so that it is fully consistent with the FATF definition of “bearer negotiable instruments”,	Article 2(5)	Suggested change to the current definition
2	Amend the Criminal Code or the AML/CFT law to include sanctions for the case of false/inaccurate declaration.	n.a.	According to Article 27(1) the sanctions contemplated therein do not include sanction for criminal contraventions.

APPENDIX 3

Major amendments in the new FATF Recommendations and Law 9917

In February 2012 the FATF published the revised Recommendations which have integrated the FATF40+9 into one set of recommendations now referred to as “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation”. According to the FATF “The revisions address new and emerging threats, clarify and strengthen many of the existing obligations, while maintaining the necessary stability and rigour in the Recommendations”. The following table identifies *major* changes that could impact on the Law 9917 in relation to those Recommendations that are considered under this Technical Paper. The print in *italics* in the ‘Comments’ section indicate amendments to present provisions of Law 9917 accordingly and where necessary.

New Rec	Old Recs	Reference	Law 9917	Comments
		A - AML/CFT Policies and Coordination		
1	-	Assessing risks and applying a risk based approach	n.a.	To be considered separately by Albanian Authorities
2	R.31	National cooperation and coordination	Article 23	New Recommendation retains the previous R.31 and calls on countries to have national AML/CFT policies and to designate an authority for coordinating or other similar mechanism. - <i>Present Article 23 suffices.</i>
		B - Money Laundering and Confiscation		
3	R.1 & R.2	Money laundering offence	n.a	Governed by other laws
4	R.3	Confiscation and provisional measures	n.a	Governed by other laws
		C - Terrorist Financing and Financing of Proliferation		
5	SR II	Terrorist financing offence	n.a	Governed by other laws
6	SR III	Targeted financial sanctions related to terrorism and terrorism financing	n.a	Governed by other laws

7	-	Targeted financial sanction related to proliferation	n.a	New concept. Should be governed by other laws
8	SR VIII	Non profit organisations	n.a	Governed by other laws. Notwithstanding the new Recommendation retains the previous SR VIII in total
		D - Preventive Measures		
9	R.4	Financial institution secrecy laws	Article 25	New Recommendation retains the previous one in total - <i>No further amendments required</i>
		Customer due diligence and record keeping		
10	R.5	Customer due diligence	Article 3/1 Article 4 Article 4/1 Articles 7 - 9	Notable changes are: (i) RBA is mandatory – <i>although already mandatory under Law 9917 an amendment is suggested to Article 7(1).</i> (ii) Termination of business relationship and consider reporting when ongoing due diligence as part of CDD cannot be done – <i>an amendment is suggested for Article 4/1(13) referencing to the definition of CDD as suggested to be included in the new Article 3/1</i>
11	R.10	Record keeping	Article 16 Article 9(1) Article 8(5)	New Recommendation carried one change requiring the retention of the results of any analysis such as those for the background and purpose of complex large transactions – <i>no changes necessary as this obligation is already included in Law 9917</i>
		Additional measures for special customers and activities		

12	R.6	Politically exposed persons	Article 2(10) Article 8(1) Article 8(2)	<p>Notable changes are:</p> <p>(i) direct reference to both customer or beneficial owner being a PEP – <i>already included in Law 9917</i></p> <p>(ii) obligation for identification of PEPs and application of ECDD applicable to both foreign and domestic PEPs – <i>according to definition of PEPs under Article 2(10) of the Law 9917 the requirements for ECDD for PEPs under Article 8(1) and (2) apply to both foreign and domestic PEPs. No further changes required.</i></p>
13	R.7	Correspondent banking	Articles 9 (2) – (5)	<p>Notable changes are:</p> <p>(i) instead of documenting respective responsibilities FIs are now required to 'understand' them – <i>change has clarified what already existed under the Methodology (Footnote 15 to EC 7.4). Already reflected in Law 9917.</i></p> <p>(ii) FIs should be prohibited from entering into, or continuing, a correspondent banking relationship with shell banks – <i>already reflected in Law 9917.</i></p> <p>(iii) FIs should be required to satisfy themselves that correspondent institutions do not permit their accounts to be used by shell banks - <i>already reflected in Law 9917.</i></p>
14	SR VI	Money or value transfer services	Article 10(4)	<p>Notable changes are:</p> <p>(i) agents of MVT providers should either be</p>

				<p>licensed or the MVT providers should keep a list of agents</p> <p>(ii) Countries should take measures to ensure that MVT providers that use agents include them in their AML/CFT programmes and monitor them for compliance with these programmes.</p> <p><i>The new Article 10(4) is proposed to be included in Law 9917 on the assumption that MVT providers are authorised under the respective laws or regulations to appoint agents.</i></p>
15	R.8	New technologies	Article 6(1)	<p>Notable changes are:</p> <p>(i) 'Countries and FIs should identify and assess the money laundering or terrorist financing risks that may arise in relation to..' as opposed to previously 'FIs should pay special attention..' - <i>Article 6(1) was already indicative towards such obligation. Further changes are suggested</i></p> <p>(ii) ...(a) the development of new products and new business practices, including new delivery mechanisms - <i>Article 6(1) is suggested to be amended accordingly.</i></p> <p>(iii)(b) the use of new or developing technologies for both new and pre-existing products - <i>Article 6(1) is suggested to be amended accordingly.</i></p> <p>(iv) In the case of financial institutions, such a risk assessment should take place prior to the launch of the new products, business practices or the use of</p>

				<p>new or developing technologies - <i>Article 6(1) is suggested to be amended accordingly.</i></p> <p>(v) They should take appropriate measures to manage and mitigate those risks - - <i>Article 6(1) is suggested to be amended accordingly.</i></p>
16	SR VII	Wire transfers	Article 10	<p>Notable changes are:</p> <p>(i) Countries should ensure that, in the context of processing wire transfers, financial institutions take freezing action and should prohibit conducting transactions with designated persons and entities, as per the obligations set out in the relevant United Nations Security Council resolutions, such as resolution 1267 (1999) and its successor resolutions, and resolution 1373(2001), relating to the prevention and suppression of terrorism and terrorist financing.</p> <p><i>No amendments are proposed at this stage as this new inclusion calls for a considered assessment by the Albanian Authorities to empower financial institutions to take freezing actions – freezing powers are not provided by Law 9917 to any competent authority as these are presumably governed by other legislation.</i></p>
		Reliance, Controls and Financial Groups		
17	R.9	Reliance on third parties	Article 6(3)	<p>Notable changes are:</p> <p>(i) specific reference to introduced business.</p>

				<p>(ii) new provisions for reliance with a party that is part of the same financial group as the FI.</p> <p><i>Since Article 6(3) prohibits outright any reliance on third parties no changes are necessary.</i></p>
18	R.15 & R.22	Internal controls and foreign branches and subsidiaries	Article 11	<p>Notable changes are:</p> <p>(i) requirement for FIs to have AML/CFT programmes in place including group wide programmes – <i>further changes are being suggested for Article 11 to reflect the group level requirements. To this effect a new definition of ‘financial group’ inspired from the definition in the FATF Glossary has been included in Article 2 as item 25.</i></p>
19	R.21	Higher risk countries	Article 8(5) Article 22(f)	<p>Notable changes are:</p> <p>(i) use of the word ‘apply enhanced due diligence’ instead of ‘give special attention’. – <i>no further changes necessary at this stage</i></p>
		Reporting of suspicious transactions		
20	R.13 & SR IV	Reporting of suspicious transactions	Article 12	No changes are proposed through the new Standards for Rec. 13 and SR IV.
21	R.14	Tipping off and confidentiality	Article 14 Article 15	No changes are proposed through the new Standards for Rec. 14
		Designated non-financial businesses and professions (DNFBPs)		
22	R.12	DNFBPs: Customer due diligence	Article 3 Article 4/1 Articles 6-9	No changes proposed except for the inclusion of the activities of TCSP previously delineated in the Glossary – <i>no further</i>

			Article 16	<i>changes to the proposed inclusion of item (k)(ii) in article 3</i>
23	R.16	DNFBPs: Other measures	Article 3 Article 8(5) Article 11 Article 12 Article 14 Article 15 Article 25(2)	No changes are proposed through the new Standards for Rec. 16
		E - Transparency and legal ownership of legal persons and legal arrangements		
24	R.33	Transparency and beneficial ownership of legal persons	n.a	Governed by other laws
25	R.34	Transparency and beneficial ownership of legal arrangements	n.a	Governed by other laws
		F - Powers & Responsibilities of Competent Authorities and other institutional measures		
		Regulation and Supervision		
26	R.23	Regulation and supervision of financial institutions	Article 22 Article 24 Article 28	Notable changes are: (i) Countries should not approve the establishment, or continued operation, of shell banks – <i>no further changes necessary as this was previously covered under EC 18.1.</i> (ii) This should include applying consolidated group supervision for AML/CFT purposes – <i>practical issue not necessarily to be included in the AML Law.</i>
27	R.29	Powers of Supervisors	Article 22 Article 24 Article 26 Article 27	Notable changes are: (i) including the power to withdraw, restrict or suspend the financial institution's license, - <i>no changes necessary, new requirement already covered through Article</i>

				26 of Law 9917.
28	R.24	Regulation and supervision of DNFBPs	Article 22 Article 24 Article 27 Article 28	Notable changes are: (i) prohibition for criminals or associates from holding significant interest or be involved in management – <i>previously included as EC 24.1.3 and hence no further changes necessary</i> (ii) apply effective, proportionate, and dissuasive sanctions – <i>previously included as EC 24.2.1 and hence no further changes are necessary</i>
		Operational and Law Enforcement		
29	R.26	Financial Intelligence Units	Article 21 Article 22 Article 28	Notable changes are: (i) to receive information related to the ML/FT associated predicate offences – <i>already broadly covered by Article 22(c)</i> . (ii) The FIU should be able to obtain additional information from reporting entities – <i>previously covered by EC 26.4 and hence no further changes necessary</i>
30	R.27	Responsibilities of law enforcement and investigative authorities	n.a	Governed by other laws
31	R.28	Powers of law enforcement and investigative authorities	n.a	Governed by other laws
32	SR IX	Cash couriers	Article 17	Notable change is: (i) inclusion of reference to predicate offence for restraining currency or imposing sanctions – <i>no changes necessary in the Law 9917</i>
		General Requirements		
33	R.32	Statistics	Article 11	No changes are proposed through the new

			Article 17 Article 18 Article 19 Article 20 Article 22 Article 24	Standards for Rec. 32
34	R.25	Guidance and feedback	Article 22 Article 28	Notable change is: (i) placing of obligation to provide feedback and guidance on supervisors and SRBs further to 'competent authorities' – <i>does not call for any further changes to Law 9917</i>
		Sanctions		
35	R.17	Sanctions	Article 24 Article 26 Article 27	Notable change is: (i) Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management – <i>previously included as EC 17.3 and hence no further changes necessary.</i>
		G – International Cooperation		
36	R.35 SR I	International instruments	n.a	Governed by other laws
37	R.36 SR V	Mutual legal assistance	n.a	Governed by other laws
38	R.38	Mutual legal assistance: freezing and extradition	n.a	Governed by other laws
39	R.39	Extradition	n.a	Governed by other laws
40*	R.40	Other forms of international cooperation	Article 22 Article 25	Recommendation 40 has been restructured but essential elements remain. Other elements have been moved to the supporting Interpretative Note – <i>no further changes are therefore necessary.</i>

(*) To the extent that the new Recommendation affects the powers of the FIU that are governed by Law 9917

