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TECHNICAL PAPER

PROPOSED GUIDANCE ON POLITICALLY EXPOSED PERSONS (PEPs) FOR DIRECTORATE GENERAL FOR PREVENTION OF MONEY LAUNDERING

Prepared by Mr Bob Upton, Council of Europe expert

For any additional information please contact:

Economic Crime Section
Information Society and Action against Crime Directorate
Directorate General I - Human Rights and Rule of Law
Council of Europe, F-67075 Strasbourg Cedex
Tel: + 33 (0)3 88 41 29 76
Fax: +33 (0) 390 21 56 50
Email: lado.lalovic@coe.int
Web: www.coe.int/economiccrime

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Introduction

The purpose of this guidance is to assist Reporting Entities in managing the increased risk of money laundering posed by politically exposed persons (PEPs). This includes both domestic and foreign PEPs which are defined below. The guidance does not replace legal obligations under Albanian AML Law but helps you to understand and manage the risks involved in a proportionate and risk sensitive manner. It also accords with International standards as set by the Financial Action Task Force (FATF) and other Bodies. A Question and Answer sheet is attached in order to provide further guidance and address likely questions which may arise from this briefing.

1 Definition and Designation

- 1.1 Individuals who are or have in the past, held a prominent public function, can pose a higher risk of money laundering as their positions of power and influence may make them vulnerable to corruption. Those most vulnerable will include senior political figures as well as those senior officials within the administrative, judicial and military arms of state. The same risks also extend to members of their immediate family and those known to be close associates. PEP status does not of course, mean that the individual concerned is either corrupt or has acquired illicit wealth during his/her tenure in office. It is a risk classification and an indication of their potential vulnerability.
- 1.2 PEPs under International standards are defined as *“An individual who is or has, at any time during the preceding year, been entrusted with prominent public functions and an immediate family member, or a known close associate, of such a person”*. Although the FATF definition applies to foreign PEPs, domestic PEPs also present a similar risk. As a result, the current approach to domestic PEPs in Albania will continue but expanded to embrace immediate family members and known close associates.
- 1.3 Public functions exercised at lower levels than national, should not normally be considered as prominent. The definition does not therefore extend to middle or more junior ranking individuals. However, it may sometimes be prudent to consider them as posing an increased risk when they are serving on key parliamentary committees, such as Defence procurement, Finance and Agriculture. PEPs will embrace the following individuals:
 - Heads of State, Heads of Government, Ministers and Deputy Assistant Ministers.
 - Senior members of Parliament (but not middle or more junior ranking officials).
 - Members of the Supreme Court, Constitutional Courts or other high level Judicial Bodies whose decisions are not generally subject to further appeal.
 - Members of the Courts of Auditors or the Boards of Central Banks
 - Ambassadors, Charges d’Affaires
 - High Ranking Officers in the Armed Forces
 - Members of the Administrative, Management or Supervisory Boards of State Owned Enterprises.
 - Senior Party functionaries

Immediate Family Members include:

- A Spouse
- A Partner (including a person who is considered under his national law as equivalent of a spouse)
- Children of their Spouses or Partners and
- Parents

Persons known to be Close Associates will include business partners, individuals known to have joint beneficial ownership of a legal entity as well those running or controlling businesses or arrangements known to have been established for the benefit of a PEP. The definition also covers political and other advisers.

- 1.4 A PEP designation begins when a natural person is first appointed to a prominent public function and continues throughout his/her tenure in office. As allegations of corruption tend to emerge after a change of government or after leaving office, the designation should continue for a period of at least 12 months after this date. Reporting Entities are however, encouraged to take a risk based approach in deciding whether to continue enhanced monitoring after this period, in order to ensure that the risks have adequately abated.

2 Enhance Due Diligence (EDD) Measures

- 2.1 EDD measures in relation to PEPs, consist of 4 key elements namely:
- Appropriate risk based procedures to determine whether a customer, client or beneficial owner is a PEP
 - Adequate measures to establish and where appropriate validate, the source of funds or wealth involved in a relationship or transactions
 - Senior Management approval for establishing and maintaining a business relationship or undertaking an occasional transaction with a PEP and
 - Enhanced on-going monitoring of the business relationship.
- 2.2 EDD involves a more searching and probing approach to Customer Due Diligence. As a result, Reporting Entities should undertake more thorough enquiries and therefore hold a fuller set of information and documentation concerning PEPs as well as other relationships to which EDD measures apply.

3 Risk Based Procedures

- 3.1 The extent to which EDD measures should be applied will depend upon the nature and scope of a Reporting Entity's business activities and its vulnerability to money laundering. This assessment will generally determine whether PEPs are an issue and whether to screen all customers and clients for this purpose. Where the risks are low and PEPs are unlikely to exploit the particular products or services involved, the

screening of all customers may not be required. There will however, need to be procedures in place to apply EDD measures where PEPs are encountered. In other cases, an appropriate PEP screening process will need to be in place commensurate with the risks involved.

- 3.2 Identifying whether a potential customer or existing relationship is a Foreign PEP, can present a number of challenges. There is no Official List of Foreign PEPs against which customers can be screened. However, information is available from different sources to help the identification process. Staff training is an essential part of AML risk management, which should also include an awareness of Foreign PEPs so that they can be identified when encountered. Where Reporting Entities need to complete specific checks, they should undertake internet searches, or consult relevant reports and databases on corruption risk published by specialised national, international and non-governmental organisations. Resources such as Transparency International's Corruption Perceptions Index is also a useful risk management tool . It ranks 178 countries by the perceived level of public sector corruption and therefore helps to identify higher risk countries. A PEP Declaration in addition to internet searches, may also be useful when dealing with foreign nationals, foreign legal entities or other arrangements. However, where more thorough checks are needed or there is a high risk of having PEPs as clients, subscription to a specialist PEP database from a commercial provider, may be the only practical solution.
- 3.3 The list of PEPs updated by the HIDA is a useful way of identifying Domestic PEPs. However, EDD measures should also be extended to immediate family members of Domestic PEPs as well as those known to be close associates. Extending the definition ensures a consistent approach to the PEP Risk Management which helps manage risks and accords with International standards.
- 3.4 An essential part of the EDD process is to establish and understand the activities which generated the client's total net worth (source of wealth) as well as the origin of the funds accepted at the beginning of a relationship (source of funds). This information provides a context against which the voracity and integrity of the relationship can be assessed. In most cases, establishing the source of wealth/funds will involve obtaining information directly from the client. The results of internet searches will also assist. A more probing approach may be necessary where the relationship involves PEPs from a higher risk country or where increased risks are evident. In such cases it may be necessary to request suitable corroborate documentation from the client in order to establish whether a PEP is seeking to establish a business relationship for legitimate reasons. It is a matter for each Reporting Entity to decide upon the most appropriate approach to obtain this information and manage the risks involved. Domestic PEPs (with the exception of close family members and known close associates) are required to complete an Income and Assets Declaration which can be employed to establish the source of wealth.

4 Risk Assessment and Senior Management Approval

- 4.1 Once a relationship with a PEP has been identified and EDD measures completed, the

results should be considered and a decision made as to whether to open, continue or decline the relationship or occasional transaction. Other options may also be available such as limiting the facilities provided. Several factors may influence your decision. They may include considerations such as the amount and frequency of expected transactions, the jurisdictions involved as well as the extent of PEP involvement. Other risk factors may also need to be considered before a decision is made. Where an existing relationship is involved, it may also be necessary to consider additional factors such as the duration and conduct of the relationship and whether STRs have been submitted or suspicions of money laundering exist.

- 4.2 It is essential that Senior Management is actively involved in the decision making process. This involvement can take many forms including a written submission by the Head of Compliance Control or as part of a Risk Management Panel. Whichever approach is adopted, Senior Management should have sufficient information at their disposal in order to make an informed decision. Senior Management approval does not necessarily mean approval from the Board of Directors, but the individual should be of sufficient seniority within the business for the level of risk involved. Decisions should ideally be documented and the rationale clearly recorded.

5 Enhanced On-Going Monitoring

- 5.1 Ongoing monitoring of a business relationship consists of two distinct elements. Firstly, the scrutiny of transactions throughout a relationship and secondly, ensuring that the documentation or information held about the customer or client is kept up to date. Normal levels of monitoring should be enhanced in view of the PEP designation and in the light of the risks involved. This will include additional monitoring of transactions and closer scrutiny of any unusual or uncharacteristic behaviours identified. In addition to increased levels of transaction monitoring, Business relationships with PEPs should ideally be reviewed at least annually and when uncharacteristic transactions are identified, when a new product or service is required or when new or additional intelligence is encountered.
- 5.2 Customer Due Diligence information should be routinely updated to ensure that it remains current. Risk based principles may be employed to determine the frequency and level of information required. The information requested should include any alterations to the ownership or control structure of the business as well as any changes to the nature and extent of business activity. Any material alternations evident since the last review, should be assessed to ensure that they are credible and appear legitimate. In addition, Reporting Entities should, as far as practicable, be alert to public information relating to possible changes in the status of its customers or clients in relation to foreign political exposure. When an existing customer is identified as a Foreign or Domestic PEP, EDD must be applied.

6 Laundering the Proceeds of Corruption – Techniques and Indicators

- 6.1 Recent research indicates that all stages of the money laundering process may be employed to launder the proceeds of corruption. No longer are we likely to see corrupt PEPs placing laundered funds into their owned named account or in

association with Companies or Enterprises with which they can easily be linked. Instead, more opaque methods are likely to be employed including the use of Associates or Introducers, establishing a series of front Companies or ones with needlessly complex ownership structures as well as Trusts and other vehicles. Domestic Institutions as well as Off-Shore jurisdictions are likely to be employed as well as Gatekeepers and Specialists Advisers.

6.2 Potential indicators of whether a relationships or transaction may involve the proceeds of corruption are similar those involved in money laundering. However, particular attention should be paid to the following where the relationship involves a PEP, no matter how remote the connection may appear:

- Substantial movement of funds for which there appears to be no commercial rationale or where the account activity appears inconsistent with the legitimate or anticipated activity.
- Substantial activity over a relatively short space of time.
- The use of needlessly complex Corporate structures or vehicles designed to conceal the true ownership of funds.
- Requests for undue levels of secrecy.
- Where the origin of the customer or client's wealth or source of funds cannot be easily verified as the audit trail has been deliberately broken.

7 Further Information

7.1 Additional information is provided in the enclosed Question and Answer (Q&A) briefing which forms part of this guidance. The briefing also refers to documents and guidance on PEP Risk Management provided by FATF and other International Bodies.

7.2 The guidance and the accompanying Q&A briefing will be updated and revised as required, in order to ensure that it remains current and addresses any common issues encountered by Reporting Entities.