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**PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)**

**Technical Paper**

**Enhancing the Implementation of the Albanian Law “For the Prevention of  
Money Laundering and Financing of Terrorism”**

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## 1 LIST OF ABBREVIATIONS

AML/CFT – the law for the prevention of money laundering and financing of terrorism;

FIU – the financial intelligence unit;

PEP - Politically exposed persons;

KYC - Know Your Customer;

DNFBPs – Designated Non Financial Businesses and Professions;

STR – Suspicious Transaction Report;

NRC – National Registration Center;

IT – Information Technology

## 2 METHODOLOGY

The findings and recommendations of this Technical Paper originate in a workshop held by PACA on 27-28 April in Tirana, Albania and the review of legal and administrative documents. The workshop brought together the General Directorate for the Prevention of Money Laundering (GDPML or FIU) and all of the reporting entities under the AML/CFT including financial institutions, designated non financial businesses and professions (DNFBP), and the state agencies that cooperate, in different capacities, in the fight against money laundering and terrorism financing.

The workshop was devised in 4 sessions: a plenary, a session bringing FIU face to face with the financial institutions, a session bringing FIU face to face with DNFBPs, and a session in which FIU touched base with the relevant government agencies.

Each session, with the exception of the plenary, was conceived in a way so that the actors could juxtapose the requirements of the Albanian law, the international standards as encapsulated in the FATF and MONEYVAL recommendations and the actual state of affairs, in terms of adopted policies and practices, at the various reporting entities.

The analysis of the aforementioned AML/CFT aspects is done separately for the various categories of obliged entities including the financial institutions and the DNFBPs. The performance of the government agencies which are also considered obliged entities for the purpose of AML/CFT is looked upon more generally as their obligations do not always take the form of the aforementioned factors (due diligence, know your customer etc).

The objective of the workshop was to come to certain conclusions on the level of implementation of AML/CFT and on the possibility of legal amendments

## 3 EXECUTIVE SUMMARY

This opinion examines the level of implementation of the Albanian AML/CFT by looking at the performance of obliged entities with regard to application of customer due diligence, the adoption and use of Know Your Customer policies, the compiling and filing of suspicious transactions reports, the enhanced due diligence reserved to politically exposed persons and the level of cooperation between the Albanian FIU and the various obliged entities.

As far as the performance of the financial institutions is concerned this paper finds that the banks and other financial institutions are relatively formal in the implementation of their tasks under the AML/CFT. Whereas transactions above the legal threshold are commonly reported to the FIU, the level of STRs is still low.

The quality of the STRs remains the biggest problem. Typically, the STRs submitted by the financial institutions entail little financial analysis. Whereas the FIU is legally bound to analyse the reports submitted by the financial

institutions, it can't possibly substitute for such institutions such as the banks which are in the best possible position to do such analysis because of their continuous exposure to clients. Thanks to KYC policies (supposedly in place) the financial institutions can reason the doubts that gave rise to the STR in the first place.

The banks' and other financial institutions' KYC policies, as combined with a risk based approach to the business relation (the risk based approach is a work method which not all financial institutions are familiar with) ought to enable them come to grounded conclusions concerning the risks posed by certain transactions and, hence, enable the rest of the AML/CFT machine to work efficiently.

Despite the seemingly thorough legal definition, some confusion seems to loom around the notion of "beneficial owner" in financial transactions as the banks apply at least two standards in this regard: the standard imposed by the relevant regulations of the Bank of Albania and the standards of the mother companies that own most of Albania based banks. The law on the National Registration Center of the AML/CFT itself may be revisited with the a view to establishing a more functional relationship between the financial institutions and the NRC, thus simplifying the task of the former in identifying beneficial owners in complicated cases involving foreign companies.

The financial institutions' due diligence efforts (at least the identification of clients) seem to be compromised to some degree by the lack of a proper postal address system in Albania. Being able to attach a legal residence to a physical/legal person may help in client identification as a first step towards all sorts of due diligence operations.

The need to reconcile due diligence considerations with data protection considerations is not always served satisfactorily.

Most of the efforts to enhance the implementation of the Albanian AML/CFT should take place within the obliged entities. Establishing functional compliance structures and procedures as well as training should be considered the highest priorities in this regard. Some of the obliged entities, especially those belonging to the category of DNFBPs (most typically private attorneys) lack any form of awareness as to their role in the framework of AML/CFT. Their performance is consequently close to zero.

In the case of private attorneys, it should be considered to amend the law so that the bar associations, rather the individual attorneys, are given the status of obliged entities under the AML/CFT

The increased emphasis on obliged entities should not be interpreted as a recipe for the diminution of the FIU's role. In addition to prompting the obliged entities do their share in the AML/CFT process, the FIU ought to be able do more cross checking among the various obliged entities in order to spot cases of failure to report. These findings then need to be used not just to sanction wrongdoers. They also need to be shared with others in an attempt to raise awareness and enrich/update continuously the typologies. IT solutions are the

only way to enable FIU do that.

The FIU has proposed amendments to the AML/CFT with a view to acquire judicial police powers and thus extend its existing legal remit. It must be noted here that this particular proposal runs against the relevant recommendation by Moneyval which supports the option whereby FIU is confined to an analytical role rather than a law enforcement one. Whereas the solution whereby FIU is given judicial police powers is clearly an option, nothing in the findings and recommendations following PACA's workshop and its continuous engagement with AML/CFT seems to justify such a move.

Despite the good work done by the Bank of Albania in establishing typologies of money laundering in the banking sector, such typologies need to be dynamic and respond to the evolving features of money laundering. Therefore, a consultation mechanism among the main stakeholders needs to be established for the continuous enrichment/updating of typologies.

Typologies (adopted through instructions of the Minister of Finance) exist also with regard to the work of the tax and customs authorities. The same comment concerning their continuous updating is due here too.

As of the day of the release of this technical paper, there are no typologies concerning the work of DNFBPs and some other obliged entities. The FIU is in the final stages of compiling draft typologies relevant to the work of DNFBPs and other obliged entities. Assuming that consultations with the relevant obliged entities have taken place, once the typologies are adopted (presumably by the Minister of Finance) tailored training and feedback by the obliged entities need to take place in continuity.

The trimming of structures and procedures on the obliged entities side and feedback on the FIU side ought to characterize the relationship between the AML/CFT main actors.

### Financial Institutions

The assessment of financial institutions performance under the AML/CFT concentrated around 5 issues, namely client due diligence, know your customer policies (KYC), suspicious transactions reports (STR), politically exposed persons (PEPs) and communication between FIU and the financial institutions.

### Due Diligence

As far as due diligence is concerned, the banks revealed a relatively good understanding of the legal requirements and reported on their relevant policies and practices. They generally maintained that the foundation of the banks due diligence policies is the respective instruction of the Minister of Finance and the Regulation of the Bank of Albania.

The banks claim there are procedures in place that enable them to collect data

on the clients and there is a client information file per each client. There are also rules concerning the refreshing of data. To support this function the banks have developed computer softwares that help register client data on the first contact and then refresh the data following each transaction;

Some banks even have a manual that details each and every step from the moment of the first contact between the bank and the client till possible termination of their relationship. Some banks reported that they have specific projects concerning the total updating of their client database.

Banks also do updating of client data is when Albanian law undergoes changes concerning the identification of citizens. For example following the introduction of the new ID cards, certificates and utility bills are no longer used for client identification purposes.

In concrete terms, banks do a good job in identifying clients duly distinguishing between physical persons and juridical persons. For the latter the banks commonly request the identifying data of the legal administrator.

A problem faced by all banks that diminishes their efforts to properly identify clients is that the new IDs do not feature the name of the father. This problem is bigger than the banks. In order to do client identification properly the banks, in some case tend to supplement the personal information provided by the IDs with more data by asking their customers to also submit birth certificates. However, doing this for all bank clients is very user unfriendly and could compromise a banks commercial stance. Therefore they only do it sporadically when they have grounded suspicions.

The banks claim they do updating of client data routinely (not through campaigns) any time the submitted IDs expire.

Their biggest problem (especially for the old banks) are the dormant accounts. The banks have taken any chance to update client data on the first occasion the client contacts the banks.

One more source for the updating of client data can also be done following a client's request i.e. when the administrator of a company is changed.

In some cases the client identification policies are translated into fully fledged IT programs. Since the advent of the NRC it's been easier to get client data for legal persons. However data updating remains a problem especially as far as legal persons are concerned.

Some banks have policies in place for the identification of passing by clients as well. A major difficulty to be noted however is the absence of a reliable addresses system.

In another bank the IT system has been adjusted to accommodate AML/CFT requirements concerning client identification. The IT system alerts the bank when a submitted ID expires. Also the system allows the identification of the beneficial owner.

Another method used by the banks with a view to proper client identification is the signing of a declaration by the clients according to which they pledge to update their data every 3 months.

The banks, generally, don't see a problem with due diligence.

Participants from the financial institutions agree however, that although the customer due diligence sounds a straight forward exercise, statistically 70% of AML/CFT cases involve personal data manipulation. It is therefore important that the banks and other financial institutions do matching between the old and new documents.

Although perfectly aware, the financial institutions tend not to have policies concerning those situations that involve the changing of names by companies and the relation between companies where one company holds shares in another. It is crucial to hold accurate history of changes in the companies and their unique tax number.

The lack of a proper address system is a major handicap. Moreover the new IDs do not include addresses.

As far as the risk posed by certain clients is concerned, some banks maintain that they have issued instructions to rate clients, at an early stage, in accordance with their risk for AML/CFT purposes. The criteria include the nature of activity, the venue where the activity is managed from, the origin of the business (i.e. traffic zone). Banks also maintain that the issue of client identity is as much an issue for the banks as it is for the government which needs to do proper IDs.

### Conclusions concerning due diligence

The banks are quite ahead in this particular aspect of AML/CFT policy thanks to hard work and the standards imported by the international banks that own them;

As far as the risk based approach is concerned (a facet of due diligence), the financial institutions and the FIU generally concur that it is better served with IT rather than manuals and regulations.

Concerning the issue of passing by clients (clients that do not have a bank account and business history with the bank), the banks have a disparate approach. Some banks require these clients to open up an account, some others allow them to do transactions without opening a bank account.

Generally, a client that is not present cannot open a bank account unless he/she provides smb else with a proxy;

Client rating is also to be pursued by the banks in a way that will enable the banks to enter the risk level into the system just as any other data;



Despite the seemingly thorough legal definition, some confusion seems to loom around the notion of “beneficial owner” in financial transactions as the banks apply at least two standards in this regard: the standard imposed by the relevant regulations of the Bank of Albania and the standards of the mother companies that own most of Albania based banks. Typically, banks use the more stringent Bank of Albania criterion of 25% ownership as a standard for identifying the beneficial owner. The job of the banks in this regard has been simplified by the advent of the National Registration Centre which manages a fully accessible and updated database on the companies.

Getting to know the beneficial owner however can be difficult when he/she does not reside in Albania. In this cases the banks should ask for the assistance of the NRC and maybe enter a MoU with the NRC to that effect. Or, even better, the law on NRC or AML/CFT should be amended to meet this need;

Concerning the lack of a proper address system there seems to be a way out of the situation. In order for the citizens to get the new IDs they are required to submit their addresses and (hopefully) the company/agency doing IDs has found a way to make sure that declared addresses are accurate. It would suffice than for the banks to be given access to the civil registry and for the address to be added as a necessary element for the identification of clients.

#### Know Your Customer (KYC)

The domestic regulation is to be found in articles 5, 6 and 7 of the AML/CFT. International standards include the FATF Recommendation 5, a European Parliament Directive and the relevant recommendations by Moneyval. Also article 10 of the Albanian Law and standard 10 of FATF are of some relevance.

Generally the financial institutions (banks in particular) tend to be conservative in this regard and they tend to overdo the requirements of the law.

#### Conclusions concerning KYC

KYC policies are needed also for the clients that are included in the UN black list and the OPHC list;

FIU should issue its own list;

The need for enhanced due diligence and data protection need to be reconciled. According to data protection rules and regulations the data subject’s consent is necessary if transfer of data outside the country is involved. Banks do transfer data to the countries where their parent companies are located anytime they process requests for loans;

The FIU should find a way to discuss this with the Commissioner for Data Protection.

#### Suspicious Activity / Transactions Reports

Article 12 of the AML/CFT makes up the domestic regulation in this regard. The domestic regulation draws on FATF Recommendation 13. As far as Moneyval is

concerned, its respective recommendation is deemed implemented.

It seems clear for all stakeholders that any future assessments of Albania in this particular regard (the fourth round assessment of Albania by Moneyval in particular) will put the emphasis on effectiveness. In any such assessment will duly look at the number of STRs and their quality.

During 2009 there have been 186 SARs submitted by the banks. 22 of those have been referred by FIU to law enforcement agencies.

The financial institutions that were present at the PACA event, reported on the STR cycle (how does the suspicion arise, who analyses it, who makes a decision on the referral to FIU) in each of the institutions. The following patterns emerged:

Generally, the banks' sectors that are typically faced with suspicious transactions are the front offices (tellers routinely dealing with the clients), the operations departments which deal with the transfers and the credit departments which deal with loans.

The information is analysed (and a STR eventually compiled) by a host of different actors in the various banks and financial institutions. Namely, the compliance department, the operations department or the legal department. Final decision as to the filing of the STR with the FIU is made either by the compliance departments or the banks' CEOs.

Despite the exhaustive list of anomalies included in the anti money laundering regulation of the bank of Albania, the mere fact that a transaction does meet one of the prescribed anomalies, does not automatically lead to the filing of a STR by the banks because, thanks to KYC policies, they tend to know their clients and are in the position to determine whether the anomaly is due to a possible money laundering activity or is business as usual for that particular client. The KYC policies enable the banks to do a reasonable job with STRs thus sparing FIU ungrounded referrals.

On the other hand, FIU claims that at least some of the 1 million volume transactions reports submitted by the financial institution in 2009 would in fact qualify as STRs were they analysed properly by the financial institutions.

In addition the compliance departments in the headquarter, typically the banks tend to decentralize part of the compliance function with the branches. Operation departments in the branches or the heads of branches are usually given the authority to keep an eye on the transactions and report suspicious ones to the headquarters.

The non bank money transfers sector (Western Union, Moneygram), is a specific business activity. In this market, the task to scrutinize transactions is decentralized with the agents. Only big sum transactions are scrutinized by the headquarters. This issue has been made a subject of analysis and training involving all agents. They do initial training with the newly recruited agents, regular training on a yearly basis and ad hoc training determined by changes in the legal and sub legal framework. They seem to charge their legal departments

with the job to analyze the proposed STRs. Final decisions are made by the CEOs.

### Conclusions concerning STRs

The quality of the STRs remains the biggest problem. This problem could be eased if the financial institutions would stop regarding the STRs as a one time exercise. There is only one way for the financial institutions and the banks in particular to reach to grounded conclusions as to the risks (suspicions) posed by a certain transaction. It takes continuous customer due diligence and functional KYC policy for the bank to be able produce reasonable STRs. Such dynamic approach would enable the banks to reason their doubts and make it easier for FIU to observe its 48 hour time limit to approve or disapprove the transaction reported by the banks;

The need for training here is obvious. It could come both from the DDPML or the BA.

The typologies of the Bank of Albania need to be discussed with the commercial banks in continuity with a view to enriching and updating them. Each bank department (front office, operation, credit) should develop its own typologies.

The issue of attempted transactions by the clients needs to be regulated more clearly by the law. It is not clear whether attempted transactions should be reported and under which circumstances.

Ex ante assessment of each transaction is the ultimate prevention of money laundering.

The banks should make failure by their employees to report suspicious transactions a disciplinary violation and regulate its sanctioning.

The STRs submitted by the banks should have their foundation in the proper application of the KYC. Banks should look at the entirety of the business relation history between the client and the bank before making a decision on referring a case to GDPML or not. Banks are in a unique position to have a good understanding of their clients specificities. The FIU can not possibly substitute for that.

The banks should not confine themselves to the mere spotting of anomalies but should rather analyse them because they are obliged entities under the AML/CFT and hence as much responsible for the implementation of the law as FIU is;

Banks should do more to raise awareness among their employees about the importance of compliance. In that regard, banks need to do daily monitoring and every 6 months monitoring of the transactions with a view to spotting cases of failure of their employees to report what could have qualified as a STR.

Both banks and the FIU should honour their legal obligation to be confidential

about the compliance process (there have been leakages in the past).

FIU should do more cross checking with the notaries, real estate agents and other obliged entities with a view to spot cases of failure by the banks to report STRs. The respective findings should serve both to sanction banks and to educate them on the proper handling of future cases.

It would be very instructive if the FIU were to inform the banks on the fate of their STRs so that they know when they have done a good job and when not.

The banks could also communicate between themselves on these matters with due regard to bank secrecy requirements.

#### Politically Exposed Persons (PEPs)

Article 20 of the AML/CFT makes up the domestic regulation in this regard. FATF Recommendation 20 is regarded as the main international standard of relevance. As far as Moneyval is concerned, its last assessment on the subject matter was negative because there no regulation at that time.

Albania has a list of PEPs updated regularly by the High Inspectorate for the Declaration and Auditing of Assets (HIDAA). A pending recommendation by Moneyval concerns the foreign PEPs.

Some of the banks maintain that they rate PEPs as high risk clients. Transactions between PEPs and the banks are approved by the upper echelons of the bank's management and those clients undergo enhanced due diligence. This statement by some of the banks was questioned by the FIU and other participants as to its accuracy.

Some banks reported that in an attempt to subject foreign PEPs to increased scrutiny they have all their foreign clients declare that they are not PEPs in their countries of origin.

#### Recommendations concerning PEPs

Banks should use software systems such as Worldcheck, Mantas, Factiva to implement their PEP policies.

#### Communication between FIU and the Obligated Entities

This issue is tackled by Recommendation 25 of FATF. Moneyval assessment from 2006 pointed at insufficient communication between the FIU and the Obligated Entities.

To date, the GDPML/FIU's yearly report is the main form of communication between the FIU and the reporting entities.

On the other hand the money laundering typologies involving the banks issued by the Bank of Albania, being the result of input coming both from the FIU and the banks, represent another form of cooperation between those actors.

Starting from 2009, the banks compliance officers have met with the FIU to analyse the relevant Instruction of the Minister of Finance.

The Banks Association has established a compliance committee which may prove an important factor in the efforts to boost the cooperation between the AML/CFT actors.

#### Recommendations concerning Communication

The banks should reduce to a minimum the number of banks' officers involved in the compilation and filing of STRs. This would reduce the risk of leakages;

The FIU should give feed back to the banks on STRs thus achieving some sort of distance training;

Communication channels between the banks and the FIU should be clear and easy;

The banks should give more effort to analysing the cases before referring them to FIU because this is the key to better communication and the reduction of mistakes by both FIU and the banks;

The feed back provided by FIU on the fate of the STRs submitted by the banks should be regarded as an opportunity for the banks to learn and consolidate/enrich their typologies.

#### DNFBPs

The notaries are the most active among the obliged entities under the DNFBPs category. The number of reports from the notaries has increased steadily over the years although, so far, they only report transactions over the threshold. There have been no reports on suspicious transactions by the notaries so far.

The notaries find the forms that need to be filled out for the reporting of transactions rather complicated and ask for them to be simplified.

In response to that remark by the notaries, the FIU has recently put in place a user friendly software that allows for the electronic submission of the reports by the notaries. The system has been made operational for a few months now and it needs to be tested.

The notaries also argue that the list of transactions they are legally requested to report to FIU is rather extended. They argue that would be wiser for the number of cases that need to be reported to be reduced so that AML/CFT system's resources are not wasted on minor cases.

Despite the use FIU makes of the information submitted by the notaries (whether the case is referred to police or prosecutor), the notaries identity should not be revealed. FIU retorted that its employees have a security certificate issued by the Department of Classified Information. In fact, whoever the FIU refers a case to (the prosecution or police) they only mention that the

information originates from one of the obliged entities under the AML/CFT without revealing the identity of the reporting notary.

In terms of substance, the cooperation between FIU and the notaries has been good. Out of the 194 cases that the FIU has referred to the Prosecution, 64 have originated with the notaries.

Typologies of money laundering involving DNFBPs are badly needed and seem to be under way.

The National Bar Association (rather the individual attorneys) should be made by law an obliged entity under the AML/CFT

### Other Obligated Entities

Based on the 2006 Moneyval assessment of Albania, the Minister of Finance has issued 2 Instructions addressing respectively the procedures for the reporting of suspicious transactions by the Tax and the Custom Authority.

The Customs Authority is working on electronic reporting system. Admittedly, the number of reports by the Customs has been low despite the evolution in the institutional profile of the customs authority from a mere income generating mechanism to a national security actor in compliance with the strategy for the integrated border management. Inadequate human resources seem to stand at the core of the customs' authority failure to do its share of AML/CFT.

### Inadequate human resources

Currently, the Customs Authority has put lots of efforts in reducing cross border passage of cash. However, this task requires lots of intelligence service and training.

The FIU and the Customs Authority have a Memorandum of Understanding and are negotiating the possibility for FIU to have direct access to the cash declarations database.

The Tax Authority on the other hand has a tax investigation department. Within the department there is an anti-corruption unit which is regarded as the counterpart of FIU at the Tax Authority.

The Tax Authority is considering the improvement of their anti money laundering regulation. For the time being they have achieved the acceleration of the correspondence between the two organizations.

The limited number of SARs by the Tax Authority can be ascribed to 2 factors:

- lack of awareness and training;
- lack of a proper structure inside the Tax Authority that would have the prevention of money laundering as its primary task.

