

# Anti-money laundering and counter-terrorist financing measures

# Albania

## Fifth Round Mutual Evaluation Report

July 2018



**The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL** is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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## EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in Albania as at the date of the on-site visit from 1 to 14 October 2017. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Albania's AML/CFT system, and provides recommendations on how the system could be strengthened.

### *Key Findings*

1. Albania has a reasonably good understanding of its ML risks in the formal economy. There are some areas (e.g. corruption, organised crime (OC), the informal economy, the TF component of the identified terrorist threats, legal persons and non-profit organisations (NPOs) that would benefit from a more detailed analysis of the threats posed. There are national coordination mechanisms for policy-making to address risks, which include political commitment and make use of various strategies against major predicate offenses and related ML. These mechanisms have not proven to be fully effective to ensure accountability for results by all relevant authorities and do not tackle all relevant ML/FT risks.

2. Corruption poses major money laundering (ML) risk in Albania. Often linked to OC activities, it generates substantial amounts of criminal proceeds and seriously undermines the effective functioning of the criminal justice system. The authorities are aware of the risks from corruption but the law enforcement focus to target corruption-related ML has been very limited. A significant judicial reform is currently being implemented to better address the corruption risks prevalent in the country.

3. ML investigations result rarely in indictments and the ratio has been declining. ML proceedings connected to significant proceeds-generating offences are mostly suspended and/or dismissed by the prosecution. The range of predicate offences for ML is roughly in line with the overall country's threats and risk profile, but the number and character of ML cases is not consistent with the size and significance of the underlying proceeds-generating criminality.

4. The level of evidence to which the ML offence and its relation to the predicate crime needs to be proven is not always clear for the practitioners. In foreign predicate ML cases, the prosecution appears to be over-reliant on evidence requested from foreign counterparts instead of pursuing domestic ML cases based on circumstantial evidence although the latter has already proven successful in recent cases.

5. Albania has a robust legal framework for confiscation of criminal proceeds. However, the statistics available on the number and values of seized and confiscated assets do not seem to commensurate with the level of the criminality in the country. In practice, a non-conviction confiscation regime based on the Anti-Mafia Law is more widely used rather than criminal confiscation regime, which is mandatory and applies to all criminal offences. Authorities demonstrated that parallel investigations are systematically applied in ML cases and in other criminal proceedings but the performance of the regime has until recently been deficient.

6. The perception and understanding of TF related risks do not seem to adequately address the characteristics of potential TF activities in the country and the region. In the assessed period, until recently, religious radicalism and cases of recruitment of foreign terrorist fighters (FTFs) have increased in Albania as noted also in the National Risk Assessment (NRA), which contains limited analysis of TF risks and assesses TF through the terrorism threat as "low" risk. There is no systematic approach to identify and investigate financing aspects of terrorism-related offences. There have been convictions in foreign fighting cases linked to the Syrian conflict since 2014. However, there have been no TF prosecutions or convictions in Albania.

7. Albania has a legal and institutional framework in place to apply the United Nations Security Council Resolutions (UNSCRs). However, there are some technical deficiencies, which may hamper effectiveness of Albania's compliance with targeted financial sanctions (TFS). However, Albania

demonstrated positive practice of application of listing, freezing and un-freezing measures.

8. Albania has not identified the subset of NPOs being potentially at risk of misuse for TF. It considers all NPOs to pose a high TF risk. There is no targeted risk-based supervision of the NPOs at higher risk for TF abuse conducted by the designated competent authority. This is due to inadequate understanding of duties, and the lack of dedicated human resources at the designated competent authority.

9. Albania has no legal and institutional framework in place for implementation of the proliferation financing (PF) related TFS.

10. Albania has a poor understanding of ML/TF threats posed by legal persons. Basic information on legal persons is publicly available. However, there is no requirement for the National Business Centre (NBC) or the District Court of Tirana (DCoT) to verify information provided for registration. Information held by the NBC or by the DCoT in relation to changes to basic ownership data cannot be considered to be accurate or current. Beneficial ownership (BO) information is obtained and maintained individually by financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) while performing their customer due diligence (CDD) obligations. Although there are prohibitions on cash transactions over 150,000 ALL between the tax payers in Albania, there is no requirement for all of the legal persons to have a bank account. Hence, there are certain legal entities (LEs) whose BO data is not recorded by a FI and therefore pose an impediment for a timely access to comprehensive BO information by the competent authorities.

11. The competent authorities systematically use the General Directorate for the Prevention of Money Laundering (GDPML) disseminations and a wide range of other accessible sources of information to initiate and facilitate investigations of ML, associated predicate offences and TF. However, a regular feedback to the GDPML on its disseminations would enable a better support to the law enforcement authorities' (LEAs) and Prosecutors Office's (PO) operational needs.

12. Although Albania has reportedly provided mutual legal assistance (MLA) with an appropriate level of cooperation, the general legal mechanism for executing foreign MLA requests is very complex and involves too many authorities with their respective deadlines, which might be a major delaying factor. There is no systemic prioritisation of incoming MLA requests and the case management system is not in place in all authorities involved in MLA.

13. The Bank of Albania (BoA) has a good understanding of ML/FT risks and has recently enhanced its offsite reporting system to support its assessment of risks of individual entities. The Financial Supervisory Authority (FSA) is in the process of transitioning to a risk-based approach (RBA) to supervision but its AML/CFT inspection activity undertaken so far has been very limited. Both BoA and FSA rely heavily on the GDPML to contribute to AML/CFT inspections and to impose sanctions (fines) for AML/CFT breaches. The primary DNFBP supervisors do not sufficiently discharge their functions for AML/CFT supervision, and the resources of the GDPML are too limited to compensate for this. Although some important efforts are made, the licensing authorities for FIs (BoA, FSA) do not consistently apply a risk-based perspective when reviewing licensing applicants, or take a systematic approach to on-going monitoring, to fully mitigate the risk of criminal infiltration of FIs.

14. It has not been demonstrated that sanctions imposed by supervisors for AML/CFT breaches by the reporting entities (REs) have been fully effective or dissuasive.

### *Risks and General Situation*

2. Although Albania has made considerable progress to tackle ML and TF, the risks remain high. According to the National Risk Assessment (NRA), the main threat for ML is formed by criminal proceeds deriving from trafficking of narcotics, crimes in the customs and tax area (e.g. smuggling, tax evasion) and corruption. Organised crime groups (OCGs) with individuals of Albanian ethnicity are active in many countries in Europe, with links to other source, transit and destination regions. They mostly focus on drug trafficking, human trafficking and crimes against property. The proceeds of crime are circulated and invested in several forms in Albania, e.g. through investment in real estate

and commercial companies. The large size of the informal economy in Albania, combined with the still widespread use of cash, constitutes a significant ML vulnerability.

3. Corruption remains a very serious concern in the country and forms an overarching ML risk. The number of investigations of cases of corruption is on the rise, but the number of final convictions remains low at all levels. Corruption in the judiciary adversely affects the normal functioning of the justice system, undermining public confidence in the rule of law, and enables impunity for criminals.

4. The NRA notes an increase of religious radicalism and cases of recruitment of FTFs in Albania in recent years. There have been indictments in foreign fighting cases linked to the Syrian conflict since 2014 but no TF investigations or convictions.

5. The gambling sector (through threat of criminal infiltration in ownership and/or operation) and the real estate sector are regarded as posing a very high risk for ML. The notary profession was historically deemed highly vulnerable due to its involvement in real estate transactions but its risk awareness and mitigation have significantly improved over the last years. Following increased controls over immovable property transactions, nowadays the highest risks are deemed to be present in transactions where notaries and real estate agents are not involved (informal transactions).

6. Accountants and lawyers are deemed vulnerable for ML risk exposure due to their involvement in company formation and the fact that majority of their client base is comprised of LEs. Additionally, AML/CFT supervision of these professions is limited.

7. In recent years, the money value transfer services (MVTs) and currency exchange sectors have seen considerable formalisation and improvements in application of risk mitigating measures, although smaller entities not part of larger global firms in particular remain vulnerable, and informal activities are still present. While the banking sector will remain at risk, banks have a high level of awareness of ML/TF risks and implementation of corresponding mitigating measures. FIs other than banks are not deemed particularly vulnerable, as their businesses make up a small percentage of the financial sector assets and transactions with their customers pass through the banking system.

#### *Overall Level of Effectiveness and Technical Compliance*

##### *Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

8. Since the last evaluation, Albania has taken steps to improve the AML/CFT framework. Notably, amendments to the Law on the Prevention of Money Laundering and Financing of Terrorism (AML/CFT Law) were adopted in 2012 (further amended also in 2017), which strengthened the legislative framework to fight ML and TF. Albania has also undertaken its first ML/TF NRA in 2012 and a second one in 2015. The process was coordinated in both instances by the GDPML, with input from a range of public sector representatives including state intelligence, LEAs, and supervisory authorities.

9. Albania has demonstrated a reasonably good understanding of its ML risks as far as the formal economy and commonly identified predicate offenses such as drug crime and tax evasion are concerned. Although the authorities generally acknowledge also the major threats posed by the informal economy and wide-spread corruption (including its nexus with OC), they have not made discernible efforts to assess the true impact of these phenomena on the ML/TF risks. The TF risk assessments in the NRAs are very limited. Intelligence and LEAs appeared vigilant to terrorist risks but failed to demonstrate adequate understanding of related financing risks. Further areas where understanding of authorities should be enhanced relate to risks of abuse of legal persons and NPOs.

10. There is no AML/CFT policy document in place, but the country has a proven track record in setting broader strategies and action plans to address economic and OC. These strategies are targeted at most of the major predicate offences as well as their related ML offences and address the factors that contribute to the identified ML/TF risks to a certain extent. There are mechanisms in place to coordinate these policies on institutional level, including a high-level Coordination Committee for the Fight against ML (CCFML) and its Inter-Institutional Technical Working Group (IITWG). Nonetheless,

mechanisms to ensure efficient delivery of expected results by all relevant authorities should be enhanced.

11. Cooperation at operational level and information exchange amongst the authorities is enabled through various formal and informal mechanisms. It is generally positive where the GDPML is involved.

12. Some significant initiatives have been and continue to be undertaken to address threats and vulnerabilities in certain high-risk areas. For example, the GDPML and BoA have coordinated with the Banking Association to conduct outreach to banks on AML/CFT obligations and ML/TF risks and typologies. The use of cash is restricted when trading in goods and banned in immovable property transactions. GDPML, the Ministry of Justice (MoJ) and the Chamber of Notaries have coordinated efforts to raise awareness of risks among notaries, who have a key role in real estate transactions. The Police and the Gambling Supervisory Authority (GSA) have coordinated a large-scale action to combat unlicensed gambling activity. Recently, the licensing and supervision authority for auditors was restructured and provided more independence and authority. Moreover, a major judicial reform programme is currently on-going, impacting on many levels of public administration, which should provide a better framework for the fight against corruption and related ML in the years to come.

13. There are, however, also areas where the policies and activities of authorities are not yet aligned with the risks. In order to mitigate ML/TF risks, further efforts (better coordination, intensified actions) are needed to address more complex, holistic issues. This includes:

- increasing the number and quality of prosecutions of corruption-related ML;
- stronger controls of cross-border cash movements;
- measures to prevent the abuse of legal persons including oversight of NPOs;
- finalisation of the regularisation of immovable properties; and
- risk-based supervision for all sectors.

*Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

14. The GDPML generates a good quality operational and strategic analysis, which is widely used by the competent authorities to investigate ML, and the associated predicate offences, as well as for preliminary investigation of TF. The results of the GDPML's operational and strategic analysis support the LEAs' operational needs. The GDPML and other domestic competent authorities have a good level of cooperation. Financial intelligence disseminated by the GDPML triggers and facilitates investigation of ML and associated predicate offences. Data provided by the GDPML based on the requests supports the self-initiated investigations. However, more regular feedback from the GDPML to REs would improve the suspicious activity reporting, and regular feedback from the LEAs and PO to GDPML would assist the latter to better support its operational needs.

15. ML investigations result rarely in indictments and the ratio has been declining. ML proceedings connected to significant proceeds-generating offences are often suspended and/or dismissed by the prosecution. The range of predicate offences for ML is roughly in line with the overall country's threats and risk profile but the number and character of ML cases is not consistent with the size and significance of the underlying proceeds-generating criminality.

16. In foreign predicate ML cases, the prosecution appears to be over-reliant on evidence requested from foreign counterparts instead of pursuing domestic ML cases based on circumstantial evidence. The level of evidence to which the ML offence and its relation to the predicate crime needs to be proven is not always clear for the prosecution.

17. Albania has a robust legal framework for confiscation of criminal proceeds. However, the statistics available on the number and values of seized and confiscated assets do not seem to commensurate with the level of the criminality in the country. In practice, non-conviction confiscation regime based on the Anti-Mafia Law is more widely used rather than criminal



confiscation regime, which is mandatory and applies to all criminal offences. Authorities demonstrated that parallel financial investigations are systematically applied in ML cases and in other criminal proceedings but the performance of the regime has until recently been deficient.

*Terrorist Financing and Financing Proliferation (Chapter 4 -IOs 9-11; R.5-8)*

18. Albania classifies its TF risks as “low”, justifying this by the low level of terrorism threats in the country. However, according to the NRA there was an increase of religious radicalism observed and there were cases of recruitment of FTFs identified. There has been a limited number of successful counter-terrorism prosecutions and convictions, which include indictments in foreign fighting cases linked to the Syrian conflict since 2014. However, no prosecutions and convictions of TF offences have occurred either as a stand-alone prosecution or as a part of a counter-terrorism prosecution. There is no systematic approach to identify and investigate financing aspects of terrorism-related offences and therefore there is a threat that financial aspects of occurred terrorism-related offences are not always properly investigated. In addition, the perception and understanding of TF related risks do not seem to adequately address the characteristics of potential TF activities in the country and the region.

19. Since the last evaluation Albania has developed a legal framework for implementation of the UN TFS of TF. However, the mechanism in place does not ensure their timely implementation. The overall level of awareness of obligations related to the implementation of the TFS on TF by the authorities and the REs can be considered to be satisfactory. The level of awareness of smaller FIs, such as leasing, insurance, foreign exchange office (FEO), and most of the DNFBPs on implementation of TFS is considered to be insufficient.

20. Albania has in place a system for domestic designations in line with UNSCR 1373, based also on foreign request. However, there were no persons proposed by Albania to the relevant UNSC for designation. Effective application of the TFS on TF can also be hindered since the freezing requirements do not sufficiently cover the full scope of funds and other assets that should be subject to restrictions. Moreover, criteria used by the Albanian authorities for the identification of targets for designation seem not to cover undertakings having links to designated persons or entities as stipulated by the relevant UNSCRs.

21. Albania has made an attempt to assess risks related to NPOs operating in the country. Albania considers all NPOs to pose a high TF risk and has not identified the subset of NPOs being potentially at risk of misuse for TF. There were some additional measures taken by a group of competent authorities to detect and target specific NPOs posing TF risks. Albania has introduced the institutional and legal framework for application of the risk-based supervision for targeted monitoring of its NPO sector. However, supervision is still focused on tax-related considerations.

22. There is no legislation or any governmental decision in place to implement the UNSCRs on proliferation of weapons of mass destruction (WMD). Although the lists are communicated to the REs by the GDPML, these are not enforceable and do not put any obligation for application of the TFS on PF on the REs, and do not vest the latter with any powers to freeze funds and assets in case of a match with designated persons and entities.

*Preventive Measures (Chapter 5 - IO4; R.9-23)*

23. Banks have a good understanding of ML/TF risks and AML/CFT obligations and apply mitigating measures in a manner that is mostly commensurate to the assessed level of risk. The sector has a constructive relationship with both the BoA and the GDPML, characterised by strong communication and education, including through the Banking Association. Most non-banking financial institutions (NBFIs) also have a good understanding of ML risks and their preventive obligations, but, with the exception of MVTs, TF risks are not as well understood.

24. CDD and record-keeping requirements are complied with by most REs, although stronger in the banking and FI sector. Banks largely identify and verify BOs in line with the standards. Outside the

banking sector, other FIs and the majority of DNFBBPs rely on the NBC as the sole source of BO information.

25. Notaries recognised their important gatekeeper role in real estate transactions and showed awareness of ML risks. Their implementation of AML/CFT obligations, including BO identification and filings of STRs, has significantly improved in recent years.

26. With the exception of notaries, DNFBBPs have a lower level of understanding of the ML/TF risks within their sectors. They further demonstrated low levels of understanding of reporting requirements and have filed very limited numbers of SARs.

*Supervision (Chapter 6 -IO3; R.26-28, R. 34-35)*

27. The BoA and FSA require information during the licensing process to prevent convicted criminals and persons under criminal investigation from holding, or being the BO of, a controlling interest, or holding a management function in a bank or NBFIs. The process for DNFBBP licensing authorities to prevent and revoke licences based on integrity concerns varies across the sectors.

28. It appears that licensing authorities (BoA, FSA, GSA and POB) do not fully appreciate the risks of individuals with criminal connections trying to gain control over REs. Checks of BOs and associates (including by seeking international cooperation) and on-going monitoring after market entry could be enhanced.

29. The BoA maintains a good understanding of ML/TF risks in the banking and non-banking sectors under its supervision and coordinates with the GDPML to maintain awareness. The FSA has an adequate understanding of ML/TF risks and obtains GDPML and international assistance to enhance this in light of evolution of the insurance and securities sectors under its supervision. Primary DNFBBP supervisors have a basic understanding of risks or, in some cases National Chambers of Advocates (NCA), understanding is lacking.

30. The BoA, FSA, and GDPML have either recently adopted or are in the process of adopting a RBA to supervision. BoA's resources are too limited to conduct adequate inspection of all the NBFIs under its supervision. While some of these entities may be deemed low risk, this cannot be said for the MVTS and currency exchange sectors. The GDPML assists the BoA in almost all AML/CFT inspections. Up until recently, ML/TF risks did not carry strong weight in the formulation of BoA's onsite inspection programmes; however, the BoA has made significant improvements to its offsite reporting system which enhances its RBA.

31. The FSA is in the process of transitioning to a RBA to supervision for the insurance, securities and investment sector, but its AML/CFT inspection activity undertaken so far has been very limited. Although BoA and FSA share supervisory responsibilities for banks that carry out securities activity, coordination efforts for AML/CFT inspections could be improved.

32. The GDPML has the power to supervise compliance with the AML/CFT Law of all REs and has taken up an active supervisory role. It has been effective in applying a RBA to supervision for banks and other financial entities. GDPML has also started to prioritise its supervision of DNFBBP sectors based on its understanding of the ML/TF risks. The primary DNFBBP supervisors do not implement the responsibilities for AML/CFT supervision that are assigned to them by law. This is with the exception of inspections of notaries by the MoJ that considered some aspects of AML/CFT obligations. The resources of the GDPML are too limited to compensate for the general lack of DNFBBP supervision.

33. The majority of remedial actions taken by BoA and FSA pursuant to breaches of AML/CFT obligations by REs are limited to application of recommendations. The GDPML has been active in issuing fines for banks, MVTS, and some DNFBBPs (notaries) but does not have power to impose sanctions other than fines or impose proportionate sanctions for repeat violations. The GDPML can request the primary supervisors, being the licensing authorities, to remove licences in case of repeat violations however, in practice, this has been limited to FEOs.

34. According to the results of BoA monitoring, recommendations issued by the BoA have been adopted by the individual entities; however, recurring breaches and recommendations within the same sector could indicate measures are not sufficiently dissuasive to ensure compliance by others.

35. The GDPML and BoA have coordinated ML/TF trainings with banks and NBFIs. This has helped to raise their awareness of risks and implementation of mitigating measures. The notary sector also clearly demonstrates the positive impact that outreach by the supervisors (GDPML and MoJ) and the professional body have had on the raising ML/TF risk awareness and level of compliance. Other DNFBPs, including the gaming sector, accountants, and lawyers which are considered high risk for ML/TF, have not received sufficient training and guidance regarding ML/TF risks and AML/CFT obligations.

#### *Transparency of Legal Persons and Arrangements (Chapter 7 -IO5; R. 24-25)*

36. Albania has not conducted an assessment of the ML/TF risks associated with different types of LEs created in the country as part of its general understanding of the ML/TF risk assessment process, except for the NPOs<sup>1</sup>. The understanding of ML/TF risks posed by LEs is weak. Nevertheless, Albania has taken some measures to prevent the misuse of LEs.

37. Basic information and legal ownership information can be promptly obtained from the NBC and the DCoT at any time. However, the NBC and DCoT do not specifically collect and maintain BO information, except for when the legal owner and BO are the same. Information held by the NBC and DCoT in relation to changes to registered basic information cannot be considered fully accurate and current.

38. BO information is obtained and maintained individually by FIs and DNFBPs in the course of their CDD obligations. However, timely access to this information by the competent authorities is hindered by having to first establish which FI or DNFBP the legal person or arrangement has a business relationship with.

39. Legal arrangements cannot be formed or established in Albania. There do exist, however, LEs registered and operating in Albania with a legal arrangement (trusts or other similar arrangements) in the ownership structure. Albania has not conducted a specific analysis of ML/TF risks posed by legal arrangements (LEs with such an ownership in the chain), but Albania treats them as posing a high risk, and requires the REs to conduct EDD measures.

40. The sanctions available for non-compliance with information and transparency obligations by LEs registered with NBC are do not appear to be proportionate and dissuasive, and are non-existent for the DCoT.

#### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

41. The legal mechanism for sending and receiving MLA requests is very complex and involves too many authorities with their respective deadlines causing delays in managing the incoming MLA requests. In addition, there is no systemic prioritisation of incoming MLA requests and the case management system is not in place at all authorities involved in MLA.

42. The LEAs actively exchange information with their foreign counterparts on ML, while there are no requests related to TF. Supervisors of FIs seek information with foreign supervisors and central banks for AML/CFT purposes when approving application for managerial roles and a change of controlling interests in supervised entities when there is a suspicion related to ML/TF. The FSA has obtained other forms of international cooperation relating to guidance on international best practices including when transitioning to a RBA for supervision.

43. International cooperation on BO data is hampered by the deficiencies identified in IO5 regarding timely access to the BO data.

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<sup>1</sup> "Assessment of the Non Profit Sector" 2012. The term NPO is used to refer to the type of the LEs in accordance with the definition of Art. 2(4) of the Law of the Republic of Albania "On NPOs", "associations, foundations and centres whose activity is conducted in an independent manner and without being influenced by the state".

44. Issues raised under IO6 on the guarantees for the timely provision of the information affect negatively the ability of the GDPML to provide internationally requested information in a timely manner.

45. The frequent occurrence of foreign proceeds in ML cases has resulted in a remarkable number of MLA requests sent abroad while no sufficient attention is paid to alternatives, such as using domestic circumstantial evidence.

46. At the same time the letters rogatory sent abroad are reported to have suffered from various technical deficiencies, such as delayed expedition or incompleteness. Dual criminality rules generally apply beyond coercive actions which might restrict the extent to which Albanian authorities can provide MLA.

#### *Priority Actions*

1. Enhance the analysis of ML and TF risks to implement appropriate mitigation measures, most notably by way of: a) conducting a more in-depth TF risk assessment; b) understanding the impact of the informal economy and of corruption (including its nexus with OC) on ML/TF risks; c) assessing the risk posed by legal persons (including NPOs and including through ownership/control by foreign legal arrangements).

2. Ensure coordinated policies at the national level to tackle the more complex, urgent ML/TF risks which are not sufficiently addressed through the existing strategies.

3. Review the reasons behind the low performance of the prosecution in ML investigations and address the shortcomings identified in the NRA in relation to deficiencies in the investigative process.

4. Pursue more indictments in ML cases involving foreign proceeds, making better use of circumstantial evidence concerning the predicate crimes committed abroad if such evidence is available.

5. Take steps to ensure the consistent application of provisional measures in all criminal proceedings for proceeds-generating crime. Ensure adequate measures to initiate financial investigations in a systematic manner in all proceedings involving assets derived from organised and other sorts of serious crimes within the scope of the Anti-Mafia Law.

6. Ensure that adequate efforts are made to identify criminal proceeds located abroad and take appropriate actions for their confiscation.

7. Ensure that authorities performing cross-border cash control measures systematically take into consideration ML/TF suspicions regardless of whether the amount of cash is above the declaration threshold.

8. Ensure that detection and investigation of all financing aspects of terrorism-related offences is carried out systematically for all terrorism-related offences, extending to all forms of TF regardless of its amount and including investigating the sources of travel or subsistence costs and support provided to families.

9. Take legislative steps to simplify the existing legal framework for executing MLA requests and introduce a case management system which also allows for the systemic prioritisation of MLA cases for all authorities involved. Encourage direct cooperation between counterpart judicial authorities.

10. Ensure that UN TFS on TF are implemented without delay. Propose persons or entities designated domestically to the respective UN Committee.

11. Conduct regularly awareness-raising trainings to the REs in relation to implementation of TFS, especially for NBFIs and DNFBPs.

12. Conduct an in-depth risk assessment of the NPO sector to identify NPOs that are at risk from the threat of TF abuse.

13. Ensure adequate supervisory arrangements and sufficient resources to apply a targeted risk – based supervision of the NPOs at higher risk for TF abuse. Provide guidance to NPOs regarding applied CFT measures and identified trends.
14. Establish a comprehensive legal and institutional framework, and consider developing and providing guidance on implementation of the TFS regarding the relevant UNSCRs on PF.
15. Ensure the implementation of high standards by supervisory authorities in licensing or other controls to prevent criminal infiltration of FIs and DNFBPs. This should include a comprehensive framework of screening applicants, indirect shareholders, and BOs, assessing criminal records beyond criminal convictions and current proceedings, and potential links to criminal associates, obtaining international cooperation whenever appropriate, and implementation of on-going mechanisms to check the integrity status of exiting licences.
16. Supervisory authorities (BoA, FSA) should ensure the full implementation of the newly introduced process of obtaining offsite data to enhance their understanding of the ML/TF risk profile of individual entities and use this data to enhance plans for onsite inspections, so that supervision becomes ML/TF risk-based. Primary DNFBP supervisors should implement their responsibilities for AML/CFT supervision. GDPML's resources for supervision should be significantly increased.
17. Review the sanctioning regime for breaches of AML/CFT requirements to ensure that a range of effective, proportionate and dissuasive sanctions is available to the supervisors.
18. Introduce mechanisms to ensure that basic information held by NBC and the DCoT is accurate and up to date and that accurate and up-to-date BO information is available to competent authorities on a timely basis.
19. Improve the accuracy of the database formed by the CORIP, and improve direct accessibility of information kept with the CORIP and the Tax authorities for the respective competent authorities. The LEAs and PO should consider providing regular feedback to the GDPML on its disseminations to assist the latter better support their operational needs. The GDPML should provide more regular feedback to REs on specific SAR filings to further improve the reporting behaviour and the quality of SARs.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings (High, Substantial, Moderate Low)

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>	<b>Moderate</b>	<b>Substantial</b>
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	<b>Moderate</b>	<b>Low</b>	

### Technical Compliance Ratings (C - compliant, LC - largely compliant, PC - partially compliant, NC - non compliant, N/A - not applicable)

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions - terrorism & terrorist financing
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>
R.7 - targeted financial sanctions - proliferation	R.8 - non-profit organisations	R.9 - financial institution secrecy laws	R.10 - Customer due diligence	R.11 - Record keeping	R.12 - Politically exposed persons
<b>NC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
R.13 - Correspondent banking	R.14 - Money or value transfer services	R.15 - New technologies	R.16 - Wire transfers	R.17 - Reliance on third parties	R.18 - Internal controls and foreign branches and subsidiaries
<b>LC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>N/A</b>	<b>PC</b>
R.19 - Higher-risk countries	R.20 - Reporting of suspicious transactions	R.21 - Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 - DNFBPs: Other measures	R.24 - Transparency & BO of legal persons
<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>
R.25 - Transparency & BO of legal arrangements	R.26 - Regulation and supervision of financial institutions	R.27 - Powers of supervision	R.28 - Regulation and supervision of DNFBPs	R.29 - Financial intelligence units	R.30 - Responsibilities of law enforcement and investigative authorities
<b>PC</b>	<b>PC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>C</b>
R.31 - Powers of law enforcement and investigative authorities	R.32 - Cash couriers	R.33 - Statistics	R.34 - Guidance and feedback	R.35 - Sanctions	R.36 - International instruments
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>
R.37 - Mutual legal assistance	R.38 - Mutual legal assistance: freezing and confiscation	R.39 - Extradition	R.40 - Other forms of international cooperation		
<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>		

## MUTUAL EVALUATION REPORT

### *Preface*

1. This report summarises the AML/CFT measures in place in Albania as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Albania's AML/CFT system, and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Albania, and information obtained by the assessment team during its on-site visit to Albania from 1 to 14 October 2017.
3. The evaluation was conducted by an assessment team consisting of:

#### Evaluators:

- Mr Lajos Korona, Public Prosecutor, Metropolitan Prosecutor's Office of Hungary (legal evaluator)
- Mr Edin Jahic, Chief of the Section for Combatting OC and Corruption, Ministry of Security of Bosnia and Herzegovina (legal evaluator)
- Ms Cvetelina Stoyanova, Head of Exchange of Information, Financial Intelligence Directorate, State Agency for National Security, Bulgaria (law enforcement evaluator).
- Ms Allison Smith, Principal, Project Integrity, Office of the Chief Compliance Officer, European Bank for Reconstruction and Development (financial evaluator)
- Mr David Parody, Consultant for HM Government of Gibraltar on AML/CFT and Financial Services Regulations (financial evaluator)

#### MONEYVAL Secretariat:

- Ms Veronika Mets, Administrator
- Ms Ani Melkonyan, Administrator
- Mr Alexey Samarin, Administrator
- Ms Anne van Es, Legal Assistant

4. The report was reviewed by the FATF Secretariat, Mr. Yehuda Shaffer, Deputy State Attorney, MoJ, Israel and Mr Daniel Johnson, Manager, Enforcement AML/CFT, Financial Supervision Commission, Isle of Man.

5. Albania previously underwent a MONEYVAL Mutual Evaluation in 2011, conducted by International Monetary Fund (IMF) on behalf of MONEYVAL according to the 2004 FATF Methodology. The 2011 evaluation and 2015 follow-up report have been published and are available at <https://www.coe.int/en/web/moneyval/jurisdictions/albania>. Albania's 2011 Mutual Evaluation concluded that the country was compliant with 3; largely compliant with 12; partially compliant with 30 and non-compliant with 3 Recommendations. Recommendation 34 ("Legal arrangements – beneficial owners") was assessed to be not applicable to Albania. Albania was placed under the regular follow-up process immediately after the adoption of its 4th round Mutual Evaluation Report (MER), and was moved to biennial updates in September 2015.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

6. The Republic of Albania is located in the western part of the Balkan Peninsula. It shares borders with Montenegro in the northwest, Kosovo\* in the northeast, “the former Yugoslav Republic of Macedonia” in the east and Greece in the south. In the west it also shares borders with Italy by sea. The length of the Albanian coastline is 476 km.

7. Albania has a territory of 28,748 square km and a population of 2,891,095 (as of 1 January 2017), with 858,262 people living in the capital city, Tirana. The country is divided into 12 counties and further subdivided into 61 municipalities. Albanians are the largest ethnic group, comprising 98% of the population. The national minorities are Greeks, Macedonians and Montenegrins. The main religions are Islam (57,12%), Roman Catholicism (10,11%) and Eastern Orthodoxy (6.8%)<sup>2</sup>.

8. Albania is a unitary parliamentary constitutional republic. The Parliament is the unicameral representative body with 140 deputies elected for a 4-year term. The executive power is exercised by the Prime Minister as head of government and the Council of Ministers. The President, head of state, exercises the duties of Parliament when it is not in session and appoints the Prime Minister. The judicial system is based on civil law principles.

9. Albania joined the Council of Europe in 1995 and is an official candidate for accession to the European Union (EU) since June 2014. The country is a member of numerous international organisations, including United Nations (UN), IMF, North Atlantic Treaty Organisation, International Organisation for Migration (IOC), World Health Organisation, Union for the Mediterranean, Organisation of Islamic Cooperation, Organisation for Security and Cooperation in Europe, World Trade Organisation and International Police.

### *ML/TF Risks and Scoping of Higher-Risk Issues*

#### *Overview of ML/TF Risks*

10. According to Albania’s 2015 NRA, the main predicate offences for ML in Albania are trafficking of narcotics, concealment of income/tax evasion, fraud, forgery, trafficking in human being and corruption<sup>3</sup>.

11. Corruption is one of the main proceeds-generating crimes in Albania<sup>4</sup>. According to Transparency International, Albania remains vulnerable to corruption because of political interference and a lack of independence at key oversight institutions, such as the Prosecutor’s Office, the High Court, the Central Election Commission and the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAACI)<sup>5</sup>. The Group of States against Corruption (GRECO) has urged Albania to step up corruption prevention efforts in respect of members of parliament, judges and prosecutors<sup>6</sup>.

12. The NRA assesses the ML risks in relation to each sector and identifies a broad range of internal and external ML threats. Two important internal threats indicated by the NRA are high level of informal economy and the use of cash. Albania’s NRA describes cross-border trafficking of narcotics and human beings and illicit cash inflows as the main external threats. The geographical position of Albania makes it an attractive transit country. The NRA mentions also crimes in the customs and tax area as internal and external threats to Albania. Serious crimes are often linked to organised groups that operate across borders.

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\* All references to Kosovo, whether to the territory, institutions or populations, in this text shall be understood in full compliance with UNSCR 1244 and without prejudice to the status of Kosovo. This footnote shall apply to all other mentions of Kosovo.

<sup>2</sup> These figures are from 2011 and provided by Albanian authorities.

<sup>3</sup> NRA, page 81.

<sup>4</sup> NRA, page 85.

<sup>5</sup> Transparency International, National Integrity System (NIS) assessment of Albania 2016.

<sup>6</sup> <https://www.coe.int/en/web/greco/-/greco-urges-albania-to-step-up-corruption-prevention-in-respect-of-members-of-parliament-judges-and-prosecutors>; <https://rm.coe.int/16806c1be3>.



13. The main allegations and cases for terrorism in Albania in the past were related to associations owned or controlled by foreigners, including designated persons, and characterised by domestic and cross-border financial flows. The NRA notes an increase of religious radicalism and cases of recruitment of FTFs in Albania in recent years but has an otherwise limited analysis of TF risks. There have been indictments in foreign fighting cases linked to the Syrian conflict since 2014 but no TF charges were brought.

#### *Country's risk assessment*

14. Albania completed its first NRA in 2012 and the second in 2015. Both were coordinated by the country's financial intelligence unit (FIU) and carried out by an IITWG using a self-designed methodology. The data used for the last assessment mainly covered the 2010-2014 period. According to the authorities, the main objective for updating the NRA was to obtain a better understanding of the risks. IO.1 describes the methodology and results of the risk assessment in further details.

#### *Scoping of Higher Risk Issues*

15. The assessment team identified the following areas for increased focus through an analysis of information and material provided by Albania, and by consulting various open sources:

16. Corruption. Albania continues to mark negative records of corruption<sup>7</sup>. According to the NRA, corruption is one of the main proceeds-generating crimes and one of the most frequently encountered predicate offences to ML in Albania. The assessment team sought to determine the extent to which corruption may hinder proper assessment of ML/TF risks and implementation of the AML/CFT framework. Given the perceived pervasiveness of corruption in the judiciary, it also explored the on-going efforts to strengthen the judicial system. Interviews with REs were focused on understanding of risks and mitigating measures related to politically exposed persons (PEPs).

17. Organised Crime. Organised criminal groups (OCGs) of individuals of Albanian ethnicity are engaged in a range of criminal activities in different countries, focused mainly on trafficking of drugs<sup>8</sup>, human trafficking and sexual exploitation and crimes against property<sup>9</sup>. During the on-site visit, the assessment team met with specialised law enforcement units to determine the effectiveness of measures to fight OC.

18. Legal system and operational issues. The NRA notes shortcomings in relation to the investigation of ML and associated predicate offences and the application of existing tools for seizure and confiscation of proceeds of crime. The assessment team discussed these shortcomings with LEAs, prosecutors and other relevant authorities. This included exploration of the strengths and weaknesses of the current confiscation regimes. Noting that both ML and TF risks for Albania have a significant cross-border element, the assessment team further paid particular attention to the use of MLA mechanisms and other forms of international cooperation. Moreover, assessors explored the effectiveness of inter-agency cooperation at the domestic level, and the role and powers granted to the GDPML regarding information exchange on predicate offences.

19. Informal economy and the use of cash. The assessment team considered the effectiveness of mitigation of ML risks emanating from the significant informal economy and widespread use of cash in several sectors. Special attention was paid to measures taken in recent years to channel real estate transactions through the formal sector and to combat unlicensed gambling and money transfer/exchange. Moreover, the assessment team paid particular attention to domestic cooperation between the customs authorities and border police, and to international cooperation with regard to physical transportation of cash and bearer negotiable instruments (BNIs).

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<sup>7</sup> Albania: Transparency International Reports on Large-Scale Corruption, <https://www.occrp.org/en/daily/5631-albania-transparency-international-reports-on-large-scale-corruption>.

<sup>8</sup> According to EUROPOL Albania remains the main source of herbal cannabis trafficked to the EU. The European Union (EU) Serious and Organised Crime Threat Assessment (SOCTA) 2017, page 35.

<sup>9</sup> NRA, page 97.

20. Terrorist financing. Given the limited TF analysis in the NRA, the assessment team paid particular attention to the level of awareness of TF risks among key authorities and the mitigating measures that are being taken. This was done mostly in the context of FTFs, but also through exploration of other cases. Particular attention was paid to the use by authorities of the domestic listing mechanisms and the implementation of international and domestic sanction lists by the private sector. Given the historical and geographical context, the assessment team also examined the level of awareness of authorities regarding current TF risks in the NPO sector and the adequacy of oversight measures.

21. Private sector controls. The assessment team explored the understanding of domestic and cross-border ML and TF risks by REs and their implementation of reporting obligations and other risk mitigating measures. Special attention was given to measures taken in high risk sectors (banks, games of chance, real estate, money transfer and exchange, notaries and auditors/accountants). The effects of outreach and inspections by supervisors on entities' awareness and mitigation were also considered. Prioritisation, resources, application of RBA and effectiveness of sanctions were found to be the main problems in supervision in the past and therefore again subjects of discussion. The assessment team also considered how the supervisory functions of the GDPML and other authorities are coordinated. The effectiveness of licensing and other controls by supervisors to prevent criminal infiltration of FIs and DNFBPs was another area of higher focus.

### *Materiality*

22. Albania is an upper-middle income economy with a Gross Domestic Product (GDP) of USD 11.927 billion and a GDP per capita of USD 4.180 (2016 World Bank estimates). Its official currency is the ALL. The economy is driven by the service sector (63.5%), agriculture (21.6%), and industry (14.9%). The top export destinations are Italy, Serbia, Greece, Germany and Malta, whereas the main import countries are Italy, China, Greece, Germany and Turkey. The total size of the financial sector is estimated at USD 12,61 billion.

23. The banking sector is comprised of 16 banks. 12 banks are established by private foreign capital, 2 banks by private domestic and private foreign capital, 1 bank by private domestic capital and 1 bank's shares are held by private domestic mixed with private and public foreign capital. Foreign capital continues to dominate the capital structure. At the end of 2015, it accounted for around 89.05% of paid-in capital, down by around 0.45 percentage points from the end of 2014. Notably in this regard is that some 60% of the Albanian population (over 15 years of age) does not have a bank account (according to 2014 data)<sup>10</sup>.

24. The Albanian financial system further consist of 28 NBFIs, 417 foreign exchange bureaus, 13 savings and loans associations (SLAs) and 2 unions of SLAs.

25. The size of the informal economy of Albania is significant. Although government sources indicate that the size of the informal economy is around 10-15%, other estimates reach 30-45% of GDP over the period 1998-2013<sup>11</sup>.

### *Structural Elements*

26. The key structural elements necessary for an effective AML/CFT system are generally present in Albania. There is political commitment to address AML/CFT issues and the necessary laws and institutions are generally in place. However, the negative influence of corruption on political and institutional stability, the rule of law and judiciary independence hinders the implementation of an effective AML/CFT framework.

27. The 2016 Corruption Perception Index of Transparency International ranked Albania 83th out of 176 countries<sup>12</sup> while in 2013 the country was ranked 116 out of 175 countries. In response to the

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<sup>10</sup> <http://datatopics.worldbank.org/financialinclusion/country/albania>

<sup>11</sup> B. Trebicka, 2014, 'The size of Underground Economy in Albania', *Academic Journal of Interdisciplinary Studies*, 3(4), Rome: MCSER Publishing

<sup>12</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)

2013 Global Corruption Barometer, 40% of Albanian respondents believe that the level of corruption has “increased a lot” over the past two years<sup>13</sup>. The most recent Global Corruption Barometer in 2016 shows that the anti-corruption performance of the government and the country’s corruption risks are rated by citizens as of medium risk.

28. The most corrupted institutions according to the respondents in 2013 were the judiciary (81%), medical and health services (80%), political parties (72%), education systems (70%) and parliament/legislature (66%)<sup>14</sup>. The 2013 Global Corruption Barometer also indicated that the judiciary is perceived to be the most corrupt (81% of respondents)<sup>15</sup>. Corruption in the judiciary adversely affects the functioning of the justice system and undermines public confidence in the rule of law<sup>16</sup>. Albania has a legal anti-corruption framework in place but it is not yet implemented in a proper manner. A major judicial reform is currently going on in the country, which seeks to strengthen the legal and institutional framework against corruption.

### *Background and other Contextual Factors*

#### *AML/CFT strategy*

29. The Albanian authorities have a number of tools to support AML/CFT policy making. Under the AML/CFT Law, the CCFML is responsible for planning the directions of the general state policy in the area. It consists of high-level participants from most of the relevant stakeholder authorities and meets at least once a year. The CCFML is assisted by an IITWG steered by the GDPML that meets once every few months.

30. The understanding of ML/TF risks flowing from the NRA has not resulted in the formulation of written AML/CFT action plans or strategic considerations. However, authorities have mitigated some identified risks with the help of various broader inter-sectoral strategies against crime.

31. According to the authorities, the current abundance of strategies and action plans in the field of financial and OC do not necessitate a separate AML/CFT strategy. Most notably, a National Strategic Document (NSD) for the Investigation of Financial Crimes was in place for the period 2009-2015. An IITWG examined the implementation of this document through biannual meetings. Although this strategy has formally expired, the IITWG reportedly has continued to follow its implementation. From the strategies that are currently in place, it is clear that the fight against OC and corruption is a major policy priority in Albania. More details on the strategies are described under IO.1.

#### *Legal framework*

32. The AML/CFT framework is principally governed by the AML/CFT Law. The AML/CFT law underwent various amendments in June 2012 to address deficiencies identified in the previous evaluation round with regard to CDD and reporting obligations. Another amending law in April 2017 introduced some further minor changes. Moreover, authorities have adopted or amended various pieces of bylaws and guidance since the previous round to facilitate the implementation of the AML/CFT Law. This includes Minister of Finance Instructions No. 28 and 29 on reporting methods and procedures for FIs and DNFBPs respectively (adopted in 2012); and BoA Regulation No. 44 (amended in 2013) and FSA Regulation No. 58 (adopted in 2015) on AML/CFT obligations for RES under supervision of the BoA and the FSA respectively.

33. ML is criminalised under Art. 287 of the Criminal Code (CC). In 2012, Albania passed amendments to the CC to resolve the technical deficiencies of the ML offence identified in the 4<sup>th</sup> round MER. The categories of predicate offences have been covered and the physical elements of ML have been brought largely in line with the Vienna and Palermo Conventions. FT is criminalised under

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<sup>13</sup> <https://www.transparency.org/gcb2013/country?country=albania>

<sup>14</sup> <https://www.transparency.org/gcb2013/country?country=albania>

<sup>15</sup> GRECO 4<sup>th</sup> Round Evaluation Report of Albania, p. 7; <https://www.transparency.org/gcb2013/country?country=albania>

<sup>16</sup> Group of States against Corruption (GRECO), 4<sup>th</sup> Evaluation Round Report of Albania, page 4; Transparency International, Corruption Perceptions Index 2016; The World Justice Project (WJP) Rule of Law Index 2015. The rank went down for 9 positions compared to 2015.

Art. 230 (a) of the CC. Legal amendments were made to the CC in 2014 to expand the criminalisation of foreign fighting and related acts such as recruitment and financing.

34. A new Law on measures against terrorism financing (No. 157) was passed on 10 October 2013, providing a wide range of legal mechanisms to implement the UN sanctions regime, including through domestic listing.

#### *Institutional framework*

35. The main ministries and authorities responsible for formulating and implementing the government's AML/CFT policies are the following:

36. The Coordination Committee for the Fight against Money Laundering (CCFML) is charged with the planning and general direction of AML/CFT policy and meets at least once a year. The CCFML members are the Prime Minister, acting as chair, the Minister of Finance, the Minister of Foreign Affairs, the Minister of Defence, the Minister of the Interior, the Minister of Justice, the General Prosecutor, the Governor of the Bank of Albania, the Director of the State Intelligence Service and the General Inspector of the High Inspectorate of Declaration and Audit of Assets and Conflict of Interest. The work of the CCFML is assisted by an IITWG with senior operational representation, which meets approximately 4 to 6 times a year.

37. The General Directorate for the Prevention of Money Laundering (GDPML) serves as the FIU of Albania. The GDPML operates at national level and is entrusted with the collection, analysis and distribution to the LEAs of information on possible ML/TF activity. The GDPML is the main authority for AML/CFT policy-making and implementation in practice. The General Director of the GDPML acts as counsellor to the meetings of the high-level CCFML and chair of the operational IITWG. The GDPML also has power to supervise the implementation of the AML/CFT Law for all RES.

38. The Albanian State Police (ASP) is responsible for fighting crime and for ensuring public order and the integrity of the borders. The ASP has a Directorate for Investigation of Economic and Financial Crime (DIEFC) as part of the Department for Investigating Organised Crime and Serious Crime. The DIEFC is organised on the central and local level. The central level has 4 sectors: Investigation of Money Laundering; Investigation of Corruption; Investigation of Criminal Assets; and Investigation of other Economic and Financial Crimes. At the local level, 7 out of 12 local DIEFC sectors have exclusive competence to investigate ML offences as well as predicate offences associated to ML. This system has recently replaced the former structure consisting of 8 regionally organised Joint Investigative Units for the investigation of corruption and economic and financial crime. The Sector for Investigation of Money Laundering is also responsible for the investigation of terrorist financing, whereas all other terrorist-related criminal offences are investigated by the ASP's separate Counter-Terrorism Department. The ASP's Department of Border and Migration (Border Police) has powers for preliminary investigation of suspected cases of non-declaration of cross-border cash transportation, and cooperates with the customs authorities in this field.

39. The General Prosecutor's Office (GPO) is the authority that exercises criminal prosecution and brings the charge in trials in the name of the state. Criminal investigations in ML are formally initiated (registered) and then led by the competent prosecutor of the territorially competent First Instance Prosecution Office. In case of ML related to corruption or OC, the criminal investigations are led by a recently established Special Prosecution Office (the successor of the Serious Crime Prosecution Office). Until August 2017, prosecution of all terrorism-related offences including TF fell under the jurisdiction of the Serious Crimes Prosecution Office. Pursuant to the recent restructuring, terrorist and TF investigations (unless committed by a terrorist organisation) will be dealt with by the district prosecution offices.

40. The General Directorate of Customs (GDC) cooperates with other law enforcement structures and sends reports to the prosecutor's offices for criminal offences identified in the customs area. The Sector for the Prevention of Money Laundering in the GDC's Anti-Trafficking Directorate is a central unit that gathers, analyses and forwards information on cross-border cash and BNI transportation received from customs branches. Based on the AML/CFT Law, the customs authorities must report to

the GDPML any suspicion, information or data concerning ML or TF as regards the activities under their jurisdiction.

41. The General Directorate of Taxation (GDT) is vested with the authority to apply tax legislation in Albania. Its Tax Investigation Directorate targets crimes in the economic field, including ML. A special ML prevention unit was recently created within the investigative directorate. Since 2014, the GDT also has specific legal obligations for the supervision of NPOs. Based on the AML/CFT Law, the tax authorities must report to the GDPML any suspicion, information or data concerning ML or TF as regards the activities under their jurisdiction.

42. The Agency for the Administration of Seized and Confiscated Assets (AASCA) administers seized and confiscated assets under the Law on prevention and striking at OC and trafficking through preventive measures against assets (Anti-Mafia Law; civil confiscation regime) and the Law on Measures Against Financing of Terrorism (targeted financial sanctions). The Agency performs its activity in cooperation with other relevant institutions including courts, prosecutor's offices, banks, local government and immovable property registration offices.

43. The High Inspectorate of Declaration and Audit of Assets and Conflict of Interest (HIDAACI) was established in 2003 as a central independent institution under parliamentary control. HIDAACI's mission is to fight corruption and economic crime through declaration and control of assets of elected and public officials, and prevention of conflict of interests in the exercise of their public functions. HIDAACI also has authority to investigate suspected acts of corruption reported by whistle-blowers. It exchanges information with the GDPML in case of suspected ML activities by those subject to its scrutiny, and submits criminal referrals to the Prosecution Office.

44. The Ministry of Justice (MoJ) is the competent authority for drafting and following legislation and policies related to the area of justice (such as the judiciary, enforcement of judicial decisions and international judicial cooperation). Recently, the MoJ has also been entrusted with the role of national coordinator of anti-corruption policies. Through its structure as a Central Authority for MLA, the MoJ ensures the necessary international cooperation in criminal matters between the Prosecutor's Office, International Criminal Police Organisation (INTERPOL) and foreign judicial authorities. The MoJ is also the supervisor and licensing authority for notaries public.

45. The State Intelligence Service (SIS) is a state authority of civilian intelligence without military or law enforcement powers. It collects information domestically and from abroad for the purpose of preserving the national security, integrity, independence and constitutional order. This includes information on terrorism, narcotics, WMD, environment crime and OC.

46. The Bank of Albania (BoA) is the country's central bank and the regulator, licensor and supervisor of banks and a range of NBFIs. This includes MVTS, FEO, payment institutions including e-money, microcredit institutions, lending, leasing and factoring institutions, SLAs and their unions. Monitoring and ensuring compliance with AML/CFT requirements forms part of the BoA's supervisory functions.

47. The Financial Supervisory Authority (FSA) is an independent public institution responsible for the regulation, licensing and supervision of entities in the fields of insurance, securities, and voluntary pension funds (VPFs). This includes supervision of entities' AML/CFT compliance.

48. The Gambling Supervision Authority (GSA), subordinate to the Minister of Finance, is responsible for the control and supervision of games of chance in Albania.

49. The Ministry of Foreign Affairs (MFA) is the competent authority in Albania for implementing the government policy in foreign affairs. In the field of AML/CFT, the MFA is responsible for proposing persons or entities to the relevant UN Security Committee for designation, and internal circulation of UNSC Resolutions.

50. The Ministry of Finance (MoF) is responsible for formulating and implementing financial policies. Its primary functions related to AML/CFT include: proposing to the Council of Ministers amendments to the list of designated persons and entities; ordering the temporary freezing of funds

or other property of persons and entities before the Council of Ministers' decision; ordering the seizure of funds and other property of persons and entities designated by the Council of Ministers; ordering the access to seized funds and the revocation of the seizure.

### *Financial sector and DNFBPs*

#### *Financial sector*

51. The financial sector entities licenced and supervised by the BoA include 16 banks, 28 NBFIs, including MVTS, 13 SLA, 2 Saving and Loan Association (SLA) unions, and 417 FEOs. The number of banks has been stable over the last decade, while the number of NBFIs has increased in the last few years (it stood at 17 at the time of the 4<sup>th</sup> round on-site visit). The number of SLAs decreased dramatically in 2016 due to reorganisation through merger which resulted in absorption of 98 SLAs by other SLAs. In 2016, the new Law on SLAs and their Unions, which allowed this transformation, entered into force.

52. The Albanian banking sector is dominated by global banking groups with EU-based parents (13 out of 16 banks). The other 3 banks are domestic. Only one domestic bank has a foreign subsidiary. The largest part of foreign capital in the Albanian banking system is represented by Greece, Turkey, Austria and France. Banks hold over 90% of total financial system assets, equivalent to about 90% of GDP since 2012<sup>17</sup>. Bank branches and agencies are concentrated in Tirana (40%). Banks' customers are predominantly natural persons with the share of non-residents comprising less than 1% of the customer base. LEs comprise approximately 5% of customer base<sup>18</sup>. SLAs and micro-credit institutions play an important role in the delivery of loans to rural areas. The customer base and informal economy found in these areas increase the ML/TF risks of this business model. While some entities only lend to natural persons, others also lend to businesses and often the administrator of the business will be either a guarantor or a co-borrower. The average size of the loan to microfinance customer is approximately 1500 EUR with a lower limit of 375 EUR and upper limit of 4500 EUR.

53. MVTS primarily cater to the Albanian diaspora remitting money to family in Albania. Many of the FEOs in the country also operate as an agent for the 2 major MVTS companies in the market.

54. The insurance, securities and voluntary pensions and investments sectors are licenced and supervised by the FSA. The insurance sector includes 3 life insurance companies, 31 life insurance intermediaries, 1 reinsurance company. The voluntary pension and investments market consists of 2 management companies of collective investment undertakings (CIUs) and pension funds, 1 management company of pension funds, 2 depositories for assets of CIUs and pension funds, 3 depositories of VPFs. The securities market includes 17 securities brokerage companies, 21 securities individual brokers, 2 investment advisory companies in securities, 3 individual investment advisors, 4 tied agents, 9 securities custodies, 1 securities register, and 1 securities stock exchange market.

55. Due to the various activities undertaken by the banking sector in Albania, some banks are also licenced by the FSA for custody, investment advisory and brokerage services. There are 9 banks licenced by the FSA to operate as custodians for government securities and 5 banks as a depository for investments and pension fund. There are 17 brokerage companies in total, ten of them are banks licenced for brokerage services.

56. The Albanian securities market is underdeveloped. As Albania does not have a functioning stock exchange, many of the firms conducting brokerage services are either limited to Albanian government securities or they are tied agents to another brokerage firm outside of Albania. The FSA recently granted a licence for a new stock exchange in Albania, which was not yet operational at the time of the on-site visit. For the first year of its functioning, it will only be allowed to trade in government securities, to test its infrastructure.

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<sup>17</sup> IMF – Albania financial system stability assessment.

<sup>18</sup> This statistic was calculated based on the data for July 2014 given in the NRA (p. 35).

57. The insurance sector is not highly-developed and oriented towards non-life insurance, which brought about 92.46 % of the total volume of gross written premiums in this market. The majority of life insurance products are obligatory life insurances (e.g. related to loans, group insurance for employees). The real life insurance has a low market share; authorities indicated that it is equal to 7.23% of the whole insurance market.

Table 1: Overview of financial institutions in Albania:

Name of the entity	Number
Banks	16
Foreign exchange office	417
Non-Bank Financial Institution (incl. two MVTs)	28
SLAs	13
SLAs Unions	2
Securities brokerage company	17
Securities individual brokers	21
Investment advisory company in securities	2
Individual investment advisor	3
Tied agent (for foreign investment company)	4
Securities stock exchange	1
Life Insurance companies	3
Life insurance intermediaries	31
Reinsurance companies	1
Investment and Pension Fund Management Companies	3
Depository for assets of Investment and Pension Funds	5

#### *DNFBPs*

58. All DNFBPs covered by the FATF standard are REs under the AML/CFT Law. In addition to the standard, construction companies, travel agencies, arts dealers and all companies offering games of chance are REs. There is no established trust and company service provider (TCSP) business in Albania although lawyers, accountants and notaries provide company services to some extent (see further below).

59. There is only 1 licenced casino in Albania, located in the centre of Tirana. There are 18 other companies that offer games of chance through a high number of operators. All of these entities are supervised by the GSA.

60. Notaries play a key role in the AML/CFT preventive regime for the real estate sector. The legislation obliges every transaction of immovable property to pass through the notary. Notaries are licenced and supervised by MoJ and are organised under the National Chamber of Notaries (NCN).

61. The GDPML estimates that real estate agents are involved in only 8% of immovable property transactions but observes that their role in the market is increasing. Statistics provided by authorities (see below) indicate there to be 150 real estate agents. Agents met on-site stated however that there are approximately 460 registered real estate businesses in the NBC, which according to the authorities includes construction companies that do themselves the brokerage for their buildings.

62. Lawyers are organised and licenced by the National Chamber of Advocacy (NCA). Usually lawyers work on individual basis but some of them unite in companies or partnerships. The GDPML has observed that it is not typical for lawyers to assist clients with transactions covered by the FATF standards (although gaps in engagement with this sector may have limited this assessment to some extent, see IO.1). Lawyers met on-site confirmed that they assist in company formation, although the number of requests for such work depends on economic fluctuations and there are factors limiting entry of foreigners into the Albanian market (e.g. a fairly high minimum share capital; banks not willing to open a bank account for a company through the power of attorney).

63. The accounting sector is made up of large international firms, smaller accounting offices and independent professionals. The representatives of entities met on-site confirmed that they provide a wide range of services including auditing, accounting, book-keeping and tax consultation. The large international firms also conduct activities related to company formation. Accountants also assist in share capital transactions for companies. Since changes to the relevant sectoral law were made, the licensing process which used to be shared between institutions now falls under exclusive responsibility of the Public Oversight Board (POB) of auditors.

64. Dealers in precious metals and stones (DPMS) are mainly organised as jewellery stores. The largest jewellery shop in the market also purchases source materials, which are used to produce and sell its end products. At the time of the 2015 NRA, there was no distinguished economic code in the NBC and GDT for jewellery stores and therefore no certainty on the number of active businesses. Data from open sources analysed for the NRA suggested there to be 114 such businesses in 2014. The NBC and Tax IT-system for registered businesses has improved since 2016, and there is now a dedicated code, indicating 123 jewellery stores in existence by the end of 2017. Furthermore, there are 10 entities producing jewellery and 14 foundries of non-ferrous metals. There is a prohibition in place for all tax subjects to perform transactions in cash above 150,000 ALL (approx. 1,100 EUR). Thus, technically the business conducted by DPMS in Albania does not fall under the FATF standards<sup>19</sup>. The implementation of this prohibition by DPMS is discussed under 10.4 and its enforcement under 10.3.

Table 2: Overview of DNFBPs in Albania

Name of the entity	Number
Casino and other gambling companies	19
Notaries	475
Lawyers	1912
Accountants and auditors	1020
Dealers in precious metals and stones	147
Real estate agents	150

#### *Preventive measures*

65. The AML/CFT Law defines the measures and procedures for REs to detect and prevent ML and TF. The Law was adopted in 2008 and has ever since been amended various times to improve alignment with international standards. This occurred for the last time in April 2017. The preventative framework in Albania is now broadly in line with requirements of the FATF standards. However, some technical deficiencies remain, as outlined in the TC Annex.

66. The AML/CFT Law outlines categories of customers/transactions for which enhanced due diligence (EDD) is mandatory. It also instructs REs to identify other categories of high risk for which EDD must be applied. The law does not provide for simplified due diligence, and third party reliance is prohibited.

#### *Legal persons and arrangements*

67. The types of legal persons that can be established in Albania are public and private legal persons. Public legal persons are state institutions, registered if they follow economic purposes (Art. 25 of the Civil Code). Private legal persons are companies, associations and foundations, simple companies (partnerships) (Art. 26 and Art. 1074-1112 of the Civil Code), centres (Art. 11, Law No 8788 On NPOs), SLAs (Law No. 52/2016 On SLAs and their Unions), mutual cooperation companies (partnerships) (Law No. 8088, dated 21 March 1996 On Mutual Partnerships), agricultural cooperative companies (Law No.38/2012 Law on Agricultural Cooperative Companies) and other entities of private character.

<sup>19</sup> The FATF standards for DNFBPs apply to DPMS who engage in cash transactions with customers equal to or above EUR 15,000 (see FATF Recommendations and Methodology, R.22, R.23).



68. Private legal persons are obliged to be registered either with the NBC or the DCoT. There are no legal provisions for the filing of BO data at the NBC. The authorities advised that for more than 99% of legal persons registered at the NBC, shareholders are natural persons.

69. The NBC has no responsibility for the verification and validation of documents submitted to it. This responsibility falls upon the legal entity itself which is required to submit changes within 30 days of its occurrence with penalties accruing for late submission. All legal entity records are available online via the NBC portal.

Table 3: Overview of legal persons in Albania

Legal Form	Number
Limited liability company	48665
Joint stock company	1621
Branch of a foreign company	718
Representative office	187
Partnership	45
Limited partnership company	115
Society of agricultural cooperation	82
Savings and credit companies	143
Mutual cooperation society	15
General partnership company	390
Tax representatives	79

70. The non-profit sector in Albania is composed of foundations, centres and associations. The NPOs are registered by the DCoT and there is no possibility of online registration. DCoT does not have any legal obligation to verify the information filed. The number of NPOs registered in Albania is estimated to be approximately 10,000 but this is not a complete figure as not all NPOs register themselves. However, according to Albanian tax authorities approximately 2,000 of registered NPOs are active. As of 2017 associations constitute the considerable part of the registered NPO sector, followed by centres and foundations.

71. Albania is not a signatory to the Hague Convention on Laws Applicable to Trusts and their Recognition. There is no law governing the formation and operation of trusts in Albania, but foreign legal arrangements are not prohibited from being registered as shareholders or owners of assets.

#### *Supervisory arrangements*

72. Licensing, regulation and supervision of FIs and DNFBPs is undertaken by a number of different authorities. The GDPML has a general authority to supervise the implementation of the AML/CFT Law amongst all REs. With the exception of real estate agents, all REs know another supervisor than the GDPML that also has AML/CFT supervisory responsibilities under the laws in force. DPMS formally fall under the supervision of the BoA (under Decision No. 343 dated 8.4.2009 'On the reporting methods and procedures of licensing and/or supervisory authorities'), although BoA has not assumed this authority in practice.

Table 4: Supervision of FIs and DNFBPs

Name of the sector/services	Licensing requirements	AML/CFT Supervisor	Relevant legislation
<i>FIs</i>			
Banks	Licensing	BoA and GDPML	AML/CFT Law Law on Banks BoA Regulation No. 14 on the licence and the exercise of banking activity of banks

			and branches of foreign banks in the Republic of Albania BoA Regulation No. 44 on prevention of money laundering and terrorist financing
Lending, leasing and factoring	Licensing	BoA and GDPML	AML/CFT Law Law on Banks Law on commercial companies BoA Regulation No. 1 on licensing and activity of NBFIs BoA Regulation No. 2 on risk management in the activity of NBFIs BoA Regulation No. 44
Payment institutions	Licensing	BoA and GDPML	AML/CFT Law Law on Banks Law on Commercial companies BoA Regulation No. 1 BoA Regulation No. 2 BoA Regulation No. 44
MVTS (including by Post office)	Licensing	BoA and GDPML	AML/CFT Law Law on Banks Law on Commercial companies BoA Regulation No. 1 BoA Regulation No. 2 BoA Regulation No. 44
FEOs	Licensing	BoA and GDPML	AML/CFT Law Law on Banks Law on Commercial companies BoA Regulation No. 31 on the licencing, organisation, activity and supervision of foreign exchange bureaus BoA Regulation No. 44
E-money institutions	Licensing	BoA and GDPML	AML/CFT Law Law on Banks Law on Commercial companies BoA Regulation No. 1 BoA Regulation No. 2 BoA Regulation No. 44
SLA and their unions	Licensing	BoA and GDPML	AML/CFT Law Law on savings and loans associations and their Unions BoA Regulation No. 104 on licencing and activity of SLAs and their Unions BoA Regulation No. 44
Insurance companies	Licensing	FSA and GDPML	AML/CFT Law Law on the Activity of Insurance and Reinsurance FSA Regulation No. 48 on the licence for carrying out brokerage activity in insurance

			FSA Regulation No. 79 on approval/licence to carry out the insurance agent activity FSA Regulation No. 1 on the procedures and method of submitting information and documentation regarding the capital source for insurance company shareholders FSA Regulation No. 137 on the procedure, deadlines and necessary additional documentation for the approval of appointment and reappointment of the member of the board of directors/supervisor / administrator / member of the board of directors of the insurance company
CIUs (investment funds and management companies)	Licensing	FSA and GDPML	AML/CFT Law Law on Securities Law on CIUs
Securities brokerage companies	Licensing	FSA and GDPML	AML/CFT Law Law on Securities Law on CIUs FSA Regulation No. 165 on the licensing of the brokerage/ intermediary companies, the broker and the investment advisor
Investment advisory company in securities	Licensing	FSA and GDPML (and BoA in case it is performed by a bank)	AML/CFT Law Law on Securities FSA Regulation No. 165
Custodian services	Licensing	FSA and GDPML	AML/CFT Law Law on CIUs Law on Securities
VPFs and management companies	Licensing	FSA and GDPML	AML/CFT Law Law on VPFs FSA Regulation No. 113 on the examination of the managers of the pension fund management company
<i>DNFBPs</i>			
Gambling	Licensing	GSA and GDPML	AML/CFT Law Law on Gambling
Notaries	Licensing	MoJ and GDPML	AML/CFT Law Law on Notaries
Lawyers	Licensing	NCA and GDPML	AML/CFT Law Law on the profession of advocate
Accountants	Licensing	POB and GDPML	AML/CFT Law Law on Statutory audit, organisation of statutory audit profession and certified

			accountants.
Real estate agents	No licencing requirement  Registration as business in NBC	GDPML	AML/CFT Law
DPMS	No licence requirements (except for banks which may be licenced for trading bullion under the Law on banks)  For a company to trade semi-precious and precious minerals, a trading authorisation is required (under the Law for the mining sector).	BoA (only formally; no supervision exercised in practice) and GDPML	AML/CFT Law

### *International Cooperation*

73. GDPML actively exchanges information on ML, associated predicate offences and TF with foreign counterparts, both spontaneously and upon request, although there are no written rules for the prioritisation of the requests and spontaneous disseminations.

74. There are no undue limitations for the provision of international cooperation. According to the authorities, requests are executed within 30 days, unless indicated as urgent. Secure channels are used and measures to protect the information are in place. The GDPML is a member of the Egmont Group of Financial Intelligence Units and exchanges information through the Egmont Secure Web (ESW).

75. The LEAs actively exchange information with their foreign counterparts, primarily via INTERPOL, European Police Office (EUROPOL) and Camden Assets Recovery Interagency Network (CARIN) channels and a number of liaison officers. The exchange of information follows the rules of the respective organisations, including the protection of the information. The number of requests sent and received by the ASP related to ML is generally high, while the ASP reported no requests related to TF. The regime for sending and receiving requests for MLA, in order to collect evidence for use in trials, has some deficiencies impacting on its effectiveness (see IO.2).

76. The BoA and FSA seek information from foreign supervisory authorities of central banks when approving applications for managerial roles and change of controlling interests in supervised entities. The FSA has obtained other forms of international cooperation relating to guidance on international best practices including when transitioning to a RBA for supervision (see IO.2).

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### *Key Findings*

1. Albania has demonstrated a reasonably good understanding of its overarching ML risks and of the risks in the regulated sectors in the formal economy. There are some shortcomings in the country's assessment and documentation of ML risks, for example in relation to potential of abuse of legal persons (NPOs and companies). Furthermore, some sector-specific risks have not been subject to a sufficiently detailed analysis, which may be due to limited engagement with these sectors.

2. The authorities have identified ML risks outside the regulated sectors, which, in the evaluators' view, could outweigh the risks addressed in the NRA. More specifically, the size and nature of the informal economy, including the extensive use of cash in the society, and wide-spread corruption present in Albania may lead to failure to identify and investigate major ML cases and may ultimately obfuscate the assessment of some of the ML threats present in the jurisdiction. The country is well aware of this, yet no discernible efforts have been made to analyse the impacts of these threats on ML risks (e.g. how much ML occurs in the informal economy or how corrupt practices distorts the identification of criminal proceeds and instrumentalities).

3. Some initiatives of varied depth have been undertaken in recent years to assess TF risks in separate areas (e.g. analysis of NPO sector; analysis of money transfers). However, no comprehensive TF risk assessment has been undertaken nor have all regulated sectors been assessed for TF vulnerabilities. As a consequence, no specific TF mitigation policy is identified. To some extent, this is made up for in an in-depth understanding of terrorist threats, including those posed by foreign fighters, and mitigating actions by the Albanian intelligence and law enforcement authorities.

4. The understanding of ML/TF risks has not resulted in the formulation of written AML/CFT action plans or strategic considerations. However, authorities have mitigated some identified risks with the help of various broader inter-sectoral strategies against crime. These are targeted at major predicate offences and their ML risks such as drug criminality and corruption and address the factors that contribute to identified ML/TF risks to a certain extent. There are important structures in place to coordinate policies that mitigate ML/TF risks at an operational level. However, the assessment team has some concerns over mechanisms to ensure accountability for effective, timely and coordinated delivery of expected results by all relevant authorities.

5. There are examples of important initiatives that have been undertaken by competent authorities in recent years to address identified risks (for example, coordinated actions against unlicensed gambling, expanding criminalisation of financing of foreign fighting, raising awareness of notaries as gatekeepers for the real estate sector, and setting up strengthened oversight of auditors). However, there are areas where the objectives and activities of authorities are not yet aligned with ML/TF risks.

6. There is a major judicial reform currently going on with the goal to improve the functioning and independence of the prosecutorial and judiciary authorities. Successful implementation of this reform will be of crucial importance to ensure that the structural elements are in place to fight ML and TF.

7. Cooperation at operational level and information exchange amongst the authorities is enabled through various formal and informal mechanisms. It is generally positive where the GDPML is involved, although there are some areas which require further improvement, such as coordination of follow-up actions by various authorities exchanging potential ML/TF notifications and coordination of the sanctions regime by supervisors.

8. The banking sector and the MVTs sector have a strong awareness of national risks. The level of awareness among notaries about ML risks in the real estate sector and their gatekeeper role therein, has significantly improved in recent years. Risk understanding among other FIs and DNFBPs varied.

#### *Recommended Actions*

1. The analysis of ML and TF risks should be enhanced by way of:

(a) Ensuring the comprehensive assessment of TF risks, including in-depth analysis of the TF aspect in terrorism or radicalisation cases taking place in Albania, threats of abuse of NPOs and sector-specific and product-specific TF vulnerabilities

(b) Assessing the impact that:

(i) corrupt practices;

(ii) the penetration of OC into administrative and judicial functions; and

(iii) the informal economy,

each has on the ability to properly identify and mitigate ML and TF risks present in the whole of Albanian economy.

(c) Conducting of a specific assessment of the risks posed by legal persons.

(d) Enhancing the assessment of sector-specific and product-specific ML vulnerabilities, including assessing new and emerging products, technologies and services.

2. Take coordinated measures at the national level to tackle ML/TF risks holistically and to ensure that all relevant authorities are held accountable to implement mitigation activities in a timely and effective manner. Some important particular areas that need stronger coordination of actions and dedicated resources are investigation and prosecution of corruption-related ML, risk-sensitive oversight of NPOs, and full implementation of the RBA to AML/CFT supervision of FIs and DNFBPs by all relevant authorities.

3. Add to the existing measures targeting the informal economy (controls on cash flows; reduction of the use of cash; promotion of financial inclusion). This should include urgent measures to implement stronger controls of cross-border cash movements, and to ensure complete and accurate registration of ownership details of immovable properties.

77. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

#### *Immediate Outcome 1 (Risk, Policy and Coordination)*

##### *Country's understanding of its ML/TF risks*

78. Albania has demonstrated a reasonably good understanding of its overarching ML/TF risks and of the risks in the regulated sectors. This understanding comes from information gathered in the authorities' operational activities, strategic and sectoral analyses, information exchanged in platforms for AML/CFT coordination and cooperation, participation in international fora and regional activities (including in the context of the EU accession process), outreach on typologies prepared for the private sector, and the comprehensive NRA projects of 2012 (first NRA) and 2015 (second and current NRA – serving as the reference for the findings below). While conducting its first NRA in 2012, Albanian authorities also participated in a 16-month Technical Assistance regional project funded by IMF to carry out a preliminary NRA using an abridged version of the IMF's ML/TF NRA methodology. Albania is in the preliminary stages of preparing the new round of its NRA.

79. The NRA process was led by the GDPML with involvement of a number of other public sector authorities in an ad-hoc WG. Direct private sector input into the NRA was not evidenced, although input from supervisory authorities (e.g. experience of inspections of REs) was taken into account. The NRA provides an analysis of risk-mitigating factors, risk-increasing factors (vulnerabilities), threats and consequences of use of each financial and DNFBP sector. It also analyses overall threats and vulnerabilities using data on criminal offences, activities of public sector bodies (e.g. border controls, police actions, international cooperation, prosecutions, confiscations), and open sources. The methodology used for the NRA was self-elaborated.

80. The Albanian authorities met on-site generally agree with the NRA conclusions as far as the main proceeds-generating crimes posing a ML threat and the vulnerabilities of the sectors are concerned. However, regarding identified weaknesses in the investigative and prosecutorial phases, it appears that the NRA articulates mostly GDPML's view, with which the GPO disagrees in part.

81. The authorities generally consider the gambling and real estate as the most vulnerable sectors to ML. For gambling, the risk is believed to relate primarily to ownership and control of the entities rather than to customer activity (ML by customers through gambling, see further below). For the real estate sector, problems arising from the incomplete first title registration and, in many cases, the absence of reliable evidence of ownership over substantial portions of the market, particularly new buildings and in rural areas<sup>20</sup>, presents a vulnerability that could permit laundering.

82. The threat of laundering money through banks is considered to be high although the sector is applying increasingly robust controls. MVTs and FEOs are also considered to pose significant risks. Other NBFIs are considered to pose lesser risks mainly due to the low amounts of funds that they lend. Notaries are considered to be of high vulnerability due to their gatekeeper role in real estate transactions and close links with customers, although thanks to authorities' outreach in recent years notaries have become more vigilant to risks and appear to have improved the implementation of mitigating measures. Auditors, lawyers and accountants are seen as high to medium vulnerable through their gatekeepers' role for commercial activities of legal persons and limited oversight over their profession. The insurance and securities sector are believed to pose low risks, due to the very limited level of development in these sectors. The authorities recognise that they should raise their understanding of securities-related ML risks as some development in this sector has been emerging.

83. The assessment team generally agrees with the authorities' appreciation of the risks in these regulated sectors even though, as the authorities themselves acknowledge, the understanding of sector-specific risks could be further enhanced.

84. It appears that there has been only a limited assessment of risks of use of FIs and DNFBPs for ML/TF through the ownership and control of these institutions (rather than risks arising from customers' use of these entities). For example, the growth of licenced FEOs is put down to the efforts of recent years to target unlicensed operations (see IO3) and exemption from VAT for small operations, but it is still difficult to reconcile the high numbers of independent operators with the legitimate and lawful economic activity of Albania which has little need for major currency exchange.

85. For the gambling sector on the contrary, ML risks arising from customers rather than from owners/controllers are not assessed in depth. Even though the NRA mentions that 'special cases have proven the introduction by players of considerable amounts, derived from the proceeds from crime, in games of chance' (p. 55), authorities later advised that there are no cases in which it was concluded that gambling was used as a mechanism for ML by clients other than in the use of criminal proceeds to satisfy their own gambling habits. Authorities maintain that the simple nature of gaming operations coupled with controls over amounts and winning payments reduce the player driven risks.

86. In terms of threats, the authorities recognise Albania's role in the transshipment of heroin, domestic production of cannabis, human trafficking for sexual exploitation, inflows of cash across the borders arising from predicate offences committed outside of Albania and OC. Domestic tax crime is another often-seen predicate offence.

87. Corruption is listed as one of the highest contributors to ML risk in the NRA. This appears to be prevalent across aspects of the administration ranging from the administration of justice, tax office and customs officers. It is believed that it is often linked to OC. As such, corrupt practices may mask ML cases in the country to a significant extent. The assessment team heard evidence on-site that high-

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<sup>20</sup> At the time of the onsite visit, a total of 373 out of a total number of 3,057 Cadastral Zones remain to be formalised (12%). This was broken down into 24 out of 138 Urban Cadastral Zones (i.e. 17%) and 349 out of 2919 Rural Cadastral Zones having yet to be formalised (i.e. 12%).

level cases of suspicions of corruption and ML may be identified but are not further investigated for unclear reasons (see IO7).

88. As indicated by the NRA, the presence of a significant informal economy (see Chapter 1), paired with a largely cash-based society, further complicates the detection of ML and TF.

89. These phenomena – corruption, informal economy and cash – themselves feature in the NRA. Authorities met onsite also showed to be strongly aware of them in general terms, although there are certain specific corruption-related ML risks which appear not to have been fully assessed. The NRA recognises that corruption leads to proceeds of crime being laundered in the Albanian financial system; that corruption in the judiciary feeds into an idea of impunity from punishment for ML; and that it could even ultimately affect the preventive system by discouraging reporting behaviour. However, it appears that authorities have not assessed whether and how corrupt practices at official bodies (e.g. tax, customs) may be obfuscating the full and proper identification of ML typologies and vulnerabilities.

90. In so far as the large informal economy is concerned, the authorities acknowledge its materiality and risks in general terms, yet have not attempted to assess more in-depth how much ML occurs in the informal economy or how the modalities of the informal economy may be preventing the proper and full understanding of the ML/TF risks present in Albania.

91. Counter-terrorism is handled via the SIS and through the counterterrorism police. SIS and CT Police were able to demonstrate a high level of awareness and proactive approach to the identification of terrorism and in particular the radicalisation of Albanian nationals as foreign fighters. In practice, authorities understand TF risks to relate mostly to cash flows and money remittances (see further IO.9). The NRA almost exclusively focused on ML threats and vulnerabilities and only considers TF in a small part. The GDPML considered that, at the time that the NRA was drafted, other initiatives within Albania had addressed TF risks and therefore had not given it priority consideration in the NRA.

92. A separate TF risk assessment for NPOs was conducted in 2013. However, this assessment did not appear to have gone at length to identify specific risks for Albania. Rather, it provides an overview of the NPO sector, the legislative framework and general global knowledge on potential for abuse of NPOs. GDPML and SIS do have some more developed understanding of risks related to NPOs than reflected in the documents (see IO.10). The GDPML has further carried out an analysis of cross-border money transfers for the 2015-2017 period, covering countries with high incidences of terrorist acts and their neighbours. The analysis has led to some further inquiries and will be updated with a narrower range of relevant countries.

93. The assessment team acknowledges the understanding of TF risks held by various authorities and obtained through various initiatives. It considers however that it would be beneficial for the country to conduct a more comprehensive TF risk assessment, including risks beyond cash flows and money transfers, and through more information-sharing among the AML/CFT stakeholders.

94. The NRA underplays the role played by LEs in the financial system. In general authorities appear aware of the use of LEs for ML and relevant prosecutions against or involving LEs exist (see IO.7). However, the authorities have yet to assess the full array of risks of abuse of LEs and in particular the understanding of ML threats and vulnerabilities which can exploit LEs (see IO.5).

#### *National policies to address identified ML/TF risks*

95. According to authorities, the main threats and risks stayed the same in the 2015 iteration of the NRA compared to the 2012 NRA. Neither of the NRAs was followed by a written action plan or formal strategic document to address the identified risks. The lack of such documents has not meant however that the Albanian authorities have not taken actions to address some of the identified risks. According to the authorities, there is already such an abundance of strategies and action plans in the field of financial and OC, that a separate AML/CFT strategy would not add value. From the



formulation of these strategies, it becomes clear that the fight against OC and corruption is seen as a major policy priority in Albania.

96. A National Strategic Document (NSD) for the Investigation of Financial Crimes was in place for the period 2009-2015. A dedicated WG established by the high-level CCFML examined the implementation of this document through meetings which took place approximately every 6 months. Although this strategy has formally expired and has not been replaced, its implementation continues to be examined by the general, continuous IITWG of the CCFML (which contains mostly the same, but not all, authorities of the WG for the NSD; see further under paragraph 36).

97. Current strategies and action plans exist covering the following:

- Inter-Sectoral Strategy against Organised Crime, Illicit Trafficking and Terrorism 2013-2020 and its Action Plans for Implementation 2013-2016 and 2017-2020
- Action Plan Against Cannabis Production and Trafficking 2017-2020
- Inter-Sectoral Strategy against Corruption 2015-2020 and its Action Plan 2015-2017
- Inter-Sectoral Strategy against Terrorism 2016 – 2020 and its Action Plan for Implementation.

98. All strategies are adopted by Council of Minister (CoM) Decisions. They address the crimes identified as posing the main ML risks (OC, drug trafficking, corruption), and detail the objectives, modalities of action and responsible institutions. There is a strong focus in the strategies on the need to enhance operational cooperation, investigative capabilities, parallel financial investigations, and asset recovery.

99. Evaluators were informed that the strategy papers are mostly drawn up for the purposes of EU accession process and there are regular reports to the EU on their implementation. There also exists an Action Plan 2017-2019 against Economic Crime for Albania (AEC-Albania) in the context of the Horizontal Facility building on the CoE and EU Policy priorities in the Western Balkans<sup>21</sup>. This Action Plan is specifically targeted at implementation of key recommendations of MONEYVAL and GRECO and strengthening of institutional capacities regarding measures against corruption, ML and TF. Some examples of technical assistance and awareness raising initiatives offered within this project relate to: implementation of the RBA in supervision, asset recovery, and oversight of political party financing.

100. Regarding the need to ensure that structural elements underpinning the AML/CFT system are in place, the assessment team noted that important policy reforms are currently taking place. In June 2016, the Parliament of Albania unanimously adopted constitutional amendments launching a comprehensive judicial reform. The reform is targeted at amendments to a large package of laws to strengthen the rule of law and (vetting) actions to exclude criminal elements from public offices. GRECO has expressed confidence that the reform will pay due attention to the measures that are required to meet GRECO's concerns on prevention of corruption among members of parliament, judges and prosecutors in Albania<sup>22</sup>. At the time of the on-site visit, many of the legislative amendments were adopted, but the vetting process had not yet commenced.

101. Each year, the Albanian CoM sets priority recommendations for action by the GPO, which are designed to address the areas of biggest concern for the Albanian authorities (which the evaluators concur with). For 2017, the following action points were noted:

- Guaranteeing the independence of the judiciary and prosecutors. The CoM notes that the judicial system continues to be publicly perceived as highly corrupted and vulnerable to political influence. Likewise, the lack of an active prosecutor's role in criminal proceedings continues to be evident. Constitutional and legislative amendments have been identified as well as organisational changes in the GPO to provide functional independence of the prosecutor.

<sup>21</sup> [www.coe.int/en/web/corruption/projects/aec-albania](http://www.coe.int/en/web/corruption/projects/aec-albania).

<sup>22</sup> <https://rm.coe.int/16806c1be3>.

- Combatting corruption. Legislative reform is envisaged to take place as part of the broader justice reform, in order to increase proactive investigations and use of special investigative methods, capacity building and inter-agency cooperation to investigate corruption.

- Combatting organised crime. There should be an increase of the number of proactive (financial) investigations for ML and drug trafficking, as well as the increase of confiscation of properties derived from criminal activity. The CoM also wants to see further progress in building a solid track record of investigations, prosecutions and punishments in the combatting of OC.

102. As described in the previous section, the large informal economy makes reasonable identification of ML/TF risks and pursuit of cases very challenging.

103. Financial exclusion is an important contributor to the informal economy. Interlocutors met on-site indicated that the limited presence of formal financial services in rural areas, historically explained distrust of the banking sector among citizens, and lack of financial education contribute to this phenomenon. Actions are on-going to address this. BoA, with the support of the World Bank, is in the process of finalising a draft national strategy aiming to promote financial inclusion through the creation of a modern and inclusive retail payments market in Albania<sup>23</sup>. The FSA has started a project for 2017-2018 with several local and international partners that aims to increase the uptake of insurance products in Albania. In devising further policies to promote financial inclusion, the assessment team encourages authorities to pay particular attention to ensuring that AML/CFT requirements do not have an overly restrictive effect on access to the formal financial system.

104. The assessment team agrees, to a large extent, with the authorities' view that many of the identified risks have been and are being addressed through the aforementioned strategies, action plans and policies. However, some specific ML/TF vulnerabilities (such as those related to NPOs and limited supervision of various high-risk FI and DNFBP sectors) are not in the strategies' focus. Furthermore, mechanisms to ensure accountability for the effective delivery of policy objectives could be strengthened. Timelines and budgets are not consistently given for all strategies, which can make (monitoring of) their implementation challenging. Implementation timeframes that are included in the strategies are often long, which may dilute effectiveness<sup>24</sup>, and have been exceeded in various instances<sup>25</sup>. Evaluators have noted that similar CoM recommendations to the GPO as those described above for 2017 are made on an annual basis with little progress apparent on their implementation.

105. The country is aware that efforts need to be stepped up to achieve better results in the repression of corruption, OC and related ML. The 2015-2020 Anti-Corruption Strategy acknowledges that, in spite of a number of initiatives taken in recent years, the cooperation among LEAs for proactive investigation of corruption cases has failed to show significant results. Evaluators were informed on-site that the responsibility for coordination of anti-corruption policies has recently been transferred from the Ministry for Local Issues to the MoJ. Consequently, the MoJ in the role of national coordinator against corruption will set up a dedicated unit, review the current strategy, and draft changes to policies and legal acts as needed. Furthermore, at the time of the onsite visit, Albania

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<sup>23</sup> The draft strategy was finalised after the date of the on-site visit and is expected to be adopted in June 2018.

<sup>24</sup> For instance:

- The NSD 2009-2015 foresaw measures to further reduce the level of cash in the economy for the 2009-2015 period, with relevant legal amendments (see paragraph 98) all passed after 2012.
- The 2017-2020 Action Plan for the Inter-sectoral Strategy against Organised Crime foresees a 5% increase in REs trained on AML/CFT prevention for the 2017-2020 period, which does not seem sufficient to address the gaps in training in some of the medium to high risk sectors (see IO.4, IO.3).

<sup>25</sup> For instance:

- The NSD 2009-2015 envisaged legislative amendments to the Anti-Mafia Law in 2009-2013 to broaden the scope of the civil confiscation mechanism, whereas this was only finally achieved in 2017 (see IO.8, R.4).
- The NSD 2009-2015 foresaw the first NRA to be undertaken in 2009-2011. At the time of the 4<sup>th</sup> round MER (end of 2010), no action had yet been initiated to undertake it, and it was only finalized in 2012.
- The 2013-2016 Action Plan for the Inter-sectoral Strategy against Organised crime foresaw the establishment of a Central Bank Account Register in the 2016-2017 timeframe, but this does not exist yet.

was in the process of drafting the Action Plan “Operation Power of Law” against OC 2017-2018<sup>26</sup>. The Plan aims to replace the truncated approach pursued until the present with a more coordinated approach to analyse and combat the activities of OCGs. This is to be concretised through the establishment of ad-hoc task force structures with representatives from ASP, GDC, GDT, GDPML and other authorities at a strategic and operational level.

#### *Exemptions, enhanced and simplified measures*

106. The NRA does not identify any low risk scenarios that would justify the application of simplified due diligence and the AML law does not make provision for simplified due diligence to take place.

107. The AML/CFT Law specifies that EDD is required to be undertaken in the following circumstances: PEPs, NPOs, non-face-to-face and non-resident customers, transactions with countries not applying international standards and transactions with trusts and companies with nominee shareholdings. REs are also required to conduct EDD for other categories which the entity may identify as presenting a higher risk.

108. Entities subject to the BoA Regulation No. 44 on ML/TF Prevention are required to adopt a specific RBA to customer classification which includes quantitative analysis of geographical risk, customer risk, and products risk. It provides a matrix to assist entities with risk classification and indicates for which score enhanced CDD is warranted.

109. The AML/CFT places an outright prohibition on reliance on third parties (including group introductions) for CDD-requirements.

110. Apart from the REs covered by the FATF standard, the authorities have decided to include some other categories as subjects under their AML/CFT Law. This includes construction companies, in line with the high risk for ML in the real estate sector. Furthermore, sports betting and all gambling entities (not only casinos) are subject to Albania’s AML/CFT Law as they are considered high risk.

#### *Objectives and activities of competent authorities*

111. The strategies and their action plans against crimes discussed under core issue 1.2 were not consistently mentioned by all of the interviewed authorities. LEAs maintained nonetheless that the fight against OC, drug trafficking and corruption are priorities in their daily activities. Pursuant to the NRAs and the strategies (especially the NSD of 2009-2015), structural changes were put in place in certain stake-holding authorities. For instance, in the tax and customs authorities, special units for ML prevention were created, contact points for the cooperation with the GDPML were appointed, and some ML prevention and detection training of officers was organised.

112. One of the major findings of the NRA, that the evaluators concur with, was that the detection of suspicious cases at intelligence level is good, but that the investigation and prosecution of ML presents significant problems, which also leads to the delivery of very few cases in court. As noted under core issue 1.1, the GPO disagreed with some of the specific identified weaknesses in the investigative and prosecutorial phases. In this respect, it is important to note that the Action Plans for the implementation of the Strategy against Organised Crime, Illicit Trafficking and Terrorism, foresee the conduct of joint analysis and joint training between intelligence and law enforcement/prosecution, and the increased use of special investigation techniques in ML and corruption cases. In 2016, a joint analysis was carried out by the GPO and the GDPML to analyse reasons for failure of cases and possibilities for re-instigation of cases. Furthermore, it was found during the on-site visit that, although most of the investigative deficiencies identified in the NRA remain outstanding, special investigative means are nowadays being used more frequently.

113. The range of predicate offences underlying the ML offences which are prosecuted in Albania is roughly in line with the overall criminality detected and thus the country’s risk profile. However, the low numbers and character of prosecutions sought for ML bears little correlation to the predicate offences committed. This is particularly relevant as proceeds from two of the major sources

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<sup>26</sup> Adopted shortly after the on-site visit, in November 2017.

(organised drug crimes and corruption) are concerned. Only a small proportion of registered ML investigations result in indictments and the ratio has been worsening. The clear majority of ML proceedings is eventually suspended and/or dismissed by the Prosecution. The activities of investigative and prosecutorial authorities are further analysed in IO.7.

114. As described in more details in IO.3, the FSA, the BoA, and the GDPML have all recently adopted or enhanced a RBA to supervision and have updated internal supervisory manuals to further this approach. The BoA has started to adapt its inspection plan based on risk profiles of its subject entities; for the FSA such adaptation is expected to start in 2019. The DNFBP supervisors (other than the GDPML) generally conduct no AML/CFT supervision and there is no RBA. GDPML does not have sufficient resources to compensate for the lack of AML/CFT supervision by other DNFBP supervisors.

115. Regarding TF, authorities demonstrated practical experience in investigating sources of funding of Albanian nationals who have left the jurisdiction to fight in conflict zones as well as the successful prosecution of individuals who were responsible for radicalisation of the same. This demonstrates the ability and willingness of Albanian authorities to act decisively in these matters. Legal amendments to the CC were made in 2014 to expand the criminalisation of foreign fighting conducts, including recruitment and financing. SIS was also involved in the thwarting of a terrorist act against the Israeli football team. This action was conducted in conjunction with their Kosovan counterparts in 2016 which also clearly demonstrates the Albanian authorities' ability to cooperate internationally on such matters.

116. As described in IO.10, the GDT as the supervisor for NPOs has been focussed on tax issues rather than on TF risk, in spite of legislation introduced in recent years giving it responsibility for the latter.

#### *National coordination and cooperation*

117. Accountability for the delivery of risk specific ML/TF mitigation is left to each authority with upwards reporting to the CCFML). The CCFML is chaired by the prime minister and composed of the ministers of finance, justice, interior, defence, and foreign affairs, the governor of the BoA, the general inspector of HIDAACI, the director of the SIS, and the general prosecutor. The director of the GDPML acts as counsellor to the meetings. The CCFML is given statutory responsibility for "planning the directions of the general state policy in the areas of prevention and fight against money laundering and terrorism financing"<sup>27</sup>. The CCFML meets at least annually, as is required under the AML/CFT Law, from where it takes its authority.

118. The CCFML is assisted by the permanent IITWG. In the IITWG, the GDPML and other authorities discuss matters relating to the national risks as well as operational matters and need for legislative action. The IITWG meets approximately every 2-3 months. The assessment team has been provided with agendas and minutes of these meetings, suggesting that they are an appropriate forum for discussion of bottlenecks and need for joint initiatives. However, it appears that some important authorities are not consistently present<sup>28</sup>.

119. There are numerous formal and informal mechanisms that support cooperation and coordination between the authorities. These include MoUs, regular meetings and joint trainings (see also R.2). These mechanisms enable a good level of cooperation and information exchange between the GDPML and LEAs (with some remaining weaknesses and challenges being discussed under IO.6).

120. There is a demonstrable level of cooperation between the GDPML and some of the supervisors to participate in joint AML/CFT inspections of REs and delivery of awareness programmes to the private sector. Albania also demonstrated that it has been able to coordinate legislative and human resources for some mitigation measures as a result of identified vulnerabilities in the accountants/auditors sector and in relation to licenced and unlicensed gaming activities. The

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<sup>27</sup> CCFML Regulation No. 1 on the Functioning of the Committee for the Coordination in the Fight against Money Laundering, dated 13.02.2017.

<sup>28</sup> E.g. in the 2013-2014 period, the MoJ never attended the meetings in spite of being consistently invited and of important subjects falling in its competence being discussed.

coordination between the GDPML, the MoJ and the Chamber of Notaries appears effective in raising notaries' awareness of risks and implementation of mitigating measures.

121. In conclusion, there are important structures in place to coordinate AML/CFT policies and activities. Nonetheless, the assessment team believes that the coordination framework could be strengthened to ensure better accountability for delivery of mitigation programmes (see core issue 1.2). Overall, the approach to combatting all ML and TF risks appears somewhat disjointed and concentrated in the efforts by the GDPML to address the risks mainly in the formal economy, and by the state security in relation to CT.

122. Turning to PF, authorities cooperate to disseminate information on UNSCRs amongst each other and to REs. However, there is no legal framework in place to implement UNSCRs related to PF (see IO.11 and R.7) and no coordination framework. Evaluators were informed that the need for a national law implementing PF UNSCRs has been discussed in the AML/CFT IITWG which recently decided to appoint the MFA as the competent authority.

#### *Private sector's awareness of risks*

123. When completed, the GDPML distributed the full version of the NRA to the public-sector authorities having responsibilities for REs as well as to the banks, main MVTS companies, and various industry bodies of REs. A summary of the main findings of the NRA was published on the GDPML web-site. Those entities met on-site appeared reasonably aware of the national risks which were communicated to them mostly through inspections and trainings by GDPML and primary supervisors for the financial sectors.

124. One of the most significant risks according to the private sector is the size of the informal economy. Many regulated FIs and DNFBPs suggested that ML will be undertaken through this large informal economy, although it was believed that due to more stringent controls on cash nowadays, the formal sector may have to be used at one point especially if large sums are involved.

125. The banking sector is seen as the most important sector for the prevention and detection of ML and TF due to its size and volume. Evaluators could corroborate a high level of awareness in this sector, from those banks that were interviewed, of the NRA and consistency of its findings with their own internal risk assessments. Banks demonstrated the use of a RBA to ML/TF and could provide case studies of effective actions taken in a variety of scenarios.

126. NBFIs play a significant role in the delivery of financial services within Albania such as for lending and providing micro-credits. Their work is supplemented by MVTS and payment service providers. Evaluators were satisfied that these sectors had a basic to good awareness of ML/TF risks and were aware of provisions relating to checking customers against the UNSCR lists, domestic PEP listing as well as the list of locally designated Albanians suspected of being foreign fighters. Many currency exchange operations are offered at a MVTS physical location. Those operators linked to MVTS physical locations had a better understanding of the ML/TF risks and stronger risk-based control than independent operators.

#### *Overall Conclusions on Immediate Outcome 1*

127. The evaluators found that the understanding and documentation of the ML risks posed in Albania are well understood and that there were a number of adequate mitigation programmes in place for the identified risks, threats and vulnerabilities as they exist in the regulated sectors and formal economy. Notable efforts are made, including in high-risk sectors, and important structures are in place for policy coordination and operational cooperation. Similarly, TF risks arising from domestic terrorist threats are well understood and mitigated by SIS even though the documentation of the same may not be present to the same level as that found for the ML risks.

128. Despite frank conclusions reached in the NRA of materialised risks outside the regulated sector, the evaluators note that the country's mitigation efforts appear to be concentrated on regulated sectors. Some work has also been undertaken against informal sectors (gambling, currency exchange) yet it falls short of evaluating and mitigating ML and/or TF occurring outside of regulated sectors and

those threats and vulnerabilities which are obfuscated by corrupt practices in the public sector. If mitigation of ML/TF risks is to achieve full effectiveness, these more complex holistic issues must first and foremost be addressed by all relevant authorities.

129. The penetration of OC into the political and administrative functions facilitates major predicate offences to be committed in Albania and the proceeds of crime to be remitted and laundered in Albania with success. There is a high level of self-awareness by officials of the threats that OC, corruption and interference in the judicial process have upon the country and the Government is putting in place several measures to mitigate these important risks. Their implementation, however, is still at an early stage.

130. Albania has achieved a moderate level of effectiveness with Immediate Outcome 1.

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### *Key Findings*

##### *Immediate Outcome 6*

1. The Albanian authorities regularly access a wide range of financial, law enforcement and administrative information. However, timely access to accurate and up-to-date information is hampered by the quality of certain databases (CORIP, NBC, DCoT), the scope of directly accessible information (GDT), the timeframes for providing information upon request by the state authorities and the REs. Overall, the LEAs could not demonstrate a balanced use of their own powers and of the GDPML channels to access information.
2. The results of GDPML's operational and strategic analyses are used actively by the competent authorities to initiate and facilitate investigations of ML, associated predicate offences and TF. Albania took respective measures to address some of the deficiencies identified in the NRA regarding how GDPML's disseminations are further developed by the PO and the LEAs. In this context, the significant lack of the feedback of the competent authorities to the GDPML on the use of disseminated financial intelligence potentially hampers the ability of the GDPML to adequately support their operational needs.
3. The quality of SARs overall is considered to be good. The types of the most frequently reported suspicious activities in general seem to be in line with the country's risk profile. The number of SARs filings from FIs other than commercial banks and MVTs's is modest. Reporting by the DNFBPs is inadequate, except for notaries. However, the feedback on SARs provided by the GDPML sometimes does not meet the expectations of the REs.
4. Overall there is a good level of cooperation and exchange of information between the GDPML, LEAs and other domestic competent authorities, which is facilitated by existing MoUs and good practices. However, concerns are in place with regard to cases when the GDPML and the ASP are also notified for referrals/criminal reports sent by the GDT, GDC or by HIDAACI to PO. The authorities were not able to demonstrate clear mechanisms for coordination in these cases.

##### *Immediate Outcome 7*

1. Only a small proportion of ML investigations result in indictments and the ratio has been declining. The vast majority of ML proceedings connected to significant proceeds-generating offences are suspended and/or dismissed by the prosecution.
2. The range of predicate offences for ML is roughly in line with the overall country's threats and risk profile. However, the number and character of ML cases, is not consistent with the size and significance of the underlying proceeds-generating criminality (particularly organised drug crimes and corruption).
3. In ML cases involving foreign proceeds, the prosecution appears to be over-reliant on evidence requested from foreign counterparts instead of pursuing domestic ML cases based on circumstantial evidence although the latter has already proven successful in recent cases. There is some confusion about the level of evidence to which the ML offence and its relation to the predicate crime needs to be proven.

4. The absence of comprehensive, reliable and sufficiently detailed statistics is an impediment to properly understand the ML risks and to assess the performance and effectiveness of the repressive AML regime.

#### *Immediate Outcome 8*

1. Albania has a robust legal framework for confiscation of criminal proceeds. Criminal confiscation is mandatory and applies to all criminal offences. However in practice, non-conviction confiscation regime based on the Anti-Mafia Law is more widely used. Both confiscation regimes have adequate provisional measures available.

2. The structure for the management of seized and confiscated assets seems to be relatively effective.

3. Parallel financial investigations are considered as a priority by practitioners. Authorities demonstrated that parallel investigations are systematically applied in ML cases and in other criminal proceedings but the performance of the regime has until recently been deficient.

4. Reported confiscations and provisional measures concern mainly the real estate and cash or bank account money, which corresponds to the identified typologies of laundering criminal proceeds in Albania. However, the statistics available on the number and values of seized and confiscated assets do not seem to commensurate with the level of the criminality in the country.

5. There is no strategic or systemic approach to identify and to confiscate criminal proceeds located abroad in domestic proceedings for proceeds-generating cases with a view to their confiscation.

6. It could only to a limited extent be demonstrated that the confiscation regime is applicable for different sorts of confiscation such as value confiscation, third party confiscation and confiscation of indirect crime proceeds.

7. Authorities in charge of cross-border cash control measures do not seem to systematically take into consideration ML/TF suspicions as their attention is rather focused at breaches of the declaration regime and seizures in that respect.

8. The absence of comprehensive, reliable and sufficiently detailed statistics is a serious impediment to assessing the performance and effectiveness of confiscation and provisional measures regimes.

#### *Recommended Actions*

##### *Immediate Outcome 6*

1. LEAs and POs should provide regular feedback to the GDPML on its disseminations to ensure better support of their operational needs by the GDPML's disseminations.

2. The GDPML should provide feedback more regularly to RE on specific SAR filings to further foster their reporting skills and the quality of SARs.

3. GDPML should be vested with the legal powers to shorten time limits for requesting information from the REs and other domestic authorities (except for the GDT and GDC for which these powers are set) to ensure a timely access to information in all cases.

4. Improve the accuracy of the database of the CORIP and ensure that data kept in CORIP is up-to-date. Provide direct access to the CORIP digital database to LEAs, SIS, PO and HIDAACI, ensuring their timely access to such information for AML/CFT purposes to reduce utilising GDPML powers for requesting respective data.



5. Albania should extend the scope of directly accessible information for the GDPML and the ASP to the GDT database to data on natural persons, and proceed with the practical application of the memorandum of understanding (MOU) on cooperation and information exchange signed between the ASP and the GDT in 2016 to reduce utilisation of the GDPML powers for access to the tax information.

#### *Immediate Outcome 7*

1. Review the reasons behind the low performance of the prosecution in ML investigations with a view to increasing the number of ML indictments and ML convictions. This review should include analysis of technical deficiencies and address the shortcomings identified in the NRA in relation to deficiencies in investigative process.
2. Ensure that parallel financial investigations are launched in all cases of serious proceeds-generating crimes with a view to detecting related ML.
3. In ML cases involving foreign proceeds, more indictments should be pursued, including in appropriate cases placing reliance on circumstantial evidence to establish underlying predicate criminality.
4. Review the overall statistical system to ensure that national statistics on ML, investigations, prosecutions and convictions are harmonised, reconciled and reliable.

#### *Immediate Outcome 8*

1. Ensure the consistent application of parallel financial investigations and early provisional measures in all criminal proceedings for serious proceeds-generating crime.
2. Ensure that adequate efforts are made to identify criminal proceeds located abroad in domestic proceed generating cases with a view to their confiscation.
3. In prosecuting proceeds-generating crimes and ML, prosecutorial authorities are encouraged to seek possibilities to apply for value confiscation, third party confiscation and confiscation of indirect crime proceeds.
4. Ensure that authorities performing cross-border cash control measures systematically take into consideration ML/TF suspicions regardless of whether the amount of cash is above the threshold for declaring.
5. Extend the competence of the authority for asset management and increase its resources to manage the property seized or confiscated in the framework of the CPC-CC regime.
6. Review the overall statistical system to ensure that national statistics on provisional measures and confiscation are harmonised, reconciled and reliable.

131. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

#### *Immediate Outcome 6 (Financial intelligence ML/TF)*

##### *Use of financial intelligence and other information*

###### *(a) Access to information*

132. Competent authorities have a direct and indirect access to a wide range of information held by state authorities and private sector, which is accessed routinely and when necessary, is facilitated by

the existing MoUs. However, there are concerns with regard to access to certain databases and types of information, as further described below.

133. The GDPML receives SARs and cash transaction reports (CTRs), and requests from the REs any information to develop financial intelligence, regardless of prior reporting by certain RE. The GDPML routinely utilises its powers for a direct access to a number of databases kept by the state authorities, such as driving licence registry, vehicle registry, immovable property registry, notary registry, civil status registry, Total Information Management System (TIMS)<sup>29</sup> and register on convicted persons, cross-border declarations, tax data on LEs, database of the assets and interests declarations of public officials of Albania, and other public registries. The GDPML also actively cooperates with the state authorities to obtain any other required information.

134. LEAs, the SIS and the PO regularly access bank account information. They identify bank accounts held or controlled by LEs and natural persons with written requests to commercial banks, to the GDPML or to the GDT<sup>30</sup>. In the pre-investigative phase LEAs, the SIS and the PO can obtain bank secrecy information through the GDPML. After the criminal investigation is launched, information constituting bank secrecy is obtained by LEAs according to the Criminal Procedures Code (CPC)<sup>31</sup> with the court order. There were no concerns raised by the authorities on the stated mechanism of data access. However, the assessment team was not provided with sufficient information to conclude to what extent the LEAs, the SIS and the PO use various mechanisms to obtain information, and if they adequately use the GDPML channel.

135. Regarding information on domestic LEs, there are several deficiencies hampering effective access by the GDPML and other competent authorities to this data. There are concerns on the accuracy and currency of the databases maintained by the NBC and DCoT (see the analysis in IO 5). Despite the fact that the information is easily accessible, its quality appears to be questionable. BO information of the LEs is accessed by the GDPML and other competent authorities mostly through the REs, in case the LEs concerned are their clients. This approach does not ensure appropriate timeliness of information access. Otherwise, the LEAs obtain information using their own intelligence gathering capacities. Basic and BO information on foreign LEs is accessed via the GDPML channels, and obtained from foreign FIUs.

136. Regarding information on real estate, there are certain concerns on the accuracy of the CORIP database and the timeliness of access. This issue is of a special interest considering the conclusions in the NRA about the level of use of real estate in ML schemes. In particular, the CORIP database is considered to be incomplete due to insufficient first title registration and, in many cases, the absence of reliable information on the ownership over substantial portions of the real estate market (see the analysis in IO5). Concerning the timeliness of the CORIP digital database access, Albania has indicated that it is partly directly accessible by the GDPML, while the LEAs, the SIS, the PO, and other state authorities such as HIDAACI do not have direct access to it, despite a high demand for such data. The ASP and the PO request information from CORIP almost for every case on asset investigation. During 2012 - 2017 HIDAACI submitted to CORIP approximately 6300 requests regarding the assets registered on behalf of the declaring subjects (in 2012 - 300 requests, in 2013 - 0 requests, for the period of time 2014-2017 - 6000 requests), including the requests regarding the vetting process. Considering a high frequency of information use maintained by the CORIP, which corresponds with the findings and conclusions in the NRA on the ML risks presented by the real estate sector, the indirect access to data seems not to be justified for the mentioned authorities. HIDAACI indicated that CORIP responses the requests within 1 month. Other authorities confirmed that, in most of the cases when information is needed urgently, it is provided within 3-10 days. The high number of requests also raises concerns about the administrative burden for authorities, which impacts the timeliness of access to data. This conclusion of the assessment team is coherent with the NRA findings stating that

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<sup>29</sup> Total Information Management System contains information about the cross border movements of citizens and vehicles.

<sup>30</sup> GDT holds data on accounts of LEs and natural persons with a gross income over 15.000EUR.

<sup>31</sup> Art. 203 of the Criminal Procedure Code.

digitalisation of real estate data in the real estate regional offices is necessary, as a manual search is inaccurate and requires considerable time<sup>32</sup>.

137. Regarding the access by the GDPML to tax information kept by the GDT, it shall be noted that a direct access is provided only to data of the LEs, while information on natural persons is accessed through written requests. Notwithstanding this fact, the GDPML has submitted around 215 written requests to the GDT over 2012 - 2017 ((2012(20), 2013(27), 2014(43), 2015(35), 2016(40), 2017 September (50)). The GDPML clarified that requests are usually related to particular parts of financial statements of natural and legal persons that are not reported to the GDPML or results of inspections that tax authorities might have conducted. As it can be observed from the statistics, numbers of requests was constantly increasing, having been more than doubled over the period 2012-2017. This corresponds with the fact that the tax crime is identified as one of the most frequently detected predicate offences in Albania. Therefore it seems that the scope of tax information directly accessible to the GDPML is not broad enough to correspond to its needs.

138. As concerns the access to tax information by other competent authorities, it appears that the LEAs, the SIS and the PO obtain data only upon written request. The ASP, although it has signed an MoU with the GDT in 2016, still obtains the required tax data<sup>33</sup> through the GDPML, which can be considered as additional administrative burden to the GDPML.

139. The authorities actively communicate with each other to obtain necessary financial intelligence for their operational needs. Although not explicitly covered by the AML/CFT Law<sup>34</sup> the GDPML exchanges information with the authorities not only on ML and TF, but also on associated predicate offences. There is no specific statistics provided on the number of requests to the GDPML by different authorities, but Albania indicated that over 2011 - 2016 there were about 1.880 requests regarding 12.123 persons sent to the GDPML only by the ASP and PO. According to a rough estimation, only in 5% of cases to respond to LEAs and PO, the GDPML needed to obtain information from the REs. Requests are responded by the GDPML on average within 10-15 days and in urgent cases within 24 hours. Despite the overall satisfactory timeframe for GDPML's responses, Albania reported that there had been some delays in the past in providing information.

140. With respect to access to information held with the REs upon request, authorities have indicated that according to the timeframe set out by the legislation, the request shall be accomplished in up to 15 days period, unless extended. Responses are mainly received on average within 15-30 days and in a case of urgency can be obtained within 24 hours. However, the GDPML is not empowered to set shorter terms than fixed in the legislation, and for that in such cases promptness of access to data depends on the discretion of the requested party. Within the scope of its powers provided by the AML/CFT Law the GDPML imposed 5 sanctions to the REs over 2012-2016 for failure to provide the requested information on time whilst two on-going proceedings were yet not completed by the end of the on-site visit.

141. While conducting its analysis the GDPML requests information from the competent authorities through a written request. The GDPML frequently addresses the ASP, the SIS and the PO. Requests are responded to within 15-30 days on average, unless specified as urgent. Although in general, the assessment team agrees that depending on the complexity of the request the authorities might need longer time to respond to requests, there are concerns that obtaining a response in 30 and more days may hamper effective performance of the case analysis by the GDPML. However, according to authorities such occasions have not occurred and confirmed the satisfaction with the practice applied.

#### *(b) Use of intelligence*

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<sup>32</sup> "National Money Laundering and Terrorist Financing Risk Assessment in Albania", May 2015, p. 56

<sup>33</sup> Albania has reported that the MoU between the ASP and the GDT was implemented and a direct communication brought in practice short after the on-site visit.

<sup>34</sup> Art 22, letter e of AML/CFT Law

142. Albania has demonstrated that the financial intelligence and other relevant information are widely used by the competent authorities to investigate ML and associated predicate offences. Although there have been a few occasions when referrals were submitted to the LEAs in conjunction with TF, there were no cases the suspicion was confirmed to initiate a prosecution. There is only one registered criminal proceeding for TF based on police indicia and supported by financial intelligence requested from the GDPML.

143. Financial intelligence disseminated by the GDPML to the ASP either spontaneously or upon request is extensively used in the investigative phase of ML. The number of referrals on ML during the period of 2011-2016 sent by the police to the PO based on disseminations by the GDPML, show that around 30-40% of the disseminated financial intelligence is used for referrals to the PO on ML. At the same time around 60% of the total number of referrals on ML made by the ASP to the PO is based on the information initially received from the GDPML. The table provided below also show a stable and proportionate growth of numbers of disseminations made by the GDPML and ASP, and initiated investigations. Authorities indicated that a large number of the registered by the PO proceedings on ML out of total 850 are based on the referrals of the ASP and the GDPML (see also I07).

Table 5: Information on ML cases sent/received by ASP

Years	Referrals from the GDPML to the ASP <sup>35</sup>	Referrals of the ASP to Prosecution based on information from GDPML	Referrals of the ASP to Prosecution with police indicia	Total number of referrals to the Prosecution	Referrals under investigation <sup>36</sup>	Requests to GDPML	Seizures (in EUR)
2011	110	50	34	84	59	-	7.250.000
2012	171	70	45	115	100	110	12.900.849
2013	256	46	39	85	208	85	1.200.000
2014	540	130	75	205	409	150	19.107.371
2015	526	161	96	257	365	277	31.155.646
2016	562	186	132	318	376	368	17.632.737
Total	1795	643	421	1064	1517	990	119.246.603

144. During the on-site visit Albania has provided numerous case examples demonstrating a successful use of the GDPML dissemination by the ASP for conducting investigations, based on which criminal proceedings were registered by the PO (see the Case Example 1).

**Case example 1: Investigation initiated by the ASP based on the GDPML referral on ML suspicions (OC)**

In 2014 based on the SAR submitted by a bank to the GDPML identified that Mr A., from an EU country, ordered 2 wire transfers in favour of Mr B., for the total amount of 450.000EUR, followed by a cash withdrawal of 130.000EUR and a wire transfer of 320.000EUR to Mrs C. in the same commercial bank in Albania, who eventually withdrew all amount in cash. Mr A. explained that the transaction was not conducted directly to Mrs C. because the latter didn't have yet an active bank account in EUR in Albania. The GDPML has ordered a monitoring of involved bank accounts and

<sup>35</sup> These numbers include initial referrals from GDPML, referrals with additional information and referrals sent to PO which are also sent to the ASP. There is no breakdown of the referrals by type (SAR, CTR, etc.). This information is available in the table in paragraph 180.

<sup>36</sup> The numbers refer to cases which are still open at the ASP and are still not referred to the PO.

reporting incoming wire transfers from Mr A According to another SAR filed to the GDPML, within 1-month time Mr. A transferred around 800.000EUR to Mrs C. account. Mr A., a man of 60 years old, has indicated the heritage and savings made while working as a banker as a source of the funds. Mrs. C. was indicated as his fiancé. The purpose of the transfer was an investment in real estate and in business in Albania. Further analysis conducted by the GDPML found no additional data to justify the origin of funds. There have been number of other transfers conducted using the MVTS in Albania by Mr A. and Mrs C.. Mr B. was involved in purchase of several luxury vehicles. It was established that Mrs C. and other individuals related to the case had criminal records for exploitation of prostitution. The GDPML ordered a temporary freezing of 800.000EUR on the account of Mrs. C and the case was referred to the PO and notification sent to the ASP. After the referral of the case, there were 2 meetings between GDPML and the ASP, in order to discuss possible developments of the case. As a result, a criminal case was registered and the funds were seized. There is no conviction under criminal law but there is a final decision under the Anti-Mafia Law for the confiscation of 800.000 EUR.

145. The ASP actively requests financial intelligence from the GDPML for conducting investigations on ML, triggered on its own initiative. As indicated in the table above, over 2011 - 2016 the GDPML received around 990 requests from the ASP (2012(110), 2013(85), 2014(150), 2015(277), 2016(368)). For the same period the ASP submitted to the PO 421 referrals on ML with police indicia. Due to the lack of specific statistics, it is difficult to estimate precisely the percentage of the financial intelligence requested from the GDPML that was used to make these referrals. However, a wide use of financial intelligence generated by the GDPML in the investigations of ML was evidenced by numerous case examples introduced during the on-site visit (See also case example 2 below and IO7 case example "ML case, related with fraudulent schemes with VAT").

Case example 2: Investigation of the ML case conducted by the ASP using information requested from the GDPML (trafficking of narcotics)

The ASP started an investigation based on received information that citizen L.S. was convicted in EU country for the criminal offense "International Trafficking in Narcotic Drugs" and his criminal activity served as a source for illicit benefits, which are invested in Albania in a movable and immovable property. The ASP established that citizen L.S. invested millions of dollars in Albania in the construction of buildings and other assets allegedly derived from his criminal activity inside and outside the country. Additional checks revealed that the citizen L.S. had criminal record for the trafficking of narcotic drugs in one more EU country.

In 2017, based on the ASP's request, the GDPML identified a number of bank transactions and immovable property contracts in large sums related to the activities conducted by the citizen L.S..

The ASP referred the case to the PO and the case was registered for ML. The Tirana First Instance Court ruled the seizure of immovable property and bank accounts worth about 2mln. EUR owned by the citizen L.S and his relatives. The case is at Tirana Appeals Court.

146. Albania has demonstrated that financial intelligence is used not only for ML but also for investigations of predicate offences - mainly OC, drug and human trafficking, VAT fraud, fraud, and the forgery,<sup>37</sup> which in general is in line with the risk profile of the country. Despite of the overall satisfaction with the disseminations, the ASP and the PO mentioned that the GDPML should focus on more important cases. However, authorities indicated that except for significant cases, the LEAs and the PO did not provide a regular feedback to the GDPML as to how financial intelligence is used, and what are the outcomes of its use. This potentially hampers the ability of the GDPML to adequately support the operational needs of LEAs and the PO.

147. Despite of an overall positive experience of cooperation, the assessment team was informed about some cases of disseminations by the GDPML to the PO, which were not further developed

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<sup>37</sup> Estimation is made by the PO.

appropriately. However, some measures were taken to address these issues (see more in details under IO7).

148. The HIDAACI also indicated that it had the cases of insufficient use of its dissemination by the PO. In particular, HIDAACI indicated a lack of registered proceedings by the PO on their referrals (notification for which is also sent to GDPML) (see also IO7).

#### Case example 3: Referral sent by the GDPML to PO

In 2015, the GDPML has submitted a referral to PO and a notification to ASP on the suspicions related to the fact that a company A from a neighbour county conducted several high value wire transfers to a company B in Albania and then several withdrawals in cash were performed by the company in Albania. Immediately after these withdrawals, the funds were declared at the border crossing point in Albanian as being taken abroad for business purposes. One of the individuals involved in the case has been linked with a well-known criminal organisation abroad. After the referral was submitted to PO, in October 2015 GDPML issued a freezing order for one of the requests for a cash withdrawal for the amount of 145.000EUR, which was further followed by the application of seizure by the PO. In 2 months funds were released for the absence of a link with criminal activities.

In 2016, the GDPML has identified another transaction and applied a freezing order of 51.000EUR and at this stage again from the Prosecution a seizure was imposed.

With regard to the case a rogatory letter was sent to a foreign jurisdiction by the PO. The Cases are on-going.

149. Financial intelligence is also used for the performance of HIDAACI functions. It submits to the GDPML around 60-70 requests per year. The GDPML data facilitates activities of the HIDAACI in collecting, developing and analysing information related to concealment of private assets and interests, corruption, economic crime, and in some cases - ML. Over 2014 - 2016 68 out of 230 criminal referrals of HIDAACI to PO included indicia for ML.

150. The GDT and GDC send requests to GDPML sporadically - no more than 5 per year. Based on data provided by the authorities, the requested information is related to sectoral analyses and some bank and other data which the GDPML can share about the subjects under investigation<sup>38</sup> (e.g. for tax evasion cases).

151. The GDPML receives also some requests from the SIS. However, the assessment team was provided with information on the nature of requests, and the examples of information use due to the sensitive nature of information.

152. It shall be stressed that for the period 2012-2016, there were 15 referrals submitted by the GDPML with indication of TF suspicion (2012(1), 2013(1), 2014(3), 2015(2), 2016(8)). However, after additional checks by the LEAs, it was concluded that these cases were not related to TF. In 2017 (January-September) 3 similar cases were disseminated by the GDPML to the ASP. Cases described during the on-site visit indicated that the GDPML and the ASP made a good use of their powers to generate and utilise financial intelligence to pursue with TF investigation, although there was only one occasion of registered proceedings for TF which was triggered by police indicia but cooperation with the GDPML also facilitated the investigation.

#### Case example 4: Use of financial intelligence for TF investigation

B.H., who was included in the list of individuals involved in terrorist activities, was reported by the liaison officer of a neighbour country to have travelled from Tirana to Istanbul/Turkey to join the ISIS terrorist organisation and the armed conflict in Syria. Based on this information the ASP initiated a preliminary investigation.

Based on the ASP request the GDPML analysed its databases and requested further data from the REs. Analysis of the CTR and other bank account information on citizen B.H. and his family members

<sup>38</sup> GDT and GDC have their investigation units and conduct criminal investigations.

revealed that there were a high value transactions conducted by B.H. which were not sufficiently justified by his business activities.

Based on these data in July 2017 the ASP referred the case to the PO. The criminal proceeding No. 2XX of 2017 was registered based on CC Art. 230/a "Financing of terrorism".

#### *STRs received and requested by competent authorities*

153. The GDPML receives SARs from REs on suspicion of ML/TF or funds deriving from criminal activity. SARs are also submitted by the GDT, GDC and CORIP. Concerning the suspicion of TF, although the GDPML is vested with wide powers to receive information from any person, in practice it received SARs only from the REs. Moreover, any authority that registers or licences NPOs is obliged to report to the GDPML any suspicion, information or data related to ML/TF. However, no reports with respect to NPOs have been submitted by the DCoT<sup>39</sup> or other respective authorities in recent years.

154. The total number of SARs received in the period of 2012-2016 is 4.955, of which - 50 SARs on TF. The number of SARs is constantly growing over the years (2012(556), 2013(558), 2014(1.230), 2015(1.319), and 2016(1.292)). These are reports primarily submitted by the FIs, mainly by banks, and the MVTSPs. The number of SARs filed by the DNFBPs is low, given the risks present in this sector. Deficiencies in the SAR reporting are addressed by the GDPML through the provision of trainings, publishing of guidelines and typology reports<sup>40</sup> and through inspections. As a result, since 2014 there has been a rapid increase in the number of SARs submitted by notaries due to the intensive awareness rising activity conducted by the GDPML and the increased focus on this particular DNFBP (see also IO4).

155. The GDPML finds the quality of SARs as good, especially those filed by the banks. As for the SARs reported by the MVTS, there are some concerns over the timing of their reporting. Over the recent years there was a great improvement of the quality of the SARs submitted by the notaries. The good quality of the SARs was also confirmed through a sample-test search in the GDPML database conducted in presence of evaluators. The SARs include description of the suspicion, and are substantiated by various documents enclosed. The related data on persons involved seemed to be detailed and sufficient for conducting analysis. In rare cases additional information and clarification are being requested from the REs.

156. Regarding the type of reported suspicious activity (including SARs from GDT, GDC and CORIP), as provided in the GDPML 2016 Annual Report, the most often reported suspicious activities for the period 2013-2016 seem to be overall corresponding to the findings of the NRA on the risk profile of the country.

157. According to information provided to the assessment team, feedbacks are sent at the end of each year to the banks, MVTS, Chamber of Notaries and to some other REs giving a general overview of the work of the entities during the past period. Specific feedbacks are provided on the case-by-case basis only on SARs, where the GDPML is giving a permission to proceed with transaction, or where the case is considered to be urgent by the GDPML. However, some of the REs expressed a need for more regular feedback on specific SARs, which would further improve the compliance with reporting obligations and the SAR quality. The evaluators are of an opinion, that the feedback provided by the GDPML is insufficient, and it does not always meet the needs of the REs (see also IO4).

158. As concerns SARs received by the GDPML from the GDT, the GDC and the CORIP over 2011-2017 there were in total 919 SARs.

Table 6: SARs submitted to GDPML by CORIP, GDC and GDT

SARs/Year	2011	2012	2013	2014	2015	2016	2017	Total
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<sup>39</sup> DCoT has indirect reporting obligation pursuant to Art. 20 of the AML/CFT Law.

<sup>40</sup> Besides the separate typology reports of the GDPML, the annual reports of the GDPML also contain typologies for ML/FT cases.

CORIP	8	29	20	64	201	134	83	539
GDC	20	30	36	48	45	47	46	272
GDT	0	33	10	50	7	3	5	108

159. In the light of the conclusions of the NRA on the use of the real estate sector for ML, the number of reports submitted by the CORIP seems to be adequate. In the period 2011-2016, 49 referrals were made by the GDPML based on reports from the CORIP, 88.8 % of which are based on SARs and the other 11,2% - on CTRs. The assessment team has concerns about the fact that only around 10% of these submissions resulted in referrals. Since the system for prioritisation of SARs at the GDPML is considered to be effective and adequate to the NRA findings and the GDPML, in practice, conducts a thorough and comprehensive analysis of these SARs (See Case examples 5), the reason for the low number of referrals seems to be the unsatisfactory quality of SARs submitted by the CORIP.

Case example 5: Referral initiated by the GDPML based on the SAR from the CORIP (ML in the real estate sector)

The CORIP submitted a SAR on an Albanian citizen of 20 years old, who bought a real estate valued 50.000EUR without declaring the source of the funds. The GDPML conducted analysis of financial transactions made by this citizen and her associates, and other relevant information from the state authorities. There have been identified other cash deposits indicating immigration as the source of her income. An open source search conducted by the GDPML revealed that one of her associates was condemned for drug trafficking and he was deported a year ago from an EU country. The case was referred to the ASP in March 2016, which later referred the case for ML to the district prosecution of Durres and a criminal case was registered. Later in January in 2017 the case was suspended waiting for a response of a rogatory letter sent abroad.

160. Although the reporting from the GDC maintains a relatively stable pace of growth in 2011-2017, the type of suspicions reported by the GDC seem to be non-adequate with the conclusions of the NRA on a cross-border transportation of currency. In the period 2011-2017, 78 referrals were made by the GDPML based on reports received from the GDC, which is around 35% of the submitted reports. The SARs are mostly related to cases of non-declaration or false declaration of cash on the border crossing point. Only in a very few, exceptional cases the SARs were related to the properly submitted declarations, which raise ML suspicions for the GDC. With this regard concerns are in place on the level of awareness and the skills within the GDC on identifying ML/TF suspicion on properly declared funds.

161. The SARs submitted by the GDT are fluctuating over the period under consideration. While relatively high in 2012-2014, number of SARs dropped since 2015. Authorities clarified that there were structural changes introduced in the GDT. Since 2015 the investigative unit of the GDT develops cases on suspicion of tax offences (Art. 180 of CC) and directly submits them to the PO. A significant number of referrals in the period 2014-2017 were sent by the GDT to PO (2014(131), 2015(157), 2016(153), 2017(165)). This corresponds with the findings of the NRA on the threats posed by the tax crime. However, when directly submitted to the PO, due to the absence of the relevant information no conclusion can be drawn on the average percentage of tax related cases which were investigated together with the ML. For the period 2011-2017 the GDPML made 43 referrals to LEAs based on information from GDT, which constitutes about 40% of the submitted reports and confirms an overall satisfactory use of the received SARs.

162. The GDPML makes a good use of CTRs when developing referrals. In the period 2011-2016, 167 referrals were made to LEAs and PO based on CTRs (see also Paragraph 180). In addition, the authorities confirmed that the CTRs are extensively used when analysing the SARs as an additional valuable source of information on transaction conducted by the subjects of the analysis.

163. The GDPML widely uses for its analyses also the CORIP reports on the registration of contracts for the transfer of property rights for amounts equal to or more than 6,000,000 ALL or its equivalent in foreign currencies, notifications from HIDAACI and information on cash declarations from the GDC.



These reports and notifications are routinely used for the purpose of the data-mining, for both, identification of the suspicious cases and the analysis of the SARs, through the one-click check in the GDPML's database.

*Operational needs supported by FIU analysis and dissemination*

*(a) Operational analysis*

164. The GDPML conducts analyses based on detailed internal written procedures. The analytical staff of the GDPML is experienced and well-trained. The information technology (IT) tools used, the range of search criteria and the access to a wide range of information also contribute to the quality of its analysis. In general, all the stakeholders assessed the output of the GDPML as being of a high quality.

165. The operational analysis of the GDPML is based primarily on SARs from REs. In addition, the GDPML makes a good use of the CTRs, sector analyses, information from foreign counterparts, announcements, notifications from authorities, information contained in the requests submitted by the authorities, and open source data. Notifications from the HIDAACI included in the GDPML database serve as an additional source of information about the domestic PEPs. The description and details of the case in the requests from LEAs, SIS and PO are actively used for the analysis performed by the GDPML. In many cases a former request from these authorities helps to establish a link with the on-going investigation and facilitates decisions on initiating dissemination. Such practice presents an asset and demonstrates a proper use of LEAs information for the GDPML's analytical purposes.

166. Operational analysis is further facilitated by advancement of the case management system, and development of electronic reporting system which was launched in 2011-2012. Although there is no legal obligation for electronic reporting, at the time of the on-site visit, the majority of SARs were submitted electronically which is found by evaluators to contribute to timeliness of reporting and the accuracy of the SAR database.

167. There is a SAR prioritisation system introduced in the GDPML since mid-2015, which corresponds with risks identified in the NRA, strategic analyses and typologies developed by the GDPML. Each SAR is subject to priority level assessment based on clear criteria and a rating system. The system is flexible and can be adapted – i.e. the SAR that doesn't have a high priority rating due to specific circumstances can still be classified as an SAR of a special importance. Both the experience of the analyst and the opinion of the head of sector are considered for the assessment of the SAR priority level. Such practice is effective and ensures a proper assessment of SARs even if it does not meet the pre-defined criteria. According to the prioritisation system in place, depending on the typology of the reported suspicious activity, the information from some of the SARs is also disseminated to the competent authorities in a summarised manner and/or periodically.

168. The prescribed timeframes for analysis of the SARs differ, depending on the level of prioritisation. The shortest timeframe is 1-2 days and the longest - 3-4 months. The lowest-priority SARs are only entered in the databases and can be "activated" on different occasions. The rough estimations by the authorities show that in 2016 around 9.6% of the SARs were assessed as priority "5"<sup>41</sup>. The greatest part of the SARs -32.9 % were assessed as priority "4" SARs, 29.4 % - as priority "3" SARs, 13.7 % - as priority "2" SARs, and 14.4% - as priority "1" SARs.

169. The IT tools used by the GDPML are sufficient to support the analysis, allowing for "one-click check" in a number of databases the GDPML has direct access to. However, as already described above, some of the databases used by the GDPML do not provide all the necessary information (e.g. BO information), and written requests are sent additionally to supplement information from some directly accessible databases (e.g. tax information for natural persons and details on immovable property). In the view of the assessment team, access to the above mentioned information needs to be further improved in order to allow the GDPML to more adequately address the findings of the NRA

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<sup>41</sup> Albania uses a rating system from 1 to 5 for SAR prioritisation, where 1 is the highest priority SAR, and 5 – the lowest.

with regard to tax crime and real estate sector through a more timely access to information and consequently a larger volume of data supporting the analysis.

170. In the course of a case analysis the GDPML requests also information from the REs. The decision about requesting additional information is made by the analyst, on the basis of conclusions drawn on the preliminary analysis of the case. There are no specific statistics maintained on the number of requests, but Albania suggested that according to a rough estimation, on average, there are some 4-5 requests generated per case. This practice is considered by the assessment team to contribute to the thoroughness and comprehensiveness of the analysis.

171. The GDPML makes a good use of additional information kept with the other administrative and law enforcement authorities, annually submitting around 300-350 requests. As regards the GDPML the most frequent addressee is the ASP. Their cooperation and the information exchange enable the GDPML to get to know that e.g. there is an on-going case on the same persons conducted by the ASP, which further enriches the GDPML analysis, and triggers a referral.

**Case example 6: GDPML referral triggered by information exchange with ASP.**

In 2011 an SAR was reported to the GDPML on the cash deposit of Mr. A.K. Suspicion was based on inconsistency of indicated source of funds with his client-profile. In the course of analysis the GDPML exchanged information with the ASP. It appeared that Mr. A.K was suspected for being part of a robbery in Greece in 2011 and was under investigation. Based on this information the GDPML has decided to file a referral to the ASP. Investigation conducted in Albania led to conclusion that the funds deposited in bank account derived from the robbery (part of the robbed assets).

Based on the investigation (case 3XX (XX)/03.02.2014) Court of Fier ordered a conviction with 4 years of imprisonment for A.K for ML and confiscation of 2,500,000 ALL (from the bank account).

172. With regard to the workload in the analytical department, it is to be noted that besides the operational analysis of SARs, including the preliminary analysis, the analysts in the Suspicious Transactions Analysis Sector are also engaged in the execution of requests for information from ASP, SIS and PO and foreign counterparts if a link to a case analysed by the GDPML is identified. Requests with no link to cases are executed by the Legal and International Relations Department.

173. At the time of the on-site visit the staff of the GDPML engaged in the performance of its analytical functions consisted of 8 employees, 6 of which in the Suspicious Transactions Analysis Sector and 2 - in the Strategic Analysis Sector. New employees were in the process of recruitment (4 for the Suspicious Transactions Analysis Sector and 1 for the Strategic Analysis Sector). The insufficiency of human resources at the time of the on-site visit in the light of the constantly growing number of SARs was addressed through the system of prioritisation of SARs as well as through the vetting process for new employees which was underway.<sup>42</sup>

174. The security of the submission and storage of the information is achieved through the periodic back-up of the sensitive data, surveillance systems, protection from the cyber risks as well as the unauthorised access to information, and through the capacity building of staff (e.g. implementation of trading programmes).

*(b) Strategic Analysis*

175. The Sector of Strategic Analysis and International Relations began operating in July 2013 and since then the GDPML has been extensively conducting strategic analysis, in line with the Analysis Manual. Both the available and obtainable information is considered and analytical tools utilised. In the period 2013-2016 a number of sector analyses have been conducted – sector analysis of money transfer companies, real estate, sports betting, precious metals and stones. Separate strategic analysis was conducted with the focus on cash declarations at the border control points, bank transfers for commercial purposes to China, and use of cash in the economy. The GDPML conducts a periodic

<sup>42</sup> According to information provided by Albania, the recruitment process was successfully accomplished by the end of 2017.

monitoring of complex transactions and the submitted CTRs. A few sectoral analyses were still in on-going process during the on-site visit concerning the bank transfers to/from countries with risk of ML/TF, considered as offshore country for legal and natural clients, and the real estate rent of the public properties.

176. The GDPML played the central role for the review of the NRA for ML/TF in 2015 and had a serious input in the NRA from 2012, as described in IO1.

177. The results of strategic analyses are widely used by the competent authorities. Some of them are reflected in the supervision programme of the GDPML and resulted in on-site inspections (e.g. sector analysis of sports betting companies). Some of the results of the strategic analyses are disseminated to the competent authorities (the GPO, ASP, SIS, GDT, GDC), depending on the sector involved.

178. Albania brought an example of strategic analysis conducted by the GDPML with regard to the widespread use of personal bank accounts for the business purposes. The GDPML collaborated with the GDT, requesting some additional information to develop the typology. Results of the analysis were disseminated to the competent authorities and the REs. In line with the identified scheme, the FIs were instructed to conduct EDD. In parallel, the GDT took special measures against the use of personal accounts for business purposes. The follow-up analysis showed positive results – the SARs concerning this particular scheme decreased for around 80-85%. This is an illustrative example of proper use of a targeted strategic analysis, corresponding with the risk profile of the country, and involving close cooperation and coordination of respective competent authorities and the private sector.

179. In the period 2014-2016, based on the performed strategic analyses, the GDPML identified numerous suspicious cases, which were disseminated to the GPO (17), ASP (120) and SIS (28), some of which resulted in investigation of ML and the predicate offences.

*(c) Dissemination*

180. The GDPML extensively disseminates information on ML/TF and associated predicate offences to the LEAs, SIS and the PO. Although there is no specific reference in the legislation on the competence of the GDPML with regard to associated predicate offences, this does not cause any obstacle in practice. The statistics provided below shows that the main source of information constituting the basis for the GDPML disseminations are the SARs, followed by CTRs, sector analyses, announcements, information from foreign counterparts, notifications from authorities and open sources. Disseminations resulting from sector analyses in the period 2014-2016 were based on the analysis of data from MVTC and banks for transfers made to Latin American countries, frequent senders and beneficiaries, bank transfers for commercial purposes with China, bank transfers with offshore countries, transfers made to/from countries with a high risk of terrorist financing, which seem to address findings of the NRA. No inquiries, notifications from the ASP and the PO resulted in GDPML disseminations over the 2014-2017.

Table 7: Source of information constituting the basis for the GDPML disseminations.

Year	SARs	CTR	Sector analysis	FIU partner	Open Sources	Announcements	Inquiries/ Notification from ASP/Prosecution
2011	99	50	-	16	12	9	25
2012	142	34	-	5	13	-	11
2013	214	39	-	9	3	7	11
2014	321	22	65	14	-	40	-
2015	292	10	52	12	-	35	-
2016	331	12	20	8	-	10	-

181. Decisions for dissemination are taken on a case-by-case basis depending on the extent to which information received and requested supports the suspicion. The majority of cases are disseminated to the ASP. According to the analysts interviewed on-site, there are only three hypotheses for the information to be disseminated to the competent PO - cases of suspicion of TF; cases of suspension of transactions; and cases for which there is enough information to register criminal proceedings. This is considered by the assessment team to be a good practice of avoiding the referral of immature cases to PO. In all other cases information is disseminated for further development by the LEAs before it is referred to PO.

182. Even when information is referred directly to PO, it was confirmed by the authorities that a copy is sent to the ASP, which, according to prosecutors and police officers, contributes to the effective coordination and ensures longer time for the police to prepare the investigation.

Table 8: Disseminations of GDPML to ASP and PO

Year	2011	2012	2013	2014	2015	2016
Cases referred to State Police (only)	160	171	248	314	281	291
Cases referred to Prosecutor	51	34	35	148	120	120
Total	211	205	283	462	401	411

183. In general, disseminations of the GDPML allow the LEAs to use them either to initiate investigation or use in the on-going ones. Based on the GDPML disseminations LEAs rarely request clarification or further substantiation of the case, which speaks of a good quality of GDPML output. In majority of cases, LEAs submit a request for additional information to the GDPML, if some new facts or persons linked with the case are revealed by the LEAs.

184. Although there are no written rules in place, effective coordination between the GDPML, the ASP and the PO in cases of freezing<sup>43</sup> of transactions was demonstrated. Due to this coordination, quick and timely actions are undertaken to secure the further execution of provisional measures by the prosecutors. The statistics provided shows that in the period of 2011-2016 on average 56% of the total amount of frozen funds by the GDPML was consequently seized by a court order. These numbers, however, refer to the first instance court decision for seizure and do not reflect further decisions for the release of the funds.

Table 9: Funds frozen by GDPML and seized by court

Year	No. of Freezing Orders	Total frozen in EUR	Total seized by court order in EUR	% of seized property
2011	13	1,619,509	872,125	53.5
2012	8	1,297,000	1,145,950	88.3
2013	15	881,670	213,500	24.2
2014	65	18,183,760	13,967,770	76.8
2015	47	16,278,080	11,266,941	69.2
2016	61	28,772,733	8,129,000	28.2
January - September 2017	37	5,410,194	2,105,765	38.9

185. Albania has also provided the case example of effective cooperation between the GDPML and the ASP with regard to identifying and tracing of assets, that are afterwards made a subject to seizure, applied by the LEAs.

<sup>43</sup> The AML/CFT Law uses the term “freezing” (Art. 12).

Case example 7: Investigation initiated by the ASP based on the GDPML referral (ML in the real estate sector)

Based on a SAR from a notary the GDPML submitted a referral to the ASP on a citizen R.K. with regard to suspicious contracts for purchase of immovable property. The payment was structured, and conducted by R.K, some family members of R.K and by Mr. D.B from a country B - through a wire transfer made from abroad. It was established that R.K. and his family members had also other real estate property and no business activity on their behalf. Other wire transfers from country B were established through a request to commercial banks. A request to the FIU of country B revealed not only the existence of a SAR for these individuals, but also that R.K, D.B, N.T etc. were part of an investigation for ML in country B, with human trafficking as a predicate offence. In cooperation with the ASP, GDPML issued the freezing order for the accounts and approximately 190000EUR were further seized. The case is sent to the Court of First Instance.

186. Special attention is paid to cases of TF suspicion. According to internal procedures on operational analysis of the SARs these are treated as a high priority and are analysed and disseminated within short timeframes. Although the checks conducted by LEAs did not confirm the initial suspicion on TF, case examples provided to the assessment team illustrate that timely and adequate actions are taken by the GDPML to prevent and fight TF (see also IO9).

#### *Cooperation and exchange of information/financial intelligence*

187. The GDPML and other competent authorities in overall demonstrate a good level of cooperation on ML/TF matters. Cooperation between competent authorities is facilitated both by the existing MoUs and by long-standing good practices. In general, there have been no cases of unsubstantiated refusal of cooperation and no serious delays were reported to the assessment team. However, there are some concerns about the criminal proceedings carried out by the PO based on the received referrals (see IO7).

188. The GDPML extensively provides information to competent authorities. This is done both spontaneously as described above and upon request. The GDPML has confirmed that information requests from the ASP and the PO contain a sufficient description of the case, and links to ML or TF. The good quality of requests facilitates to a great extent the operational analysis conducted by the GDPML.

189. As it was already mentioned, the main counterparts for the GDPML disseminations are the ASP and the PO. Yet, in order to ensure a better coordination the GDPML disseminates information to the GPO when more than one prosecution office is considered to be an addressee.

190. The GDPML makes a parallel dissemination to ASP and PO in case a transaction is postponed. This approach ensures promptness of possible application of seizure of funds under consideration. While the PO processes the seizure order, the ASP in parallel takes investigative measures to develop a criminal case. This appeared to be a long-standing practice, with no written rules for the cooperation and coordination among these three authorities. However, Albania has demonstrated that the absence of written rules is not an impediment in these cases, due to the prior coordination, and adequate actions taken by each authority. The effectiveness of this long-standing practice is demonstrated by the statistics provided and case examples described by the authorities (See the Case examples 1 and 7).

191. During the interviews on-site and according to the provided statistics, the GDT, the GDC and HIDAACI send referrals to the PO and the ASP when there are data about the relevant criminal offences (tax evasion, non-declaration or false-declaration of assets, corruption etc.). In case there are also doubts about the possible ML, the GDPML<sup>44</sup> is also notified. The GDPML confirmed that notifications are registered in the database and checks are conducted to identify if the GDPML can add value to the cases. The assessment team has concerns with regard to absence of clear

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<sup>44</sup> The GDPML receives notification from the GDT, GDC and the HIDAACI.

coordination mechanisms for such cases, as this can lead to overlapping of measures taken simultaneously by different authorities, affecting also the GDPML work.

192. The GDPML makes a wide use of its powers to request information from foreign counterparts not only for the use for its own operational needs, but also to facilitate the authorities' needs.

193. Domestic competent authorities use secure channels for the exchange of information as well as safeguards for the confidentiality of the data. Rules in place for the access to the databases, premises and documents are properly applied.

#### *Overall Conclusions on Immediate Outcome 6*

194. The authorities have a direct and indirect access to a wide range of information maintained by the state authorities and the REs. Some databases are only partly accessible directly, and some do not contain accurate and up-to-date information. This constitutes an additional administrative burden for the authorities and hampers the timely access to information.

195. Numerous case examples and statistics illustrate that the GDPML disseminations, on its own initiative and upon request, trigger and support investigation of the ML and predicate offences. Financial intelligence generated by the GDPML is also used for TF investigation.

196. The quality of SARs overall is considered to be good. FIs submit most of the reports. The number of SARs filed by the DNFBPs (except for notaries) is low, and seems to be insufficient given the risks present in the sector. The most frequently reported suspicious activities appear to be in line with the country's risk profile. Feedback provided by the GDPML on SAR filings does not meet the expectations of the REs.

197. The GDPML makes a good use of its powers, available tools and resources to conduct its operational and strategic analysis and to cooperate with the competent authorities. The output of the GDPML is considered to be of high quality. However, a regular feedback from the LEAs and PO would further assist to adequately support their operational needs.

198. *Albania has achieved a Substantial level of effectiveness with Immediate Outcome 6.*

#### *Immediate Outcome 7 (ML investigation and prosecution)*

##### *ML identification and investigation*

199. Albania has a robust foundation in substantive criminal law and relatively sound institutional and procedural structures for investigating, prosecuting and adjudicating ML cases.

200. Albania was in a phase of transition at the time of the on-site visit, departing from a legal and institutional structure that had been applied for pursuing ML during the entire time period relevant for this assessment to a new one established by a comprehensive judicial reform that was still being implemented. Thus, some elements had not yet been in place or were not functional. The structures introduced as results of the judicial reform can be taken into account for the purposes of this assessment, but the MER will mainly focus on output produced by the previous regime.

201. ML investigation is formally initiated by the competent prosecutor upon a referral from a LEA (typically the ASP) the GDPML or other bodies (GDT, GDC, HIDAACI), after which the investigative proceedings are directed by the prosecutor. While the prosecutorial approach towards such referrals was said to be generally positive, the referring authorities expressed some concerns about cases where the prosecutor decided not to initiate a ML investigation or where the investigation was dismissed prematurely and/or despite the evidence available (for more details see paragraphs 222-223).

202. According to the practitioners interviewed during the on-site visit, criminal investigations into more serious proceeds-generating crimes should routinely be accompanied or followed by a parallel financial investigation pursuant to the Anti-Mafia Law with a view to detecting illicit proceeds but also for establishing associated ML offences. In this case the ASP would send a referral to the competent prosecutor regarding the ML charges. In case of investigations conducted by the Serious

Crime Prosecution Office (or its successor authority, the Special PO) it is the same PO that conducts the parallel financial investigation pursuant to the Anti-Mafia Law and whenever associated ML is established, it will be the same PO again to continue the investigation also into the ML charges. However, the authorities could not yet demonstrate the proportion of such parallel investigations that actually resulted in subsequent ML referrals and investigations.

203. As it is discussed more in details under R.30, criminal cases of ML are, as a main rule and in the vast majority of the cases, investigated by the Directorate for Investigation of Economic and Financial Crime, within the structure of the ASP, where the Sector for Investigation of Money Laundering (at central level) and 7 of the 12 local sectors of DIEFC (at local level) have exclusive competence to investigate ML offences as well as predicate offences associated to the respective ML charges. This system has replaced the former structure consisting of 8 regionally organised Joint Investigative Units for the investigation of corruption and economic and financial crime. The DIEFC has 154 officers and agents, of whom 28 are located at central level and 126 in the regional Police Directorates (29 of them in Tirana) which the representatives of the ASP considered adequate. Criminal investigations are formally initiated (registered) and then led by the competent prosecutor of the territorially competent First Instance Prosecution Office or, in case of ML related to corruption or committed by a structured criminal group or criminal organisation, the recently established Special Prosecution Office.

204. As for the number of ML investigations, prosecutions and convictions, the assessment team was provided with a variety of different and substantially conflicting statistics from various sources (MEQ and NRA). While the evaluators understand that discrepancies between these statistics have been caused by the use of different methodologies, the lack of compatible and comparable statistical data is seriously hampering the proper assessment of the performance of the respective authorities.

205. The tables below were compiled by the assessment team from several tables provided by the authorities and the figures therein demonstrate how many ML-related referrals were made to LEA in the period subject to evaluation. The figures only cover referrals based on the ML offence under Art. 287 CC.

Table 10: GDPML referrals

GDPML referrals per year	2011	2012	2013	2014	2015	2016
Cases referred to State Police	160	171	248	314	281	291
Cases referred to Prosecutor	51	34	35	148	120	120

206. The table above demonstrates in how many cases the GDPML referred ML-related cases to the ASP or to the competent prosecutor. These criminal referrals were made upon information coming from STRs and/or from foreign counterpart authorities<sup>45</sup>.

207. The next table shows the number of ML investigations the ASP referred to the competent prosecutor for being registered and prosecuted. One part of these ASP referrals was based on previous input from the GDPML (see the previous table on GDPML referrals). In this context it can be seen that a significant proportion of such cases (25% to 63%) were finally referred to the prosecutor by the ASP. Another part of the ASP referrals was made on the basis of Police indications and thus independent of any GDPML input (which basically means ML cases based upon evidence gathered from investigations into predicate offences and/or from financial investigations initiated parallel to such cases).

Table 11: Referrals to Prosecution Criminal offense Art. 287 CC

Year	Referrals on basis of information of GDPML	Referrals with police indications	Total
2011	50	34	84

<sup>45</sup> Although the cases referred by GDPML to the Prosecution Service were also reported to the ASP, these are only counted in the table as referrals to the Prosecution as the primary receiver.

2012	70	45	116
2013	46	39	85
2014	130	75	206
2015	161	96	257
2016	186	132	318

208. It is thus apparent that in Albania, a considerable number of potential ML cases are referred to the Prosecution Service every year, where both sorts of ML referrals show a steady increase over the years. Since 2013-2014 the number of annual referrals almost multiplied and has since continued to grow. As it was explained, this is considered to be the result of more efficient detection of criminal offences and better cooperation between GDPML and LEA rather than any actual increase in the underlying criminality itself. The statistics are in line with findings of the NRA that the majority of the referrals sent by the ASP to the prosecutors have partly or entirely been indicated by the cases previously referred by the GDPML to the ASP.

209. More ambiguous conclusions can however be drawn from the statistics concerning later stages of criminal proceedings. The number of proceedings registered by the Prosecution Service that is, criminal investigations formally initiated upon ASP and/or GDPML referrals can be seen in the table below. Here, one can find the ratio between the numbers of referrals and criminal investigations (registered proceedings) quite proportionate (except for 2016 where there is a notable discrepancy) which apparently confirms that in most of the cases, the prosecutor decides in favour of the referral and a formal ML investigation is initiated.

Table 12.

	2011	2012	2013	2014	2015	2016
Referrals to Prosecution (total)	84	116	85	206	257	318
Registered proceedings	47	104	70	182	220	227
defendants	13	26	18	39	66	75
Proceedings sent to trial	7	8	6	7	5	8

210. However, there is remarkable drop in the statistics regarding the number of indictments (proceedings sent to the court for trial).

211. The first thing to notice is the difference between the number of registered proceedings and the defendants involved in those cases, in which relation the latter figure is significantly lower throughout the evaluation period. These figures can be different as there may be cases where no suspects have been identified, while in other cases there are several defendants. However, the numbers in this table follow a specific pattern according to which the number of defendants is about 21-33% of the number of proceedings. It means that approximately 70% of the investigations are conducted without identifying a suspect<sup>46</sup>.

212. The second, more significant bottleneck can be found at the stage where investigations are concluded, and the proceedings are sent to trial. The number of such cases is generally low throughout the evaluation period. These figures are not only very low in comparison to the number of proceedings registered in the same year, but this ratio has worsened every year: it was the highest at the beginning of the period (15% in 2011) from where it descended to an alarmingly low 3.5% in 2016 (it is worth to note that the previous 5.8% was already mentioned as “unacceptable” in the NRA). Instead of a more or less fair proportion between the numbers of ML investigations and ML indictments, the difference between the two shows a constant growth every year, with a further acceleration from 2014. The reason is that whereas the number of investigations (registered proceedings) generally increased throughout the period, the number of indictments (cases sent to

<sup>46</sup> This percentage was calculated with a theoretical 1 defendant/case ratio, the proportion of ML cases without identifying a suspect can only be higher.



trial) remained practically the same, ranging between 5 and 8 cases annually, so the increase in the volume of input did not result in any noticeable change in the volume of the output.

213. When it comes to the number of convictions as compared to the number of cases sent to trial, the ratio (indictments/convictions) becomes more proportionate again, although exact conclusions cannot be drawn because GPO statistics are more focused on the number of cases (see above) while MoJ statistics on convictions are based on persons convicted (discrepancies between these statistics had already been highlighted as a risk in the NRA but nothing has since happened in this field). The statistics below thus indicate the number of persons convicted or acquitted with a final and valid verdict at any stage of the court proceedings<sup>47</sup>.

Table 13: Judgements

Year	1st instance judgements		Appeal judgments - judgements final and enforceable			
	persons acquitted	persons convicted	appellate courts		Supreme Court	
			persons acquitted	persons convicted	persons acquitted	persons convicted
2011	-	-	-	1	-	-
2012	4	1	-	-	-	-
2013	4	1	3	2	-	-
2014	1	6	1	-	2	-
2015	-	3	4	8	-	-
2016	1	8	4	4	-	2

214. According to the statistics, the majority of ML investigations registered by the Prosecution Service will thus never reach the next stage of proceedings as these cases will never be sent to trial. In cases where the perpetrator was not identified, and no suspects were registered, this is more logical – although it also requires explanation which factors prevented LEAs from collecting sufficient evidence in this respect. Nonetheless, the number of indictments is still alarmingly low if compared to the number of registered defendants and this ratio is also getting worse year by year. Exploration of the reasons for this discrepancy was thus among the main objectives of this assessment. Considering, that investigation in registered proceedings is conducted by the prosecutor who is also responsible for deciding whether or not a certain criminal case can be sent to trial, the potential reasons for the aforementioned shortcomings are likely to be found by analysing the performance of the Prosecution Service in these cases.

215. In fairness, it can be accepted that one of the reasons is the maximum commitment the Prosecution Service claims to have shown in registering and investigating any indications incurred by Albanian LEAs regarding ML offences. As it was explained by the prosecutors, ML-related referrals are often registered even if the suspicion of ML is remote and there is not much indication regarding the perpetrator or the predicate offence so as to ensure that all ML-related cases can be properly investigated. According to the GPO, the increase in the number of registered defendants (almost 6 fold from 2011 to 2016) also supports this prosecutorial approach – which might be true, but cannot serve as explanation for the low output of the proceedings as expressed in terms of cases sent to trial.

216. Starting with the registration of proceedings, the assessment team was provided with more or less different information onsite, which does not necessarily support that the Prosecution Service always follows the full-inclusive approach described above. Some of the authorities (particularly the GDPML and the HIDAACI) expressed some disappointment as to the volume of cases where the prosecutors decided not to initiate a formal investigation upon referral, while no such complaints were heard onsite from the ASP.

<sup>47</sup> Only final and valid court decisions are indicated at every stage. A person convicted or acquitted by a 1<sup>st</sup> instance court thus denotes a 1<sup>st</sup> instance verdict that was not appealed by any of the parties and hence became final.

217. The lack of ML indictments raises concerns and it is unclear whether this is due to the reason that many ML investigations and proceedings that have been formally registered and conducted by the competent prosecutor cannot yield as much evidence as would be sufficient for an indictment that could lead to a successful conviction or for the other reasons. Albanian authorities have already examined this question and the results of their analysis is now included in the NRA where one can find a detailed list of deficiencies (“missing investigative actions and problems”), the essence of which can be summarised as follows:

(1) Institutional issues or those related to ineffective cooperation:

- referrals from GDPML to ASP/Prosecution are not given proper weight and are often dismissed without investigating the information and involving other stakeholders (GDT, GDC) and even if these are involved in a Joint Investigative Unit, they are hardly, if at all, committed to the handling of ML cases
- similarly, in case an investigation has been started and it can be proven that the defendant’s incomes cannot be justified by legitimate sources but no exact predicate criminality has been established, the prosecutors tend to dismiss the case without having sufficiently investigated all possible trails to the potential predicate criminality either by the ASP or by involving the GDT or GDC or, as another option, without referring it to the SCPO to trigger a procedure pursuant to the Anti-Mafia Law

(2) Investigative deficiencies: in the stage of investigation, the Prosecution does not perform all possible investigative actions to prove the case, and particularly:

- special investigative means are effectively non-existent in ML cases
- no actions are taken on-site to inspect and evaluate the assets (e.g. real property) of the suspects and neither are proper searches (of premises, vehicles) performed, which all inhibits the identification of other ill-gotten funds
- when accounting experts are involved, they often receive inadequate questions whereas their findings are not confronted with conclusions drawn from other evidence

(3) Difficulties and delays in the field of international judicial cooperation (see below)

(4) Application of inadequate standards of proof

- although Art. 287 CC does not require the ML offence to be related to a specific predicate criminal offence, the Prosecution is inclined to claim that “the predicate criminal offence has the right to be specified” (sic) which is thus a prerequisite for an indictment; in some cases details of the specific predicate offence were required already for the registration of the respective criminal proceedings (i.e. it was a prerequisite for the investigation)
- indirect evidence is not used in most of the cases while too much weight is given to the declaration of the suspect (which is taken at early stages of the investigation and thus has a definitive impact on the whole procedure)
- in some cases, the prosecutors denied investigating the laundering of proceeds derived from time-barred predicate offences even though such forms of ML are clearly covered by Art. 287 CC

218. Within the structure of the NRA document, these deficiencies were included in a separate list with a heading to indicate that the sole source of those findings was the GDPML (and not the other authorities mentioned). During the on-site visit, representatives of the GDPML explained that their findings had been based on feedbacks received in relation to the referrals and further information obtained from LEAs. It was also made clear that most of the deficiencies listed in the NRA were still present at the time of the on-site visit (with some notable exceptions such as the more frequent use of special investigative means in ML cases). While the relevant stakeholders in this field (GPO, ASP, GDT, GDC) did not formally disagree with, or objected to the list of investigative deficiencies, either in the NRA document or elsewhere, the representatives of the Prosecution Service, as the main

stakeholder, expressed their disagreement with the GDPML findings in general, emphasising that those conclusions had been drawn without adequate knowledge of the respective criminal proceedings.

219. According to the GPO, the delay in ML cases is usually caused by the complexity of such cases, when due time is required to identify the criminal source, to perform a criminal wealth investigation and to create the ability to prove the connection between the proceeds and the criminal source. Reference was made to the CPC requirement according to which once the necessary evidence is collected and the perpetrator is identified, the proceedings have to be registered, from which moment there is a 3-month term within which the proceedings should be completed and sent for trial – or, as an alternative, be dismissed (in case the criminal suspicion could not be corroborated by evidence) or suspended (e.g. in awaiting evidence requested from foreign counterpart authorities). The evaluators need to note at this point that while this 3-month term does appear too short, it is not 3 but 6 months for cases of the Special Prosecution Office (see R.30) and it can be prolonged up to 2 years in case of complex investigations and even beyond for organised and serious crimes so procedural deadlines would neither inhibit the proper investigation nor require the premature termination of a ML case. According to the authorities, the average length of ML investigations ranges from 6 months to 1.5 years while the average length of court proceedings from 3 to 6 months.

220. Albanian authorities, however, presented some case examples to prove that ML investigations/prosecutions would in some cases and in relevant circumstances accept also relatively low level of proof which, in certain cases, was sufficient for a conviction too.

Case example 8: (2013 conviction)<sup>48</sup>

The defendant is an Italian citizen “L” who performed 2 bank transfers from Slovenia to Albania in March 2010 in total of 500.000€ claiming, at the Slovenian bank, that the assets had been derived from the sale of a chain of grocery stores in Germany. The recipient of the assets was a registered Albanian branch of an Italian company which soon retransferred the money to another Italian company. From the account of the latter, 60.000€ was withdrawn in cash by another Italian citizen “G” who also attempted to transfer the rest of the assets to a third Italian company claiming that the purpose of the transfer is that the second company could open an Albanian subsidiary. All these transactions took place in a relatively short period of time with various declarations as to the purpose of the transfers and this was the point where the Albanian bank considered the last transfer suspicious and refused it. “G” who attempted the last transfer then registered himself as a private entrepreneur at the NBC, opened a bank account for himself and attempted to have the money transferred to his bank account. The same Albanian bank refused this transaction too and asked for further documentation, at this point “G” produced various contracts and other suspicious documents involving “L” as the representative of the second Italian firm. An investigation into ML was initiated in which it was proven that “L” gave false statement in the Slovenian bank regarding the origin of the assets then transferred to Albania. MLA provided by Germany proved that “L” had never had any property or business in Germany and the sale of grocery chain was never supported by any document. The false declaration together with the suspicious banking manoeuvres and the lack of information of the legitimate origin of the property proved to be sufficient for convicting “L” for ML.

Case example 9: (2017 investigation)<sup>49</sup>

An investigation was initiated against 2 Albanian nationals living in Albania with Greek passports who deposited large amounts of cash in Albanian bank accounts from 2010 to 2017 in considerable sums totalling 831.900 €. The deposits were labelled as “income from emigration” but the origin of the assets could not be explained by foreign bank transfers or by any registered business activity or legitimate property of the said individuals in Albania or elsewhere. The individuals also carried out some suspicious bank transfers with Greece and Germany with emigration-related references. The

<sup>48</sup> DCoT verdict no. 986 of 16.07.2013

<sup>49</sup> Prosecution of the First Instance Court for Serious Crimes, proceeding no. 513 registered on 29.03.2017

lack of legitimate source of the assets together with the suspicious references proved to be sufficient for initiating a ML investigation which was on-going at the time of the onsite visit.

221. Notwithstanding that, neither the Prosecution Service nor LEAs attempted to generally refute the specific findings listed in the NRA nor did they provide any other, convincing explanation to the difference between the number of ML investigations and indictments as discussed above. In this situation, the assessment team could see no reason not to accept that these deficiencies might have actually been in place when the NRA had been drafted – and that most of them were still present at the time of the on-site visit too, indicating the vulnerability of the repressive AML regime.

222. Furthermore, other information the evaluators obtained onsite appears to support that deficiencies in the investigative/prosecution phase of the criminal proceedings are to be blamed for the extremely low ratio of ML cases sent to trial in Albania. Not only the GDPML but also the HIDAACI as another RE made reference to the lack of proper and logical reasoning behind the prosecutorial decisions on refusing to investigate or dismissal of criminal proceedings. Prosecutors' inactivity, that is, reluctance to start an investigation upon a referral or dismissal of an investigation instead of submitting an indictment were reported to be challenged by referring authorities and particularly by the GDPML throughout the evaluation period. Such complaints were submitted to the GPO with a certain regularity, either directly or, occasionally (in 2 cases in 2015-2016) through the MoJ.

223. After the NRA was issued and the investigative deficiencies listed in NRA became known to the practitioners, the GPO and the GDPML organised a systematic review of ML cases where the GDPML objected to the decision of the first instance prosecutors or where no such decision had yet been brought but some issues had occurred during the investigation. Throughout a period of 6 months from December 2015 until July 2016, representatives of the GPO the GDPML and the ASP held roughly one meeting per month and discussed 5-6 problematic cases during each meeting. Throughout the period, there were altogether 10 cases where the GDPML objected the prosecutor's decision not to pursue the case, as a result of which the GPO overturned 2 of the 10 prosecutorial decisions and these cases were then sent back the first instance prosecutor with proper guidelines for further proceedings. In other cases, which had still been in open stage of investigation, the GPO also issued guidelines for the competent prosecutor so as to achieve a better performance.

224. One of the achievements of the recent judicial reform was the introduction of a generic right of appeal against the prosecutor's decision to dismiss the case of specific charges thereof. Before the last amendment of the CPC which entered into force as of 01 August 2017 this right was only provided, on conditions, by Art. 329 to the victim and the defendant (which is not quite relevant in case of partly/entirely victimless offences such as ML). Now Art. 328-329 empowers a broader range of participants of the procedure, including the person having filed the criminal report or complaint, to have such a prosecutorial decision appealed to the judge of preliminary hearing. According to the authorities met onsite, this provision would automatically apply to all authorities the referral of which was the basis for initiating the investigation.

#### *Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

225. Albanian authorities were unable to demonstrate having a clear understanding of the actual size, composition and output of criminality and, particularly, the proceeds-generating organised criminality in the country, beyond what can be captured by the various statistics on reported/investigated crimes.

226. Because of the use of different statistical methodologies, as noted above, the assessment team was provided with various (and often conflicting thus only relatively reliable) statistics on predicate criminality. For example, statistics on criminal offences reported to the ASP (thus not containing cases reported to other LEA) showed that the vast majority of the relevant (proceeds-generating) offences (or groups of offences) were, in the order of occurrence, tax crimes (764 cases in 2016) fraud (548) corruption-related offences (292) smuggling and other crimes in the field of customs (229) and drug trafficking (90). Other, similar statistics found in the MEQ or the NRA contained more

or less comparable figures only for some of these categories but significantly different records for most of the others.

227. While such discrepancies might obviously be (and probably are) caused by technical deficiencies in the field of obtaining, processing and keeping of statistical data and the differences in the methodology used, the assessment team have some concerns that they also indicate potential difficulties the competent Albanian authorities might have in adequately perceiving and understanding the size, composition and threat of domestic proceeds-generating criminality, which would unavoidably have a negative impact on the perception and assessment of the risks of associated ML offences.

228. Although there are various statistics available specifically on ML cases (see below) the Albanian authorities could not demonstrate having clear and updated information regarding what sorts of predicate crimes (criminality) have been underlying the ML offences investigated or prosecuted.

229. While the NRA and the annual reports of the GDPML do contain such data, those figures were admittedly based on confidential and/or open-source information which does not necessarily mean factual data coming from the ML cases themselves (which may be the reason why the predicate crime remained “not determined” in most of the cases). The information provided in this respect is very limited as it only covers cases referred by the GDPML to the ASP and/or to prosecutors (including those where exact knowledge of the predicate crime had not yet been available) which automatically excludes all predicate offences the proceeds of which were acquired and laundered without entering the financial system. Furthermore, the data for 2015-2016 are from the GDPML annual reports which are broken down to offences in a different manner than in the NRA. Because of this, the table below can only serve illustrative purposes.

Table 14: Predicate offences

Predicate offence	2012	2013	2014	2015	2016
Not determined	116	196	300	224	302
Trafficking of narcotic substances	30	18	50	48	30
Fraud/forgery	16	17	20	20	19
Concealment of income/tax evasion	15	28	40	38	2
Corruption	9	7	7	11	9
Theft/robbery	5	2	10	5	
Trafficking of motor vehicles	5	2	2		
Trafficking in human being/exploitation of prostitution	4	4	9	6	7
Other criminal precedents	3	3	15	16	10
Murder			2	3	1
Non-declaration at the border			4	14	11
Smuggling and manufacturing/sale of hazardous substances	2	1		2	
Criminal proceedings for ML		2		4	
Terrorist financing		1	3	2	8
Creation of / involvement in a criminal organisation		1		6	6
Unlicensed currency exchange		1			
Total	205	283	462	402 <sup>50</sup>	411 <sup>51</sup>

<sup>50</sup> Containing another category of offences – unlicensed gambling (2)

<sup>51</sup> The 2016 annual report uses a different categorization of offences and thus some figures do not fit into the table: trafficking in arms (2) theft and illegal possession of weapons (2) links to other practices (2).

230. The predicate offence could be identified mostly in the cases related to drug trafficking, tax crimes, fraud, corruption and trafficking offences. Considering that more or less the same range of predicate offences were mentioned by domestic interlocutors during the on-site visit, it can be concluded that these might actually represent the main sources of proceeds in relation to the ML offences investigated and prosecuted in the evaluation period generally. What is concerning, however, is the overall impression that the number of ML cases related to these specific predicate offences is alarmingly low compared to the information the assessment team obtained from various sources about the size and structure of organised criminality and corruption in Albania and the neighbouring region.

231. According to UNODC and EUROPOL data quoted in the NRA, organised criminality is mainly based on activities related to the trafficking in narcotics, in which context Albanian criminal organisations, making good use of the geographical location of the country, established their position in the Balkan route of heroin trafficking, built up direct links with Latin America for trafficking and distributing cocaine in Western Europe whereas the cannabis cultivation in and trafficking from rural areas of Albania also remained a major issue. It was also acknowledged in the NRA that in Western Europe, the OCGs of individuals of Albanian ethnicity occupy a significant part of criminality, focused mainly on trafficking of drugs, trafficking and sexual exploitation and crimes against property. The first conclusion emanating from this is that significant volume of criminal proceeds must inevitably be generated from this activity that eventually returns to Albania and the region in various forms (purchase or real estate was highlighted in the NRA) which is to a very low level addressed by Albanian LEA taking into account the number of ML cases or the volume of proceeds detected, seized and confiscated. The second is that this context does to some extent confirm the dominance of ML cases involving (or even depending on) MLA, the negative effects of which (primarily the extreme delays in obtaining evidence from abroad) should however encourage Albanian prosecution authorities to more explore alternative routes of building up criminal cases giving more emphasis to circumstantial evidencing and abandoning the (implicit) requirement to precisely determine the exact predicate offence for a successful ML conviction.

232. Upon the basis of UNODC and GRECO reports, the NRA concludes that corruption is a major threat in Albania. The country was reported to mark negative records of corruption level in all major areas including the judiciary (prosecutors and judges) where it remained an extraordinarily serious concern which adversely affects the normal functioning of the justice system and undermines public confidence in the rule of law. The statistics provided to the assessment team show that the number of investigations into corruption cases has increased, but the indicator of cases sent to court remains low as compared to the total number of cases recorded and the number of individuals convicted for such offences remains even lower. The proportion of acquittals as opposed to convictions is unusually high in corruption cases – for example  $143/314 = 45\%$  in appellate court judgements in 2016.

233. The lack of financial and high-level corruption investigations, corruption in the judicial system, conflicts of interest and asset declaration fraud was already noted as a weakness in the in the 2014 Progress Report (and no significant changes have since been reported) which will eventually lead to corruption-generated proceeds being undetected and associated ML unpunished.

#### *Types of ML cases pursued*

234. As noted above, ML related to foreign predicates has a significant occurrence among the cases being investigated although the reliance on MLA (formal letters rogatory) in obtaining evidence on the criminal origin of the proceeds is a delaying factor in most of these cases. Both GDPML and ASP reported to the assessment team that the majority of such cases cannot go forward to trial because the Prosecution requires more evidence regarding the origin of the proceeds and typically the specific predicate offence that can only be obtained through MLA. As it was expressed by the GDPML in the NRA, such letters rogatory often suffer from various deficiencies (see above under IO2) which unavoidably delays the timely execution of the requests, until when the ML investigation is

suspended or eventually dismissed. This approach raises concerns particularly in ML cases where the letter rogatory is aimed at specifying details of the predicate offence (which, as noted above, is not a direct requirement under Art. 287 CC) and/or where circumstantial evidence already obtained in the domestic investigation could be sufficient for a successful indictment. The prosecutors however tend rather to suspend proceedings until legal assistance is provided rather than prosecuting the laundering act as stand-alone (autonomous) ML. The evaluators note that the actual level of proof required to successfully achieve a conviction for a third-party or stand-alone ML offence did not appear entirely clear to all practitioners.

235. During the meetings, both the prosecutors and judges claimed that their respective interpretation of Art. 287 CC would allow for a lower level of proof regarding the predicate offence and it is the interpretation applied by the other party that can be blamed for the poor statistics (the question is thus whether the prosecutors are over-defensive in not sending more “risky” ML cases to court or the judges have set overly high evidential standards which legitimately discourages the prosecutors from doing so). In this respect, however, the evaluators note that the use of circumstantial evidence is not only provided by positive law specifically for the ML offence but also encouraged, in a general sense, by guiding decisions of the Supreme Court<sup>52</sup>. In this context, reference was made, as a positive example, to a 3<sup>rd</sup>-party ML case related entirely to foreign proceeds yet successfully prosecuted without MLA as described below. This approach is welcome, and the evaluators encourage Albanian authorities to pursue it in more similar ML cases.

236. As far as ML related to foreign proceeds is concerned, it needs to be noted that in relation to ML cases, Albania sent out 45 MLA requests in 2014, 61 in 2015 and 98 in 2016 which implies as many criminal proceedings having potentially been suspended awaiting the results of the letter rogatory. While these are remarkable figures, they fall short of providing adequate explanation to the extreme difference between registered proceedings and cases sent to trial (175, 215 and 219 cases, respectively) which does support that international cooperation is just one of the factors contributing to the deficiencies of criminal investigations listed above.

237. The assessment team were not given any statistics or indicative figures as to what proportion of ML investigations, prosecutions or convictions had been related to self-laundering or 3<sup>rd</sup>-party ML, and what proportion of the latter were stand-alone or autonomous ML offences.

238. According to the GPO, however, most of the registered ML proceedings (and hence most indictments and convictions) are related to the prosecution of the predicate offence, which may equally refer to cases of self-laundering or 3<sup>rd</sup>-person ML offences prosecuted together or parallel to the respective predicate crime. The GPO estimates that these categories represent the highest percentage among the ML cases. In some concrete cases, however, 3<sup>rd</sup>-party ML offences are pursued autonomously, with no need for prosecution or punishment for the predicate criminality.

**Case example 10: A self-laundering<sup>53</sup>**

A former director of control at Regional Tax Directorate of Tirana (“AH”) and a business representative (“MB”) were convicted for theft through abuse of office, counterfeiting of documents and ML (other accomplices were tried separately). “MB” and others had registered and opened a number of business companies for the sole purpose of issuing knowingly false VAT refund applications, together with equally counterfeit underlying documentation, to the tax authority. “AH” and her accomplices at the tax authority, acting in cooperation with “MB” and her accomplices, approved the false applications and ordered the reimbursement of the respective amounts making sure that no actual control procedures are carried out to check the veracity of the applications. After the transfers for reimbursement took place, “MB” withdrew all the amounts in cash so as not to leave any further traces of money in the banking system before the perpetrators have shared the ill-gotten proceeds among each other.

<sup>52</sup> Decision No. 114, dated 27.05.2016

<sup>53</sup> Decision No. 737 dated 08.04.2015 of the Appellate Court of Tirana

Case example 11: A 3rd party ML (2017 indictment)<sup>54</sup>

The perpetrator, who is a retired pensioner with no legitimate business activities, received a series of bank transfers in a time period from 2012 to 2016 from various overseas companies (Lebanon, USA, China) with which she had no business relationship. At the same time, she conducted 39 money transfers to various recipients worldwide (UK, Ivory Coast, Australia and Ghana). At least in one of these cases the incoming bank transfer had apparently taken place as result of social engineering fraud but all other transactions were equally suspicious and involved false data. The latter, together with the lack of any legitimate relationship between the perpetrator and the sender/recipient entities involved in the various transfers she had committed, was sufficient to have her indicted for ML offence. Despite the foreign proceeds, the indictment was thus based exclusively on evidence gathered through domestic financial investigations and inference from factual circumstantial evidence.

239. LEs (typically limited liability companies) were mentioned to have frequently been prosecuted for various crimes, including for ML but no exact or approximate figures were disclosed to the assessment team and both case examples<sup>55</sup> the authorities provided in this respect dated back to 2012-2013 (one of them was still pending before the court). In both cases, the legal persons were commercial companies prosecuted for ML together with the respective predicate offences (which were, in one of the cases, fraud and theft through abuse of duty, while VAT fraud and forgery in the other one). In the case already ended with a conviction, the legal entity was sentenced to dissolution and confiscation of all its assets. In both cases, the responsible natural persons were also prosecuted (and convicted) within the same criminal proceedings.

240. According to the documents and case examples described to the evaluators, the ML convictions and prosecutions are mostly related to predicate offences such as various sorts of fraud, economic crimes, drug trafficking and crimes related to prostitution. Having said that, the evaluators were only made aware of one outstanding drug-related ML case being commensurate to the occurrence and volume of this kind of predicate criminality in Albania (with a particular regard to the large-scale police operations in 2014 against criminal organisations engaged in outdoor cannabis cultivation where as a result of a single raid 10 tons of marijuana was seized).

Case example 12: An outstanding drug-relate ML case<sup>56</sup>

The defendant S.Sh. in collaboration with other people, attempted to traffic 908 kg of herbal cannabis to Italy. While being prosecuted for trafficking in narcotics, a parallel financial investigation revealed that he had financial and commercial ties with an individual who had been arrested in Germany for the possession of 335 kg cannabis. Furthermore, S.Sh. and his close relatives proved to have assets and properties (real estate) which could not be covered by any legal sources and thus were demonstrated to originate from proceeds of drug trafficking invested into economic activities. S.Sh. was convicted of both drug trafficking and ML for which he was sentenced to 10 and 5 years of imprisonment, respectively.

241. There is also apparent lack or low number of convictions of high-ranking public officials for corruption-related ML charges despite the relatively high number of corruption-related ML referrals from various bodies. Between 2014 and 2016, the HIDAACI sent 230 criminal referrals to the Prosecution on the basis of the offence of violation of asset declaration requirements for public officials (Art. 257/a CC)<sup>57</sup> out of which 68 also included suspicion of corruption-related ML involving

<sup>54</sup> Tirana District Prosecutor's Office case No. 8023 of 2016 – indictment on 19.10.2017. The court found the defendant found guilty in ML offence, but the conviction took place beyond the time frame relevant for this assessment (Tirana District Court Decision No. 3294 of 11.12.2017)

<sup>55</sup> Vlora District Court Decision No. 693 of 20.12.2012 and Tirana District PO case No. 9749 of 2014 (indictment in May 2017)

<sup>56</sup> Final conviction: Serious Crime Appellate Court Decision No. 119 of 04.12.2015

<sup>57</sup> Refusal of declaration, non-declaration, concealment or false declaration of assets, private interests of elected persons and public employees, or of any other person that is legally binding for the declaration



high officials (members of Parliament, judges, prosecutors, mayors etc.), however the vast majority of the cases have been dismissed by the Prosecution (while most of the cases sent to trial involved officials of the local institutions). Prosecutors, on the other hand, explained that the HIDAACI, as an administrative (non-investigative) body working exclusively with asset declarations, would usually submit such referrals with some very basic ML typologies (existence of a non-declared bank account etc.) that could normally be subsumed under the offence in Art. 257/a CC but would not allow for establishing criminal charges for an additional, associated ML offence.

242. Among the annual priority recommendations (imperatives) issued by the Council of Ministers to the Prosecutor General upon Art. 103 of the Law on the Organisation and Functioning of the Prosecution Office, it was noted as a priority already in 2013 that the timeliness of pre-trial investigations should be enhanced so as to avoid intervals during which no investigative operations are carried out and specifically in cases referred by the GDPML the periods without investigative operations should be avoided, making best use of the investigation time limits and proceeding. In 2017 one of the priorities was to increase the number of final sentencing decisions in ML cases making more use of proactive actions and special investigation methods, coordination with the law-enforcement agencies and FIs.

*Effectiveness, proportionality and dissuasiveness of sanctions*

243. Albanian authorities provided the following table on criminal sanctions imposed in ML convictions during the evaluation period. The figures below only cover criminal cases ended with a final conviction for the ML offence in Art. 287 CC (the evaluators have learnt that cases related to the somewhat similar Art. 287/b CC carried more lenient sentences).

Table 15: Custodial sentences

Year	Number of persons sentenced	Imposed prison sentence (in years)
2011	1	5
2012	3	5
2013	3	5
	1	7
2014	2	5
	2	6
	3	7
2015	1	5
	1	6
2016	2	6
2017	1	5
	3	6
	3	7

244. In light of the range of punishments available for the ML offence (5 to 10 years of imprisonment for the basic offences while 7 to 15 years for the aggravated forms), the sanctions indicated in the table, ranging from 5 to 7 years, can only be considered moderately dissuasive (although they are not too lenient either). On the other hand, however, the evaluators learnt that imposing these sanctions did not in all cases mean that the respective terms of imprisonment had to be served by the perpetrator.

245. According to Art. 55 CC whenever the defendant is convicted for more than one criminal offence, the court first sentences every criminal offence separately, then imposes the most severe of these terms as a single sentence, which can further be increased, but cannot exceed the total sum of the punishments determined separately, nor the maximum provided for the type of the sentence rendered. That is, if the defendant is convicted for a predicate offence and the associated ML in the

same verdict and the predicate offence carries a more severe sentence than the ML, then the term of imprisonment originally imposed for the ML offence can to a large extent be absorbed by the final sentence and the defendant will only serve a part of it.

246. Apparently, the courts did not impose other sanctions than imprisonment, so there is no court practice on the application of fines as an alternative or additional punishment for ML (until it was allowed by the law).

247. The assessment team has learnt from the interviews with relevant authorities that LEs seem to be regularly prosecuted and have also been convicted for ML offences. However, the authorities did not provide any statistical data on convictions involving LEs that could have demonstrated the dissuasiveness of the sanctions imposed.

#### *Other criminal justice measures*

248. In cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction, the only criminal justice measure available is the non-conviction based forfeiture pursuant to the Anti-Mafia Law which is mostly conducted against assets generated from crime rather than directly against the person and can be applied even in lack of a conviction for ML or the predicate offence. Further analysis can be found under IO8.

#### *Overall Conclusions on Immediate Outcome 7*

249. Albanian authorities consider the fight against ML as a priority and the legal framework for effectively prosecuting ML is robust, particularly the ML offence in Art. 287 CC despite of minor shortcomings mentioned under Rec. 3. However, only a small (and decreasing) proportion of registered ML proceedings end up with an indictment submitted to the court while the large majority of ML investigations are either suspended or dismissed by the competent POs. Prosecutorial inactivity and a number of deficiencies in criminal investigations are likely to be still present among the possible negative factors. On the other hand, positive case examples were provided particularly on the use of circumstantial evidence to prove the predicate criminality in stand-alone ML cases.

250. The range of predicate offences underlying the prosecuted ML offences is roughly in line with the overall criminality and the country's risk profile, but the number of ML cases and the characteristics of the respective ML conducts (in terms of complexity, organisation or the volume of the laundered proceeds) seem not to adequately correspond to the size and significance of the underlying criminality.

251. A large proportion of ML cases involve foreign proceeds and prosecutors appear to be sometimes over-reliant in these cases on evidence requested from abroad relating to the predicate crimes rather than pursuing domestic ML cases based on circumstantial evidence. However, case examples of successful prosecutions and convictions in ML cases related to foreign proceeds were provided where the full proof regarding the predicate criminality was not pursued. This indicates that the legal framework and its judicial interpretation would allow more such cases to be successfully adjudicated by the court.

252. Albania has achieved a moderate level of effectiveness with Immediate Outcome 7.

#### *Immediate Outcome 8 (Confiscation)*

##### *Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

253. Albania has provided strategic documents to the assessment team which set the confiscation of proceeds, instrumentalities and property equivalent value as a policy objective. Reference was made, among others, to Council of Ministers 2<sup>nd</sup> Action Plan<sup>58</sup> for implementing the inter-sectoral strategy in the fight against OC, illicit trafficking and terrorism for the period 2013-2016, similarly to the

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<sup>58</sup> Annexed to Council of Ministers Decision No. 663 of 17.07.2013 on the Cross-cutting Strategy of the Fight Against Organised Crime, Illicit Trafficking and Terrorism

subsequent 3<sup>rd</sup> Action Plan<sup>59</sup> for the period 2017-2020. Increasing the effectiveness of provisional measures and confiscation, both in the CC-CPC regime and under the Anti-Mafia Law, was one of the priorities in both documents.

254. In the 2<sup>nd</sup> Action Plan, this particularly refers to increasing the number and the quality of property investigations pursuant to the Anti-Mafia Law (expecting 10% increase per year as result of trainings and joint analyses with LEA and prosecutors) and the number of ML-related confiscations (where a 5% annual increase was expected). Similar objectives can be found in the 3<sup>rd</sup> Action Plan with regular meetings and joint analyses, as a result of which further increases are expected in the implementation of the Anti-Mafia Law (to increase property investigations by 2,5% per year so as to achieve 30% more successful property verifications by 2020) while the value of assets seized from ML should be increased by at least 5.000.000 EUR every year (see the statistics below for comparison).

255. As discussed under Recommendation 4 more in details, Albania has introduced both the traditional conviction-based confiscation regime under the CC together with the respective provisional measures in the CPC and, on the other hand, the relatively new non-conviction-based confiscation and provisional measures regime as provided for by the Anti-Mafia Law. The conviction-based regime is robust in itself with mandatory rules for confiscating criminal proceeds, instrumentalities and corresponding value (the apparent technical deficiencies of the legislation regarding the coverage of laundered assets as *corpus delicti* as described in Criterion 4.1 have reportedly had no actual impact on the performance of the confiscation regime as laundered assets would normally be confiscated as proceeds). The Anti-Mafia Law, which was until recently (August 2017) limited to a set of organised and other serious criminal offences (including ML), extends the scope of the potential asset recovery by introducing reverse burden of proof and the application of civil legal standards. The two regimes provide a robust legal framework and an adequate legal basis for effective seizures and confiscation.

256. According to the authorities met on-site, a separate financial investigation would routinely be launched alongside every criminal proceeding initiated in relation to any serious offence that belongs to the scope of the Anti-Mafia Law. Criminal proceedings being conducted is not a prerequisite to any procedures pursuant to the Anti-Mafia Law (suspicion based on *indicia* suffices for initiating a financial investigation) and, in addition, the scope of application of the latter is considerably broader, both in terms of the standard for seizure and confiscation (unjustified wealth) and the range of persons subject to these measures.

257. Where there is a criminal investigation opened in relation to any of the relevant offences, the competent prosecutor would liaise with the ASP DIEFC Sector for the Investigation of Criminal Assets and any suspicion of assets being disproportionate to the defendant's or their relatives' income would then justify a financial (or property) investigation. During such an investigation, the aforementioned Sector would seek cooperation from the GDPML, the GDT, the GDC or other agencies and consult all databases available at the ASP or counterpart authorities. The practitioners met on-site were satisfied with the cooperation between relevant agencies.

258. According to authorities, all criminal proceedings under the jurisdiction of the Serious Crime Prosecution Office are accompanied with parallel financial investigations pursuant to Anti-Mafia Law. This was demonstrated by the following statistics of the SCPO on number of criminal proceedings accompanied with parallel financial investigations per year: 2011 - 44; 2012 - 88; 2013 - 128; 2014 - 115; 2015 - 122; 2016 - 116.

259. In addition, district POs conducting investigations into offences that fall under the scope of the Anti-Mafia Law are obliged by a GPO order<sup>60</sup> to initiate parallel financial investigations and to report

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<sup>59</sup> Drafted pursuant to Prime Minister Order no. 169, dated 22.11.2016

<sup>60</sup> GPO Order No .106 (18 .05. 2010) for the cooperation of reports between Judicial District Prosecution Offices and Prosecution Office for Serious Crimes, in the implementation of Law No. 10 192, dated 03.12.2009 "On the prevention and combating organised crime and trafficking, through preventive measures against property"

the result of the property verification to the SCPO.

260. Financial investigation is aimed at identifying and securing property items that might be subject of criminal confiscation (first of all as proceeds of crime or property that has been laundered), which makes it unnecessary to apply any CPC provisional measures for the same purpose (which could still be applied to seize evidence or instrumentalities). Proceeds are thus normally sequestered according to the Anti-Mafia Law until the end of the trial stage. When it comes to the conviction of the defendant, the court would shift to the traditional regime by imposing confiscation of proceeds pursuant to Art. 36 CC (criminal confiscation). In other cases, particularly if the defendant has not been convicted but the conditions prescribed by the Anti-Mafia Law (unjustifiable wealth etc.) still exist, the judge could confiscate the respective property according to the latter piece of legislation.

261. Having said that, it has not been demonstrated to a full extent that confiscation of criminal proceeds is pursued as a matter of policy and particularly in cases where no conviction could have been achieved. In any case, in the time period relevant for the NRA (until 2014) non-conviction-based regime did not result in more effective seizures and confiscations, as it is clear from the findings in the NRA where the poor results of the civil confiscation regime are criticized. The NRA analysed first instance decisions of the Court for Serious Crimes based on the Anti-Mafia Law and concluded that the number of cases and volume of proceeds were equally negligible (given the estimated extent of proceeds-generating crimes in Albania and criminal proceeds entering the country from abroad) and thus the application of the law was very disappointing (see the tables under Core Issue 8.2)

262. These shortcomings are expected to be remedied with the legal amendments from August 2017, which not only extended the range of offences by which the scope of the Anti-Mafia Law is defined but rendered CPC provisions being applicable as underlying legislation for procedural rules for financial investigations conducted pursuant to the Anti-Mafia Law. (Previously, the Civil Procedure Code served as underlying legislation which had reportedly caused some difficulties for the practitioners.) Having said that, the actual scope of the recent amendments (and particularly what actual impact the application of the CPC rules instead of the civil procedure might have) still appeared unclear to some practitioners during the on-site visit which calls for further efforts in training and awareness raising in this field.

263. In general, the assessment team was not given any meaningful and comprehensive statistics to illustrate the volume of proceeds seized/sequestered in Albania (under either/both regimes) and the ratio between this and the volume of confiscated assets. In lack of reliable statistics, the performance of the provisional measures could be hardly, if at all, assessed. While there are updated and verified statistics on confiscations (see below) the performance of the two competing regimes (Anti-Mafia Law versus CC-CPC) could not be assessed separately, as some property items might be included, at different stages of proceedings, in both (and most of the interlocutors the team met did not or could not differentiate between the two regimes and discussed the confiscation regime in a holistic approach). Equally, the lack of comprehensive information on predicate offences in the CC-CPC regime prevented the team from assessing whether confiscation was applied systematically in prosecution of proceed generating predicate offences

264. As a result, the evaluators have not been provided with decisive information to refute all critical findings on the overall performance of both confiscation regimes in the NRA.

*Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

265. As noted above, Albania has provided various statistics to show the range of assets seized and confiscated in the CC-CPC regime and/or pursuant to the Anti-Mafia Law. The tables below contain data exclusively on confiscations, starting with those taken place under the CC-CPC regime (see Table Confiscations pursuant to the CC-CPC regime) followed by confiscations under the Anti-Mafia Law (see Table - Confiscations pursuant to the Anti-Mafia Law).

Table 16: Confiscations pursuant to the CC-CPC regime (data from District POs)

Year	Movable properties	Immovable properties	Cash	and	cash
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			equivalents
2011	<ul style="list-style-type: none"> <li>smuggled goods (10 cases)</li> <li>wood logged illegally (1 case)</li> <li>gaming and gambling machines</li> </ul>	a residential area of 1.200 m <sup>2</sup>	24.000 EUR
2012	<ul style="list-style-type: none"> <li>smuggled goods (4 cases)</li> <li>IT and other electronic devices</li> </ul>		115 EUR 1800 ALL
2013	<ul style="list-style-type: none"> <li>47.250 of cigarette cartons,</li> <li>a gaming machine</li> </ul>	5.800 m <sup>2</sup> of land	700 gr of gold, 500.000 EUR
2014	<ul style="list-style-type: none"> <li>smuggled goods (2 cases)</li> <li>ammunition (1.040 bullets)</li> <li>various watercrafts (6)</li> <li>various motor vehicles (3)</li> <li>various gaming and gambling machines (in total 36, of which 15 are electronic gambling machines) (10 cases)</li> </ul>	various properties <ul style="list-style-type: none"> <li>3×land 102.185 m<sup>2</sup> (total value 450.000 EUR)</li> <li>2×land 657.2 m<sup>2</sup> (total value 65.000 EUR)</li> <li>5×garages (total value 60.000 EUR)</li> <li>5×shops 278 m<sup>2</sup> (total value 834.000 EUR)</li> <li>10×apartments 1037 m<sup>2</sup> (total value 725.900 EUR)</li> </ul> <p><i>(The total amount of confiscated assets is estimated about 2,134,900 EUR)</i></p>	452.160 EUR 4.144.044 USD 12.360.000 ALL
2015	<ul style="list-style-type: none"> <li>electronic devices</li> <li>smuggled goods (3 cases)</li> <li>various gambling machines (19)</li> <li>42 various motor vehicles (cars, motorcycles, lorries) (1-2/case)</li> <li>a watercraft</li> </ul>	various properties <ul style="list-style-type: none"> <li>1×land 1000 m<sup>2</sup> (value 100.000 EUR)</li> <li>2×land 21.739 m<sup>2</sup> (total value 2.000.000 EUR)</li> <li>property 128.000 m<sup>2</sup> (total value 280.000 EUR)</li> <li>2×property 48.5 ha</li> <li>pasture 85.000 m<sup>2</sup></li> <li>6× apartments</li> </ul>	155.545 EUR 727.500 USD 246.900 ALL
2016	<ul style="list-style-type: none"> <li>electronic devices (including electronic gaming machines) smuggled goods (1 case)</li> <li>19 various motor vehicles</li> </ul>	pasture and forest 54.6 ha	33.290 EUR 328.000 USD 2.300 GBP 5.157.300 ALL

	(cars, trailers, a bus)(1-2/case)		
	<ul style="list-style-type: none"> <li>• a sport airplane</li> </ul>		
2017	<ul style="list-style-type: none"> <li>• 43 various motor vehicles (cars, 1 motorcycle, 3 trailers, 1 lorry) (1-2/case)</li> <li>• 8 gambling machines</li> </ul>	various properties <ul style="list-style-type: none"> <li>• residential and services building with 3-8-10-11 floors and 2 floor undergrounds</li> <li>• pasture 29.28 ha</li> <li>• property 270 m<sup>2</sup> and a 5-star hotel</li> <li>• apartment 190 m<sup>2</sup> with assets 782 m<sup>2</sup> and a gas station</li> </ul>	366.687 EUR 18.453 USD 2.684.900 ALL

Table 17: Confiscations pursuant to the Anti-Mafia Law (data from the Serious Crimes PO)

Year	Cases	Value of assets	Offence
2011	5	- land with a surface area of 500 m <sup>2</sup> worth 800.000 ALL.	OC
		- restaurant bar 130 m <sup>2</sup> worth 4.000.000 ALL.	
		- 110 m <sup>2</sup> land area worth 72.900 ALL.	OC
		- bank account in the amount of 1.148 EUR.	
		- bank account in amount of 30.000 EUR.	ML
		- vehicle worth 35,000 EUR.	drug crimes
		- 6 × bank accounts in amount of 2.598.510 EUR + 967 USD	OC
		total in 2011: 2.664.658 EUR, 4.872.000 ALL + 967 USD	
2012	3	- commercial companies + its assets, worth 20 million ALL.	drug crimes + OC + ML
		- shares in commercial companies, worth 7,000,000 ALL	
		- vehicle worth 18,000 EUR.	drug crimes + OC + ML
		- 3 × vehicles worth 1.800,000 ALL	ML
		- bank account in the amount of 47.112 ALL	
		total in 2012: 18.000 EUR + 28.847.112 ALL	
2013	2	-27.3% of 2 apartments (128.2 m <sup>2</sup> + 124.6 m <sup>2</sup> ) worth 45.000 EUR.	drug crimes + OC
		- 3 × bank account in the amount 3,209,745 ALL.	drug crimes + ML
		total in 2013 : 45.000 EUR + 13.209.745 ALL	
2014	2	- bank account in the amount of 427.000 EUR.	ML
		- 2× bank accounts in the total amount of 100,000 EUR.	drug crimes

		total in 2014: 527.000 EUR.	
2015	1	- 3× bank accounts in the total amount of 154,601 EUR.	drug crimes + ML
		total in 2015: 154.601 EUR	
2016	7	- real estate land 2400 m <sup>2</sup> worth 350.000 ALL. - 4× vehicles total worth 3.419.000 ALL	ML
		- bank account in amount of 846,703 EUR.	ML
		- 10× bank accounts in the total amount of 3,190,523 USD, 451.303 EUR + 35,613 ALL.	ML
		- 3×land with a total area of 6100 m <sup>2</sup> worth 4,612,160 ALL. - three-storey building in the value of 8.110.739 ALL. - one floor building in the value of 36.700 ALL. - floor one floor in the amount of 1.595.970 ALL.	ML
		- real estate area of 1450 m <sup>2</sup> , worth 33.000.000 ALL ( <u>non-final decision</u> )	drug crimes
		- 14× real estate with a total value of 25,162,500 ALL.	drug crimes + ML
		- treasury bills in the amount of 5.500.000 ALL. - 3 × bank account in the amount of 12.731.259 ALL + 938.844 USD - vehicle in the amount of 19,348 EUR	ML
		total in 2016: 4.129.367 USD, 1.317.354 EUR + 94.553.941 ALL	
2017 (January-September)		- 5 × real estate totalling 200,000,000 ALL ( <u>non-final decision</u> )	drug crimes + ML
		- 5 storey building and land with an area of 2500 m <sup>2</sup> worth 1.100.000 EUR ( <u>non-final decision</u> )	drug crimes
		- real estate with an area of 85 m <sup>2</sup> , worth 1.600.000 ALL.	drug crimes
		- apartment property worth 6,635,398 ALL. - local assets worth 6,679,268 ALL	drug crimes + ML
		total in the period: 1.100.000 EUR + 214.914.666 ALL	

266. Considering, that in some cases, due to the parallel and independent procedures applied, the same property may be found as “confiscated” in both regimes, these tables cannot be considered as fully comprehensive, but solely with a view to illustrate the asset recovery efforts undertaken by the authorities.

267. The statistics on criminal (CC-CPC) confiscation show a significant increase throughout the assessed period in terms of the variety of property items, the volume of confiscated property and, to the extent it could be inferred from the tables received, also in the number of criminal proceedings in which confiscation was applied by the court. The upward trend was particularly notable regarding the volume of real estate and vehicles confiscated. On the other hand, there was no information available to indicate the underlying criminal offences or at least the most typical ones. The

confiscated property items are likely to include not only proceeds but also instrumentalities of crime (e.g. the numerous gaming/gambling devices must have been instrumentalities) but no exact data were provided in this respect either.

268. The statistics were not able to demonstrate the occurrence and significance of value confiscation (Art. 36 [1][ç] CC) in the CC-CPC regime. The prosecuting authorities claimed that confiscation of equivalent value is a practice and referred to an example from a corruption case<sup>61</sup> where the amount of the bribe, which had been given and accepted in cash, but had been expended by the perpetrator before the commencement of the criminal proceedings so it could not be seized in original. When the court ordered the confiscation of the bribe, this measure was aimed at the amount and not the banknotes that had actually been received – so the equivalent sum was finally confiscated from legitimate assets of the defendant. No other, more sophisticated forms of value confiscation were reported, and the authorities did not demonstrate whether and how frequently third-party confiscation occurred in court practice.

269. The other table, which contains data on confiscation measures pursuant to the Anti-Mafia Law, is more comprehensible due to the nature and processing of this statistical information (single source of data, limited range of offences, only proceeds are involved etc.). Here again, the frequency of real estate and currency (including cash and bank account money) amongst the assets confiscated is consistent with the main typology mentioned under IO.7.

270. As opposed to the performance of the CC-CPC based confiscation regime above, the statistics on non-conviction based confiscations cannot demonstrate a clearly positive trend in terms of volume or variety of confiscated property. On the contrary, the figures show an undoubtedly downward trend throughout the assessed period, with descending numbers from 2011 to 2015 and a negative record in 2015. This is roughly the same period that was taken into account in the NRA which strongly supports the critical findings on the overall performance of this regime in the NRA – including concerns that despite the high-level objectives to deprive criminals of their proceeds, these are not followed up consistently in practice.

271. The assessment team notes, at the same time, that significant changes have taken place since 2015 which are well demonstrated in the table above. In the past 2 years, the variety and volume of confiscated property multiplied, which clearly shows the true potentials of the non-conviction based confiscation regime. The evaluators welcome this development – which cannot be considered a trend in itself, but it is still very promising for the future, particularly as these better results had all been achieved before the scope of the Anti-Mafia Law was extended in August 2017. (All cases mentioned above were related to drug crimes or other sorts of OC and ML.) Albanian authorities are thus encouraged to maximise the potential of this confiscation regime.

272. Various statistical tables were provided relating to the performance of the provisional measures regimes, with significant discrepancies in terms of both structure and contents, depending on which authority was the source and what methodology was used. As opposed to the statistics on confiscation, however, these statistical tables could neither be harmonised nor updated by the authorities (it could not be clarified which regime had been applied, what sorts of property were involved, whether these were proceeds or instrumentalities, whether and to what extent the various statistics could overlap and, first and foremost, whether and what proportion of the seized assets had subsequently been subject of confiscation).

273. In light of this, the evaluators could not accept these statistics as reliable and decided not to include them in the report. In fairness, all these statistics demonstrated that Albanian authorities are capable of seizing diversified forms of property, including real estate (also business property) and vehicles or cash, which dominate the statistics on confiscation as well. Other features of these provisional measures (e.g. the underlying criminality) were not or only to a limited extent provided (it was however demonstrated that drug crimes had been the most prominent source of seized

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<sup>61</sup> Decision of the Supreme Court Nr. 8/25 of 14.06.2017



assets). There were no reliable figures provided regarding the total volume of assets seized on a yearly basis (let alone data broken down by regime etc.) so the evaluators were not in the position to draw any conclusion as to the ratio between property seized and confiscated in Albania.

274. The issue of criminal proceeds obtained domestically but held (invested, deposited etc.) abroad by Albanian criminals directly or through professional launderers is considered by Albanian authorities as serious as the phenomenon of criminal proceeds obtained abroad and channelled back to Albania (“abroad” typically denotes Western European countries in both relations). Having said that, the assessment team is not aware of any strategic or systemic approach aimed at identifying and, if applicable, seizing and confiscating such assets. The only outstanding case known to the evaluators, where the proceeds of crime located abroad were successfully identified and eventually confiscated, was the case related to assets derived from pyramid scheme fraud deposited in Hungary (see under IO.7) initiated by a foreign FIU.

275. Freezing of suspicious transactions under the AML/CFT Law has also been used in practice as a preliminary measure with a view to the seizure of the respective assets. The statistical data on the use of GDPML powers in this respect are presented under IO.6. In this respect, sequestration was in most cases (more than 90% of the cases) applied according to the CPC and the rest under the Anti-Mafia Law. As it can be seen in Table under IO6 para. 183, the number of freezing orders and the volume of frozen assets show a more or less steady increase after 2014, the ratio between frozen and seized assets does not indicate any trends as the annual figures appear rather random (ranging from 24.2% to 88.3% with an average of 52%) and the team was not provided with sufficient clarifications in order to understand the interrelation between this information and the general statistics on confiscation.

276. Effective measures are in place to ensure that assets seized and confiscated pursuant to the Anti-Mafia Law and property frozen according to the Law on Measures against TF (for the latter see IO10) are to be preserved and managed appropriately by the AASCA. As far as criminal proceeds beyond the scope of the Anti-Mafia Law are concerned, the AASCA does not have exclusive competence but one based on the discretion of the court. That is, Council of Ministers decision no. 687 authorises AASCA to store, safeguard and manage property seized or confiscated pursuant to the CPC or CC (i.e. through the classic confiscation regime) only in cases the court, which decides on the respective measure, specifically designates the AASCA. Representatives of the AASCA disclosed that courts, which are not bound by the said decision, have been reluctant to designate the AASCA in such cases which therefore only occur sporadically (one case in 2011 and another in 2015). The evaluators learnt that this bylaw would in the near future be replaced by an organic law to extend AASCA’s competence to safeguard and manage all sorts of property seized or confiscated regardless whether under the Anti-Mafia Law or the CPC and CC. This is even more important as the lack of a general system for administering and managing all criminal assets was already noted as a shortcoming in the NRA.

Table 18: Seized, Returned and Confiscated property

2013									
Seized			Returned			Confiscated			
Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	
43	221 543 161	1 628 994	46	44 235 492	325 261	45	435 716 511	3 203 798	
2014									
Seized			Returned			Confiscated			
Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	
17	54 542 515	401 048	4	39 598 899	291 168	3	42 977 550	316 011	
2015									
Seized			Returned			Confiscated			

Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	Qty	Value in ALL	EUR
44	537 534 973	3 952 463	14	159 426 440	1 172 253	7	255 337	1 877 479
							235	
2016								
Seized			Returned			Confiscated		
Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	Qty	Value in ALL	EUR
65	78 205 560	579 300	19	152 117 851	1 118 514	13	477 825 552	3 513 423
01.01-30.09.2017								
Seized			Returned			Confiscated		
Qty	Value in ALL	EUR	Qty	Value in ALL	EUR	Qty	Value in ALL	EUR
24	239 740 506	1 789 108	25	392 317 320	2 927 741	12	424 590 554	3 168 586

277. The table above demonstrates the volume of seized and confiscated assets administered by the AASCA pursuant to the Anti-Mafia Law (no other property is thus indicated in the table). The structure of these statistics do not allow for a more profound analysis apart from the fact that funds seized but later released and returned represent an unexpectedly significant proportion throughout the evaluation period seemingly in line with the conclusions drawn in the NRA as discussed above.

278. The AASCA has a close cooperation with other agencies, primarily with the ASP DIEFC Sector for the Investigation of Criminal Assets, but also with the prosecutors and the GDPML. The AASCA was reported to have staff with appropriate skills and experience to manage all sorts of property although the majority of the assets they administer consist of less problematic property items not requiring actual management. The assessment team was however provided with examples where AASCA successfully managed more complex forms of property e.g. a concrete factory. Furthermore, the current AASCA staff and resources would not be sufficient to take over the administration and management of all seized and confiscated property should the current bylaw be replaced by a law, in which case the necessary resources should therefore be allocated.

279. The assessment team learnt that the proceeds of property confiscated and managed by AASCA go to a special fund for the prevention of criminality and legal education established pursuant to Art.37 of the Anti-Mafia Law. This fund is administered by the Minister of Finance who, relying on the recommendation of the Inter-institutional Expert Committee for Measures against Organised Crimes, determines the financing of projects within the scope defined by the said Article and the ways of use of the fund made available to the applicants. AASCA is responsible for the verification of requests for funding of projects, for the preparation of the necessary documentation and for overseeing the provision of the funds.

280. In the year 2016 there were 25.000.000 ALL (approx. 183.000 EUR) allocated to the aforementioned special fund from which the following projects/authorities are to be financed: the ASP (10M ALL); the GPO (7,8M ALL), National Centre for Supporting Victims of Trafficking (2,2M ALL); NGO "Aksion Plus" (2,5M ALL - drug abuse and HIV prevention) and NGO "Different & Equal" (2,5M ALL - reintegration services for victims of trafficking, exploitation and abuse).

#### *Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

281. Its geographical position and the ML/TF risk profile make Albania vulnerable to cross-border illicit flows of currency or BNIs. Trans-national OCGs engaged in cultivating and trafficking of narcotics as well as in other trafficking offences generate large scale proceeds in the region, mostly in the form of cash. Furthermore, the same or other criminal organisations, operated entirely or partly by Albanian nationals in EU countries, are known to gain equally large-scale proceeds from predicate crimes, including committed elsewhere in Europe. The practitioners met during the on-site had no doubts that a significant proportion of these ill-gotten assets would eventually find its way back to Albania with a view to having it laundered into legitimate property.

282.As it was expressed also in the NRA, these assets would often enter Albania in the form of cash physically transported through the border, similarly to legitimate remittances coming from the large Albanian diaspora in Western Europe. During the interviews, cash couriers were mentioned as frequently used means to transport money sent from Western Europe to Albania, which typology was raised also in connection to possible manners of TF. In general terms, the ML/TF risks associated with cross-border flows of cash and BNIs were recognised by all the authorities met during the on-site visit. However, this awareness does not seem to have resulted in concrete ML/TF cases based on the cross-border cash control and the declaration regime.

283.Albania has implemented a declaration system, where all cash or BNIs exceeding the value of ALL1.000.000 are to be declared. The authorities competent in the control of borders are the Customs authorities and the Border Police which both appear to have been vested with sufficient powers to undertake their duties in this respect (discussed more in details under Recommendation 32). The assessment team was not provided with case examples where the authorities seized assets at the border based exclusively on a ML/TF suspicion when there was no breach of the declaration obligation.

Table 19: Cross border declarations

Years	Number of declarations	EUR	USD	GBP	ALL
2011	456	7,423,537	3,615,850	24,450	16,839,700
2012	572	9,782,729	3,872,200	28,800	8,947,000
2013	786	645,042,576	143,742,852	68,379,985	0
2014	825	588,648,675	192,185,729	56,418,684	0
2015	789	687,244,478	117,622,866	10,318,520	3,000
2016	945	773,083,721	105,061,752	97,775,200	1,000,000
2017 Jan-Sep	1005	671,501,758	52,585,170	105,077,000	-

284.The first table imported from NRA contains the number of declarations made at border crossing points of physical transport of cash/BNIs exceeding 1.000.000 ALL (with cumulative figures covering incoming and outgoing transports). The number of declarations shows a steady increase every year both in the number of declarations and the amounts declared, with a remarkable boost from 2013 and also in the first 3 quarters of 2017.

285.The GDPML carried out a thorough analysis of cross-border cash and BNI declarations in which they broke down the above figures as follows.

Table 20: Declarations analysed by the GDPML

	Total	Incoming	Outgoing	USD-incoming	USD-outgoing	EUR-incoming	EUR-outgoing	GBP-incoming	GBP-outgoing
Declarations 2013									
Banks	484	40	444	68.600.000	72.431.800	4.119.000	635.982.346	1.113.500	67.234.4
Individuals + subjects	302	13	289	163.772	2.547.280	325.751	4.615.479	0	32.000
TOTAL	786	53	733	68.763.772	74.979.080	4.444.751	640.597.825	1.113.500	67.266.4

Declarations 2014									
Banks	409	9	400	19.200.000	170.115.286	0	581.679.771	0	52.136.0
Individuals + subjects	416	38	378	343.488	2.526.955	896164	6.968.904	31.600	4.282.59
TOTAL	825	47	778	19.543.488	172.642.241	896164	588.648.675	31.600	56.418.6
Declarations 2015									
Banks	451	10	441	9,020,000	106,887,900	11,700,000	668,115,800	-	-
Individuals + subjects	437	53	384	258,828	1,456,138	1,493,601	5,935,077	42,600	10,275,9
TOTAL	789	63	726	9,278,828	108,344,038	13,193,601	674,050,877	42,600	10,275,9
Declarations 2016									
Banks	417	22	395	9,200,000	89,914,000	4,000,000	739,686,120.	2,850,000	94,795,1
Individuals + subjects	528	131	397	64,656	5,883,096	1,518,064	27,879,537	105,100	25,000
TOTAL	945	153	792	9,264,656	95,797,096	5,518,064	767,565,657	2,955,100	94,820,1
Declarations Jan-Sep 2017									
Banks	395	42	353	33,297,700	17,700,000	27,700,000	626,256,102	14,400,000	90,624,8
Individuals + subjects	610	122	488	1,371,969	215,501	2,245,449	15,300,207	30,147	22,000
TOTAL	1005	164	841	34,669,669	17,915,501	29,945,449	641,556,309	14,430,147	90,646,8

286. Upon this analysis, the following conclusions can be drawn. The vast majority of the declarations were related to outgoing transports of currency or BNIs (83-94%) which is more or less mirrored by the aggregated values of declared currency or BNIs for the same years (the numbers of declarations and the respective aggregated values are thus roughly proportionate as well). Approximately half of the declarations were made by commercial banks transporting cash or BNIs in the framework of their activities (39-61%) representing an overwhelming proportion of assets throughout the evaluation period, whereas non-bank declarations, which might be relevant for ML/TF risks, were few in number and represented relatively little values.

287. Further analyses in the NRA revealed that in a given period subject to examination (the first 9 months of 2014) the overwhelming majority of the declarations, that is, 619 out of 655 (94%) were made at the Tirana International Airport (Border crossing point (BCP) Rinas) while other BCPs were represented by some negligible figures (the 2<sup>nd</sup> in line was BCP Durrës with 14 declarations that is 2%). Out of these 655 declarations 325 were non-bank related ones which, as it was underlined in the NRA, is still a negligible figure compared to the number of total border crossings carried out by natural persons to and from Albania (which was ranging from 13.5 to 14 million in the years 2011 to 2013 which numbers must have since remained or increased).

288. All the features described above lead to the conclusion that most of the currency or BNI declarations are highly unlikely to be related to ML/TF activities, namely those made:

- in relation to large scale transports performed by commercial banks in the framework of their respective (and supposedly legitimate) activities;
- at the Tirana International Airport, where the smuggling of cash or BNIs would bear unreasonable risks for potential cash couriers because of the security and screening procedures;
- and/or in relation to outgoing transports which does not fit in the presumed pattern of incoming flow of assets either derived from foreign predicate criminality or intended to support terrorist activities.

289. The assessment team thus agrees with the conclusions drawn in the NRA that most of the non-bank related declarations are likely to indicate cash transported for legitimate purposes to abroad (e.g. for importing goods or vehicles or for medical treatment abroad) as well as non-voluntary declarations in case the individuals mistakenly fail to declare assets believing that Albania uses the same 10.000 EUR threshold that is generally applied in Europe (while the actual threshold of 1.000.000 ALL is about 7800 EUR). The frequency of such cases has already prompted the GDC to propose setting the threshold at 10.000 EUR. It also means, however, that the declaration regime could not (or was not able to) detect cross-border flow of cash or BNIs attributable to putative cash couriers, which primarily refers to incoming transport of currency through land border checkpoints. Even though the GDC reported that the number of declarations at land BCPs had recently increased (reaching 10% by 2017) the fact that only a few declarations (including non-voluntary ones) had been made at such BCPs despite the higher probability of smuggling funds and precious stones or metals through land borders had already been noted in the NRA as well.

290. Certainly, the number of declarations does not necessarily indicate the activity of illegal cash couriers who would not normally declare the assets they are carrying. This is not the case in Albania however, where detected cases of non-declared or falsely declared sums of cash or BNIs are equally followed by a declaration filled in and submitted by the Customs authorities at BCPs upon their findings. In the statistic table below, these are referred to as “non-voluntary declarations”.

Table 21: Non-voluntary declarations

Year	Total number of non-bank declarations	← out of which: non-voluntary declarations
2012	482	2
2013	300	4
2014	414	6
2015	338	14
2016	528	6
2017 (Jan-Sep)	610	27

291. While the number of non-voluntary declarations shows a steady increase throughout the period, these figures are still very low as opposed to the total number of non-bank declarations and thus indicate a relatively low level of effectiveness in detecting non-declared and/or falsely declared cash or currency being transported through the border.

292. The following table demonstrates the number of SARs the CA submitted to the GDPML based upon Art.17 of the AML-CFT Law, also indicating whether or not such reports were made in relation to cases of non-declaration. In light of the ML/TF risks associated with cross-border cash transport, these figures are still relatively low and, what is more, they remained at the very same level during the evaluation period while the total number of declarations (banks and NBFIs alike) increased year by year.

Table 22: SARs submitted by the CA to the GDPML

Year	Total	Total number of	← out of which:
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	number of declarations	non-bank declarations	suspicious of ML/TF	suspicious from non-declarations
2012	572	482	30	2
2013	786	300	41	20
2014	825	414	44	32
2015	789	338	44	11
2016	945	528	46	7
2017 (Jan-Sep)	1005	610	44	28

293. Controls are usually random checks of persons crossing the border for violations of the declaration obligation on a case by case basis. According to the ASP statistics below (imported from the NRA hence there are no figures beyond 2014) there have been annually several seizures of cash at border crossing points in relation to the criminal offence in Art. 179/a CC. The assessment team was given no indication as to the nationality or any other characteristics of the persons involved.

Table 23: Non-declaration cases and the seized value

Year	Criminal offences / suspects (Art. 179/a CC - Failure to declare money and valuable items)	Seized value
2011	10 / 10	EUR 160.020; USD 140.700
2012	15 / 16	EUR 319.650; USD 76.000; ALL 17.000
2013	3 / 4	EUR 307.000; USD 48.100
2014	10 / 10	EUR 54.000; USD 59.000; GBP 70.000
2015	13	EUR 280.255; USD 7.580
2016	7	EUR 542.858;
2017 (Jan-Sep)	37	EUR 1.259.035; USD 112.100

294. Although the table contains no information in this respect, the evaluators learnt that seizures mostly occur upon exiting rather than at entry, in similarity with the occurrence of declarations and in disproportionality with the transfers presumably taking place in reality. If the reason is that the authorities dedicate a higher focus on controlling persons upon exiting, this approach does not correspond to the actual risks. Furthermore, the authorities that control cross-border transportation of currency apparently focus on situations where the amount exceeds the statutory threshold (1.000.000 ALL) and/or to breaches of the declaration regime (false or non-declaration).

295. It can be concluded from the case examples provided to the evaluators that SARs submitted by the GDC to the GDPML with the suspicion of ML/TF were results of *subsequent* in-depth analyses of multiple interrelated voluntary declarations and the evaluators were left without detailed information as to how many of these SARs resulted in criminal proceedings for ML. As far as the criminal reports the customs made in relation to cross-border cash transport and thus all subsequent criminal proceedings are concerned, these were all related to the offence in Art. 179/a CC as above and even the numbers of such proceedings are relatively low – not to mention the number and volume of seizures which also were criticised by the NRA. However, the evaluators note that the latest statistics for the first three quarters of 2017 show some significant increase in the number and volume of cash/BNI seizures at BCPs (5 times more seizures involving twice as much money than in the entire year of 2016) and they encourage the Albanian authorities to keep up this performance level.

296. As it was concluded in the NRA, actual cash inflows can be expected to be at a level significantly higher than what is indicated in these statistics. During the period in 2014 subject to thorough analysis, a clear discrepancy was observed between the cash declarations on entry at BCPs (only 2 of

which were made through the 3 summer months) and the number of SARs from REs in the same period (where clients often referred to “cash from emigration” as the source of the assets subject to transactions). It was thus concluded that factors such as the low number of declarations and the amounts declared as opposed to the millions of people crossing the state border and other data suggesting that considerable flows of cash enter Albania every year, the sporadic cases of detection of non-declaration together with low punishments and non-confiscation of amounts all threatens with BCPs being used for undeclared cash transport also for the purposes of ML, TF as well as predicate offences such as tax evasion by the concealment of income. According to the NRA this can partly be attributable to shortcomings in the application of proper countering measures by the authorities entrusted with the cross-border cash control and the apparent lack of RBA in their activities. These deficiencies led the GDC to draft an orientation manual<sup>62</sup> for the Customs officers at BCPs in 2017 with regard to the interviewing of the passengers and thereby carrying out a rapid and detailed risk analysis that serves for a more complete control and detection of undeclared assets.

*Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.*

297. As discussed above, real estate and bank account money make up a significant part of the confiscated assets, which is consistent with the identified risk of the real estate sector being used for laundering criminal proceeds. Similarly, the range of criminal offences that occur in the statistics available to the assessment team, also reflects some of the typical proceeds-generating offences (with the exception of corruption offences though).

298. However, concerns still remain about the overall effectiveness of the regime(s). As noted already in the NRA, considering the level of organised criminality and high value proceeds-generating criminality in Albania (and/or by the involvement of Albanian nationals abroad) the volume of assets seized and confiscated do not seem to be proportionate to the ML risks in the country.

299. The values of confiscations related to falsely or non-declared cross border transports of cash or BNIs, the evaluators have serious doubts whether these correspond with the respective ML/TF risks in Albania and the region. In any case, the disproportion between declarations and seizures of outgoing and incoming cash and other patterns described above all appear to show that the authorities' approach is not addressing adequately the identified risks.

*Overall Conclusions on Immediate Outcome 8*

300. The parallel regimes for criminal and non-conviction based confiscation and provisional measures provide for a robust legal framework for recovering ill-gotten proceeds. No technical deficiencies indicated under R.4 seem to pose an actual obstacle to apply these measures to the full extent particularly as the scope of the Anti-Mafia Law has recently been extended. A relatively effective structure for the management of seized and confiscated assets has also been put in place but further legislative efforts need to be taken to cover all criminal proceeds including those seized-confiscated within the conviction-based regime.

301. Parallel financial investigations are considered as a priority and appear to have been applied on a routine basis. Nonetheless, Albania could only to a limited extent demonstrate that provisional measures and confiscation are, in either regime, effectively applied in ML cases and generally for proceeds-generating offences. The number and values of provisional measures could not be assessed in lack of reliable statistics while the figures relating to confiscation do not seem to be proportionate to the levels of domestic and transnational criminality. As to the latter, further efforts seem to be necessary to effectively identify criminal proceeds located abroad and take appropriate actions for their confiscation.

302. Authorities in charge of cross-border cash control measures do not seem to systematically take into consideration ML/TF suspicions as their attention is rather focused at breaches of the declaration regime (falsely or not declared transactions of cash/BNIs) and seizures only in this

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<sup>62</sup> Manual on the control procedure in support of Customs officers regarding cash declarations, cheques, precious metals and stones at the Border/Customs Crossing Points/Houses, No. 14457/1 Prot. of 15.06.2017

respect. The performance and output of the entire mechanism seems not to address the main ML/TF typologies in this field.

303. Overall, Albania has achieved a moderate level of effectiveness with Immediate Outcome 8.

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### *Key Findings*

##### *Immediate Outcome 9*

1. Whereas a limited number of counter-terrorism prosecutions have already resulted in successful convictions, no prosecutions and convictions of TF offences have occurred either as a stand-alone prosecution or as part of a counter-terrorism prosecution. The competent authorities did not demonstrate having an effective and systematic approach to explore and investigate the financing aspects, meaning the purchase of travel tickets and provision of low amounts of support in cash, in relation to the terrorism-related offences.
2. The perception and understanding of TF related risks do not seem to adequately address the characteristics of potential TF activities in the country and the region.
3. Despite the reinforcement of counter-terrorism Police department, the investigation of TF activities belongs to the competence of another department, which is counterproductive. Delegation of terrorism-related offences including TF to local level judicial authorities by the recent judicial reform raises questions.
4. There appears to be some uncertainty about the scope of the legislative framework for prosecuting the financing of recruiting and travelling of FTFs.

##### *Immediate Outcome 10*

1. Albanian authorities have not performed a comprehensive assessment and nor demonstrated a sufficient understanding of the TF risks. Nevertheless, Albania takes some measure to mitigate TF risks present in the country. The country has demonstrated practical examples of designation of persons under the domestic framework, identification of matches with designated persons and freezing of assets. Albania has unfrozen the assets of a person de-listed from the UN Al-Quaid list.
2. Since the last evaluation Albania took steps to introduce a comprehensive legal framework for implementation of the TFS, resulted in setting up of a sophisticated mechanism, which contains technical deficiencies. Albania has provided no country specific guidance to REs, and other persons or entities on the implementation of TFS.
3. Despite the application of various measures to proactively communicate the UN lists of designated persons to the concerned parties, major concerns still remain with the timeliness of implementation of UN TFS.
4. The REs demonstrated an appropriate level of awareness regarding their obligations for implementation of UNSCRs. The larger FIs, primarily banks in general demonstrated timely and effective use of the TFS. As concerns the other REs, such as leasing, insurance companies and DNFBPs, the level of performance varied and is limited. Supervisory authorities identified no breaches of TFS implementation by the REs, which is not convincing the assessment team.
5. Albania has a practice of listing persons that meet the designation criteria under UNSCR 1373 on its own initiative and on the basis of a foreign country request. However, no proposals for designation have been submitted to the respective UNSC or a foreign country.



6. Albania has made some attempts to assess the risks related to NPO operating in the country, but has not identified the subset of NPOs being potentially at risk of misuse for TF. Albania considers all NPOs to pose high TF risk, for the historical reasons.

7. The GDT, as a designated supervisory authority, conducts inspections of the NPOs only in relation to collection of taxes and does not exercise targeted oversight of NPOs that are at risk of terrorist abuse. This is due to inadequate understanding of their duties, and the lack of dedicated human resources.

8. Since the last evaluation NPOs have received only 1 training on the TF matters. No guidance was provided except for the one from 2011, which was not updated since then. NPOs met during the on-site visit were generally unaware of possible vulnerabilities of NPO sector to TF threats.

#### *Immediate Outcome 11*

1. There is no legislation in place or any governmental decision to implement the UNSCRs on proliferation of WMD.

2. Despite the fact that there is no legislation in place or any governmental decision to implement the UNSCRs on PF, the MFA takes measures to inform some of the Albanian authorities on PF related UNSCR updates. The GDPML publishes the consolidated UN Security Council sanctions list of designated persons and entities on its website, informing the REs not only about TF related, but also on PF related TFS.

3. Larger FIs, primarily banks that are part of the international group implement the TFS related to PF. Other REs, consult the GDPML website only as a source of information on UNSCRs.

4. Considering, that there are no legislative provisions on implementation of the PF related TFS and there are no case examples, it is therefore unclear what steps would be taken by the REs in case there is a match and what would be the powers and procedures for the state authorities to apply adequate measures with regard to freezing of assets of designated persons and entities.

5. No outreach activities have been conducted to the financial or non-financial entities regarding the application of PF related TFS.

#### *Recommended Actions*

#### *Immediate Outcome 9*

1. As a result of a more detailed and comprehensive assessment of TF-related risk in all its aspects, authorities should significantly strengthen their understanding of these risks, both in Albania and region-wise, so that they can better focus their attention on TF investigations and prosecutions.

2. Detection and investigation of all financing aspects of terrorism-related offences should be carried out systematically for all terrorism-related offences, extending to all forms of TF and including investigating the sources of travel or subsistence costs and support provided to families.

3. Include TF offence and any other relevant applicable offences under Art. 265/a and 265/b CC into the scope of competence of the department dealing with counter terrorism issues providing, at the same time, for adequate resources and skills to ensure this LEA is able to carry out TF investigations, which include financial investigations.

4. After the implementation of the new judiciary structure, monitor and analyse its impact on the frequency, timeliness and success of TF investigations. Specifically, all prosecutors handling terrorism-related cases, including TF prosecutions not involving terrorist organisations, should be subject to the same levels of awareness-raising and specialist training on the importance of parallel investigations into the financing aspects of all suspected terrorist activity and the scope of the TF offences including the funding of FTFs in compliance with the Additional Protocol CETS 217.

#### *Immediate Outcome 10*

1. Streamline the AML/CFT Law and the Law on MTF, and address the technical deficiencies in the legislation (R.6) in order to ensure implementation of the TFS without delay.
2. Develop a country specific guidance for REs and other persons or entities, and regularly conduct awareness-raising trainings on the implementation of TFS, especially to the DNFBP sector.
3. Enhance the monitoring of the REs for compliance with the TFS, especially over the FIs demonstrating weaknesses in performance and the DNFBPs.
4. Enhance cooperation among the domestic authorities and be more proactive and strategic in proposing persons or entities to the 1267/1989 and 1988 Committees. Develop a mechanism for requesting a foreign country to give effect to the actions initiated under the freezing mechanisms.
5. Conduct an in-depth risk assessment of the NPO sector to identify NPOs that are at risk of the TF abuse.
6. Establish adequate supervisory arrangements and sufficient resources to apply a targeted risk – based supervision of the NPOs at higher risk for TF abuse.
7. Revise existing, or develop a new guidance for NPOs regarding applied CTF measures and identified trends. Provide a regular outreach to the NPO sector.

*Immediate Outcome 11*

1. Establish a comprehensive legal and institutional framework, and develop and provide guidance on implementation of the TFS related to PF matters.

304. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

*Immediate Outcome 9 (TF investigation and prosecution)*

*Prosecution/conviction of types of TF activity consistent with the country's risk-profile*

305. As result of the latest amendments made in 2013, the TF offence is now broadly in line with the FATF standards and the remaining technical deficiencies described under R.5 of the TC Annex do not seem to prevent the Albanian authorities from identifying and pursuing any criminal activity related to TF with one, but notable exception described below.

306. As discussed under IO1 above, the NRA is generally focused at AML issues and thus does not contain an in-depth analysis of TF risks. However the limited findings in NRA on TF appear to be in line with the opinion of the authorities met on-site. State security services and LEAs have an effective understanding of the terrorism threats that are present in Albania and in the region, as well as the mitigation measures required to address these threats. The same can only be said, however, with some limitation about the perception of TF threats in the country.

307. According to the authorities, the main terrorism-related threat in Albania is the phenomenon of religious-based extremism/radicalism manifested in either local or regional, isolated terrorist attempts or recruiting and financing persons travelling to take part in conflicts abroad (FTFs). Such activities benefit from different factors, such as the strategic geopolitical position of the country, the lack of language barriers in the neighbouring region, inadequate awareness in domestic religious communities, low economic level in certain groups of society that facilitates the dissemination and embracement of extremist doctrines and the lack of proper experience of domestic authorities in relevant field.

308. The competent Albanian authorities met on-site were mostly aware of these sorts of risks related to domestic and regional terrorism. On the basis of open source information, however, the evaluators attempted to verify the occurrence and significance of other terrorism-related intermediary services that may potentially be offered from or through Albania, such as smuggling of weapons to other parts of Europe for terrorist purposes (trafficking in arms is not an uncommon crime in the region) or the possibility that criminal organisations provide financial support or other

services to terrorists (see more on the volume of OC-related proceeds under IO.7 and IO.8). The authorities generally denied having ever detected the provision of such intermediary services or any tangible contact between organised criminals and supporters/recruiters of terrorists, and doubted that such phenomena represented any TF-related risk in the country.

309. As it was mentioned in the 4<sup>th</sup> round MER<sup>63</sup>, in the early 2000s the suspicion of TF was in most cases related to NGOs controlled by foreign entities (including those listed by the relevant UNSCRs) serving as hubs to channel money into Albania for the purpose of disseminating religious fundamentalism. As a result of governmental actions, most of the approximately 25 suspect NGOs ceased to exist or function in Albania by around 2010. Their financial support from existing radical religious groups (e.g. improvised mosques with self-proclaimed imams spreading extremism) received from abroad is now mainly carried out by cash couriers transporting small but steady sums of money. According to authorities such support is not coming directly from actual terrorist organisations. In addition, money collected from unknown believers has also been used for TF purposes by organisers and recruiters of FTF.

310. As in many other countries, the revival and increase of religious radicalism has taken place in Albania since 2011 as a result of the terrorism-related armed conflicts in Syria and Iraq. According to the authorities met on-site, the only criminal organisation that has ever been prosecuted and convicted in Albania for such crimes (Genci Balla case) had recruited 74 Albanian citizens who left the country in 2012 to 2014 to fight for the ISIS. Altogether 135 persons travelled to the conflict region including accompanying family members. 40 persons out of recruited 74 persons returned to Albania but only one of them was prosecuted for the offence of involvement in military operations in a foreign state based on the Art. 265/a of CC. The other 39 persons were not prosecuted because they returned to Albania before Art. 265/a of CC entered in force in August 2014. Albanian authorities explained that the introduction of this offence, together with the other one in Art. 265/b of CC on organising the involvement in military operations in a foreign state, have reportedly interrupted further travels to the conflict region.

311. Until August 2017, all terrorism-related offences including TF were under the jurisdiction of the Serious Crimes Court, whereas the prosecution of the same offences fell under the jurisdiction of the Serious Crimes Prosecution Office. According to the recently amended procedural rules, the new Anti-Corruption and Organised Crime Court will only try terrorism-related offences that have been committed by a terrorist organisation while the judicial district court will be competent for the other terrorism-related cases. Equally, TF investigations that belonged to the competence of the Special Prosecution Office will be dealt with by the district PO.

312. It can be assumed that the scope of the new Anti-Corruption and Organised Crime Court was determined to enhance focusing on most serious and frequent forms of OC and corruption and this could be a reason why relatively rare offences such as TF (Art. 230/a) were left out of the scope. However, such changes might also indicate lower importance attributed to the offences left out of the scope of the court (TF offence and all terrorism-related crimes if not committed by a terrorist organisation). Counter Terrorist Department of the ASP, which is the LEA specifically authorised to investigate such offences, expressed their concerns during the on-site regarding the fact that terrorism-related crimes will be in future dealt by local district prosecutors instead of a centralised PO which may potentially result in loss of expertise (e.g. experience gained by SCPO prosecutors when handling terrorism-related cases).

313. The Counter-Terrorism Department mentioned above is responsible for the investigation of all criminal offences in Chapter VII of the Special Part of CC (“Acts of Terrorist Intention”) with the TF offence (Art. 230/a of CC) being the only exception which, similarly to the ML offence, belongs to the competence of the Sector for Investigation of Money Laundering within the DIEFC of ASP. The Counter-Terrorism Department was substantially restructured and enlarged in 2015 (from 5 to 74 personnel with more investigators and analysts), which allows for an increased focus on investigating

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<sup>63</sup> See para 55 page 19.

terrorist activities. In light of this, the evaluators find it counterproductive that all financing aspects of a terrorism-related activity are investigated by a separate body or that TF related evidence collected by the Counter-Terrorism Department is forwarded to the DIEFC for investigation due to the of lack of competence (e.g. Genci Balla case). According to the representatives of the Counter-Terrorism Department, the competences of ASP departments were already being reviewed at the time of the on-site visit and the interlocutors met by the assessment team expressed their hope that the TF offence would also be included in the competence of the Counter-Terrorist Department.

314. According to the statistics provided to the assessment team, there have been no convictions for TF offence in Albania.<sup>64</sup> Albanian authorities have also confirmed subsequent to the on-site visit that there was only one case where criminal proceedings for TF had been registered during the evaluation period (see Case example 4 under IO.6) while the rest of TF-related figures quoted in the NRA had apparently been wrong (they actually relate to separate acts of terrorism consisting of the destruction of electricity transmission towers without any related TF charges).

315. The number of STRs related to the suspicion of TF appears negligible to the total number of reports but the figures show a steady increase. This is due to enhanced awareness of the REs and not because of actual increase in TF-related transactions. Most of the STRs were made by banks. However, the money transfer sector also appears in the statistics as from 2015 (4 of 6 STRs in 2015 while 14 of 29 in 2016). The table also shows the criminal referrals made by GDPML upon the basis of such STRs.

Table 24: GDPML referrals of TF

	2011	2012	2013	2014	2015	2016	2017
TF-related STRs	1	3	4	8	6	29	2 <sup>65</sup>
TF-related referrals	0	1	1	3	2	8	3 <sup>66</sup>

316. Most of these referrals were submitted to the ASP but in certain cases to the competent prosecutor (2 referrals in 2014 to the POs of Tirana and Elbasan and 2 in 2016 to the Serious Crimes PO). However, the pre-investigations conducted upon these referrals did not confirm the suspicion of TF (the cases were in fact not related to TF).

317. Terrorism-related offences other than the TF offence appear in annual criminal statistics with certain, although limited regularity. In the statistics below, the cases for 2012 - 2013 refer to separate terrorist acts of destructing electricity poles with no TF aspect revealed, while the figures for 2016 refer to the Genci Balla case. No information was provided about the case in 2015.

Table 25: Terrorism-related offences and convicted persons

Year	Offences	Persons convicted
2012	Art. 230	4
2013	Art. 230	1 × 1 <sup>st</sup> instance + 6 × appeal court
2015	Art. 231 (recruitment)	1
2016	Art. 231	9
	Art. 232/a (incitement)	1

318. According to the authorities, the relatively low numbers of terrorism-related criminal offences, as well as the characteristics of the potential financing activities, are the main reason for the absence of the TF prosecutions. As noted above, religious extremist groups or movements, to the extent they

<sup>64</sup> There were no FT convictions also during the 4<sup>th</sup> Mutual Evaluation

<sup>65</sup> January- March 2017

<sup>66</sup> January - September 2017

are present in Albania, are considered to be funded by relatively small amounts of money either transported from abroad by cash couriers and/or collected from believers as almsgiving. Such forms of financing are difficult to detect while, on the other hand, they appeared to be sufficient to fund the terrorism-related activities occurred in Albania and in the region.

319. The recruitment and sending FTFs to Syria is one of terrorism-related activities which have occurred in Albania. This activity does not require significant financial support from the organisers' or donors since it involves the procurement of passports, purchasing the travel tickets and in some cases providing financial support to the families of FTFs. However, the authorities have provided explanations that some of the individuals travelled on their own expenses and the organisers typically omit their promise to provide financial support to FTFs families.

320. In addition, the assessment team was provided with information about a planned but thwarted terrorist plot against the national football team of Israel, during an Albania-Israel football match at Shkodër Stadium<sup>67</sup> in 2016. In this attack, the terrorists planned to use firearms and explosives the purchase of which must have required some financial support from the organisers or other donors but such acts of financing were said to have taken place in the neighbouring Kosovo\* and therefore the Albanian authorities had no information to share in this respect.

#### *TF identification and investigation*

321. As noted above, there have been no TF cases prosecuted in Albania and the evaluators have only heard about one single, very recent case where TF criminal proceedings were registered and investigated. In this very case (as described in Case example 4 under IO.6) the suspicion of TF was established by the combination of three different factors: first, the fact that the individual (one of those convicted in the Genci Balla case) had already been included in the domestic terrorist list, second, a piece of information from a counterpart LEA that the individual travelled to the conflict zone to join the ISIS and third, suspicious transactions conducted by the individual that were subsequently identified as a result of GDPML analysis. On the other hand, this was a unique constellation of circumstances which could only lead to identification of TF because the individual had already been listed as a terrorist. No other details of the case are known to the evaluators which does not allow for drawing further conclusions.

322. Apart from this single case, the assessment team cannot examine procedures for initiating and conducting TF investigations and experiences gained in this field. As far as the output of the Suspicious Transaction Report (STR) regime is concerned, whereas the numbers of TF-related STRs have moderately increased, no such STRs have so far resulted in criminal investigation as no TF suspicion could be corroborated (the aforementioned case was not based on a STR). It is however a possible reason for the low figures in the statistics that the characteristics of the potential terrorism-related activities and the estimable expenses do not likely require the use of bank transactions or any other, detectable and reportable channels (with the possible exception of money transfers) to provide financial support to the organisers, while cash couriers transporting sums below the reporting limit are likely to go unnoticed.

323. Identification of TF is more likely to occur while investigating the terrorism-related activities. The authorities claimed that any aspects of financing should routinely be examined in terrorism-related criminal proceedings. However, the assessment team was not provided any information or evidence to demonstrate that TF is examined in all terrorism-related cases and neither was any concrete case reported where such identification had been successful and resulted in TF investigation. As a result, the assessment team have mixed impressions regarding the scope of such examinations and particularly the use of information obtained.

324. For most of the practitioners (e.g. police officers and prosecutors) the FT appears to mean something more specific or serious than what can (and should) be captured in domestic cases. Interlocutors met by the assessment team during the on-site deemed it necessary to underline that

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<sup>67</sup> The venue was eventually changed, for security reasons, to Elbasan Stadium.

they had not detected any significant financing coming from terrorist organisations abroad, while neither the significance of funds nor the direct contact with terrorist organisations is a prerequisite to identify TF. Some (but not all) practitioners met on-site only appear to perceive TF if it involves the provision of significant sums (as reward or otherwise) and/or banking transactions, but not necessarily in cases of low-scale and/or indirect financing of individual terrorists. This approach needs reconsideration to achieve better results in CFT.

325. On the other hand, potential TF activities, in at least one concrete case described below, appear to remain unaccounted for. In the Genci Balla case, where 9 persons were convicted<sup>68</sup> for various terrorism-related offences, such an examination of TF aspects did take place. In this case, some of the defendants were self-proclaimed imams of improvised mosques in Albania, while the others were their accomplices in their activities. While propagating religious radicalism and inciting hatred in their mosques, these imams encouraged and recruited Albanian citizens to travel to the conflict zones in Syria or Iraq in order to fight alongside with the ISIS with which the main culprits had direct contacts. As a result of this, as noted above, more than 70 individuals were recruited, who left Albania and fought in Syria as FTFs (the direct involvement of some of these individuals in atrocities involving explosives could also be proven in the proceedings). The 9 perpetrators were indicted and then convicted of recruitment of persons for the commission of terrorist offences (Art. 231 of CC) encouraging public invocation and propaganda for the execution of terrorist offences (Art. 232/a of CC) and inciting hatred or quarrel (Art. 265 of CC) the first two of which are offences included in Chapter VII CC (“Acts of Terrorist Intention”). At that time, Art. 265/b of CC (organising the involvement in military operations in a foreign state) had not yet been included in the CC.

326. It was proven during the trial that the defendants had purchased flight tickets for some of the recruits to Syria and thus covered their travel expenses (while others travelled on their own expenses) and at least in one case they gave financial compensation, in the form of cash, to the family of a recruited militant who was killed in Syria. (Neither of these acts involved any form of financing but cash.) The judges interviewed during the on-site confirmed that these conducts were considered to be included in the charges of terrorist recruitment (Art. 231 CC) which interpretation was shared also by the prosecutors. On the other hand, the Counter -Terrorism Department of the ASP, which carried out police investigation in relevant case, disclosed to the evaluators that within their investigation, they had actually collected all possible evidence to support the aforementioned and probably additional TF activities. However, the prosecutor decided not to pursue TF in the same procedure since further investigation was needed. As a result, the case related to potential TF charges was separated and sent to the ML Sector of the DIEFC (because of the aforementioned issues on exclusive competence), where criminal investigation was reported to be pending at the time of the on-site visit. It is unknown to the assessment team if TF suspicions are still being investigated after the on-site visit to Albania<sup>69</sup>.

327. The Genci Balla case illustrates well the legal and interpretational problems associated with investigating and prosecuting FTF-related activities in Albania. As noted under Criterion 5.2bis, the new Art. 265/a and 265/b CC were introduced so as to provide for an adequate coverage of activities in this field that had previously been not or not in all aspects addressed by the existing CC provisions. As noted above, this legal amendment proved to be an effective measure to discourage, and to significantly decrease the number of, potential foreign fighters in Albania. Notwithstanding that, the introduction of Art. 265/a and 265/b of CC as declaredly not terrorism-related offences appears to separate the phenomenon of foreign fighters from terrorism and the wording of Art. 265/b – with its clear overlap with Art. 230/a – seems to be designed as a *lex specialis* for financing the expenses of foreign fighters. At the time when the Genci Balla case was investigated and prosecuted, these new offences were not yet in force. Thus, foreign fighters were clearly considered in the Genci Balla

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<sup>68</sup> Decision No. 58 (03.05.2016) 1st Instance Court of Serious Crimes and Decision no. 118 (30/11/2016) of the Appeal Court for Serious Crimes.

<sup>69</sup> The recent FT investigation described in Case example 4 under IO.6 does relate to one of the defendants (B.H.) convicted in the Genci Balla case. However, that case has apparently been based on a recent STR and not on evidence collected during the original criminal proceedings.

conviction as persons recruited for committing acts with terrorist purposes and not just persons involved in military formations, military or paramilitary organisations as provided by Art. 265/a and 265/b. The recruitment of such persons qualified as recruitment of persons for committing acts with terrorist intentions pursuant to Art. 231 of CC. It cannot therefore be understood why financing aspects of this recruitment could not qualify as TF pursuant to Art. 230/a paragraph (1)(a) of CC.

328. Conclusions that can be drawn from this sole criminal case are that in recent jurisprudence, foreign fighters are considered as persons recruited for committing acts with terrorist intentions (as this recruitment establishes Art. 231 CC). This means that funds provided to such an individual to cover travel or subsistence expenses can be considered, as a minimum, as funds provided knowing that they will be used by a single terrorist (Art. 230/a [1][c]) i.e. the act is punishable as TF and there is no need to use Art. 265/b CC. This means that in the Genci Balla case, the lack of TF charges was not a result of inadequate legal framework but an overly limited interpretation of Art. 230/a of CC. In this context, one can see room for broadening the scope of application of the existing legal framework, in line with the Additional Protocol to the CoE Convention on the Prevention of Terrorism (CETS 217) which has been in force in Albania since July 2017.

329. In addition, the judges and the police officers met during the on-site visit underlined that the investigation did not extend to exploring the financial background of relevant self-proclaimed mosques (e.g. whether or not the establishment and functioning of those premises had already been funded by any donors with a view to their subsequent use as centres of religious fundamentalism and recruitment of FTFs).

330. Investigations of terrorism-related offences often involve international cooperation since the underlying extremist activities are also operating throughout the neighbouring region. For example, the planned terrorist attack at the Albania-Israel football match could only be detected and prevented with cooperation of counterpart authorities in Kosovo and “the former Yugoslav Republic of Macedonia” (in this case the organisers were arrested in Kosovo and thus the financing aspects are mainly investigated there). Perpetrators in the Genci Balla case had also connections with persons allocated within the region. This is why terrorism (and recently TF) related cases occur in MLA statistics with a certain regularity as follows:

#### MLA requests received in relation to TF or terrorism-related offences

- 2011        2/terrorism-related
- 2012        1/terrorism-related
- 2014        2/terrorism-related
- 2016        4/TF + 2/terrorism-related

#### MLA requested from abroad:

- 2014        2/terrorism-related
- 2015        3/terrorism-related
- 2016        1 TF-related extradition request

#### *TF investigation integrated with -and supportive of- national strategies*

331. The assessment team could not examine the extent to which the investigation of TF was integrated with, and used to support, national counter-terrorism strategies and investigations – considering, that it could not even be established if there have ever been any criminal proceedings related to TF offence registered in Albania.

332. In the Genci Balla case mentioned above, a conviction for a terrorism-related offence has proven to be sufficient basis for designating ISIS-related natural persons as individual terrorists on a

domestic list<sup>70</sup> (and could and should also have sufficed for a proposal to include the same individuals in the corresponding UNSC list – see more in details under IO.10.) This domestic designation has since led to the freezing of assets from one of those individuals pursuant to the MTF Law (60.190 EUR and 13% of shares in a company). According to the authorities the team met onsite, the same procedure would take place in case someone would have been convicted not for terrorism-related offences but for TF offence. The assessment team needs to note, however, that the fact that funds owned by this terrorism-related individual could successfully be frozen by a subsequent administrative procedure raises further questions why the financing aspect of their organising and recruiting activities had not been subject of a more thorough examination. Inclusion of the financing aspect into the recruitment charges might have accelerated and simplified the proceedings but it might also have prevented the authorities from a more profound understanding of a possible wider terrorist support network, and particularly from identifying and investigating those who had only been involved in financing activities but not in recruitment or dissemination of extremism.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

333.No sanctions or measures have yet been applied for TF. As stated above, no indictments concerning TF are pending before the criminal courts.

334.As described in the TC Annex, available sanctions for natural persons and legal persons appear to be sufficiently proportionate and dissuasive (see R.5)

#### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

335.The assessment team was not informed of any other criminal justice, security or administrative measures to disrupt TF activities where it is not practicable to secure a TF conviction. The TF offence itself is broad enough to cover most forms of potential TF activities and therefore conducts that cannot be subsumed under Art. 230/a are highly unlikely to occur in practice. No TF cases have ever been sent to trial (or even registered) in Albania and neither were the evaluators informed of any proceedings where other criminal charges had to be pursued instead of Art. 230/a CC in order to secure a conviction.

336.Administrative measures or sanctions were not reported to have been applied against natural or LEs (e.g. NGOs) during the evaluation period in relation with TF activities and neither have there been asset freezing actions using the Anti-Mafia Law, which is also applicable to terrorism-related offences.

337.In the Genci Balla case, as noted above, evidence for financing was examined during the investigation and even if TF offence was finally not included in the charges against the defendants, the financing aspects of their conducts were considered as part of the recruitment activities. Therefore, the prosecutors and the courts did not ignore these acts but considered them as supportive acts to establish and to corroborate recruitment charges which supported successfully securing the conviction for the terrorism-related offences. On the other hand, the failure to recognise the financing activities as separate criminal acts was at the same time an obstacle to pursue TF charges against potential further individuals who, as noted above, had only been involved in financing activities but not in recruitment or other terrorism-related offences.

#### *Overall Conclusions on Immediate Outcome 9*

338.The understanding of TF-related risks do not seem to be adequate, as the competent authorities insufficiently take account of or investigate/prosecute the financing aspects of the detected terrorist activities and the phenomenon of cash couriers transporting apparently negligible sums for terrorist purposes. The financial foundations of self-proclaimed extremist institutions were not demonstrated to have been explored.

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<sup>70</sup> Council of Ministers Decision No. 769 of 02.11.2016



339.Despite the successfully investigated and prosecuted terrorism-related cases and the robust foundations for TF criminalisation in the CC, there have been no conviction or indictment for TF and only one proceeding was registered at all. Efforts to identify the financiers in terrorism-related cases or at least to recognise their TF conducts have so far been unsuccessful. Counter-terrorism investigations do not include the exploration of the broadest financial background of the organisers.

340.Concerns were raised about the institutional framework of TF investigations as the separation of such cases from other terrorism-related cases within the structure of the ASP seems to be counterproductive. The recent delegation of TF cases and all terrorism-related offences not committed in an organised manner from special-centralised judicial authorities to local district courts and prosecutors also raises some concerns.

341. Albania has achieved a low level of effectiveness with Immediate Outcome 9.

*Immediate Outcome 10 (TF preventive measures and financial sanctions)*

*Implementation of targeted financial sanctions for TF without delay*

342.Albania has a legal framework in place and relevant competent authorities established to implement TFS under UNSCRs 1267 and 1373. Over the recent years Albania has revised its AML/CFT Law and adopted a new MTF Law to set a comprehensive legal framework for implementation of TFS. However, there are yet some technical deficiencies which hamper effectiveness of Albania's compliance of with TFS (see R.6). Concerns remain with the timely implementation of the UNSCRs, and appropriate application of TFS by some types of REs.

343.In relation to implementation of the UNSCRs 1267/1989 and 1988, according to the MTF Law, persons included in the UN list are designated by the decision of the CoMs of Albania to ensure enforceability of the TFS at the national level. Decision of the CoMs enters into force from the day of its publication in the Official Gazette. The procedure to adopt these decisions by the CoMs takes up to 15 days. Additionally, a few days are required to publish the decision. Such measures do not ensure implementation of the TFS without delay.

344.In order to meet the requirement for implementation of the UN TFS "without delay", the MTF law stipulates that the MoF "may", i.e. has discretion to issue a temporary freezing order of assets and property of a designated person before the CoMs takes a formal decision on listing. The freezing order enters into force immediately and it is valid for a period of no more than 30 working days. However, these powers have never been exercised in practice.

345.In practice, Albania takes various measures to proactively communicate the amendments in the UN lists to the competent authorities and the REs. MFA circulates information on updated UN lists to the GDPML, MoF, GDC, BoA, and SIS within a few days after being informed on updates by the Permanent Mission of Albania to the UN. The GDPML promptly informs REs about the amendments in the UN lists by publishing the latest consolidated list in the PDF format, as well as providing a link to the relevant UN web site. However, this mechanism for distribution of information cannot be considered as an appropriate effective implementation of the UNSCRs without delay, as doesn't ensure enforceability of the TFS.

346.Albanian authorities clarified that before the CoMs approves the designations made by the relevant UNSCs the REs shall apply provisions of the AML/CFT Law. This mechanism however in the view of evaluators does not comply with the TFS implementation requirements, as under the AML/CFT Law the REs should merely consider the lists as indication of TF. It doesn't set a direct mandatory obligation to freeze assets of the designated persons.

347.Further on, the Albanian authorities explained that, although never exercised, but before formally being designated by the CoMs, a transfer of assets of the UN listed person or his/her associate would be treated as a criminal offence under Art. 230b of the CC. However, it seems that the wording used in the mentioned Art. states that it prohibits the transfer or the movement of the property, "which is put under measures against terrorism financing", which would mean that decision of the CoMs or a court should already be in place. In addition, the evaluators have

reservations with respect to intention of the Albanian authorities to apply repressive measures since in the framework of the FATF Recommendations these are initially “preventive measures that are necessary and unique in the context of stopping the flow of funds or other assets to terrorist groups; and the use of funds or other assets by terrorist groups”<sup>71</sup>.

348.As concerns the measures to be taken after the CoMs approve the designations made by the relevant UNSCs (or on the own initiative), the REs shall apply the MTF Law. They shall receive information on designations via the relevant supervisory authorities within 3 days from the CoMs approval, and check the clients and assets against the listed persons within 10 days. In case of match the REs are only required to notify the GDPML via the responsible authorities about the identified funds and other property. There is no obligation for freezing without delay set out for the REs under the MTF Law. Based on the notification the GDPML proposes to the MoF to issue a seizure order, which is a permanent measure. This mechanism ensures freezing of funds within 5 - 24 days from the day of designation of persons by the CoM. Thus the assessment team is of opinion that the legal framework set hampers adequate implementation of TFS “without delay”.

349.Having in place such a sophisticated mechanism for implementation of the TFSs the Albanian authorities have developed no country specific written guidance for REs to ensure a clear understanding of the sequence of steps to be taken applying the 2 legislative acts – AML/CFT Law and the MTF Law. The only guidance provided is the FATF Best Practice on Implementation of Recommendation 6.

350.Albania has demonstrated a practical implementation of the UNSCR 1373. In 2015 the CoMs adopted 3 decisions designating 20 persons. Decisions were published in the Official Gazette. Out of three decisions: (a) 1 decision was made on the basis of 1foreign request to designate 2 persons in total, where there was no criminal proceeding in Albania; (b) 1 decision was made on the basis of conviction of 13 persons for terrorism-related criminal activities; (c) 1 decision was made on the basis of ASP proposal to designate 5 persons (4 citizens of Albania, and 1 Italian affiliated person) considering, that Italian authorities imposed to them restrictive measures for participation in terrorist groups. All three decisions for listings were made by the CoMs within 1month, since the listing of persons had been requested by the relevant authority, twice exceeding the legally set out terms, thus raising doubts on timeliness of implementation process in practice.

351.Although all 3 designations are made in criminal proceedings either in Albania or abroad, the CoMs decisions are not conditional upon their existence. In all cases the criminal proceedings were at different stages and conviction was not a pre-condition too. Thus, although there is no threshold defined in the legislation for application of “grounded suspicion”, in practice, the Albanian authorities demonstrated a flexible approach.

352.Albania has not proposed the inclusion of the domestically designated persons to UNSC corresponding lists, although it is a legal obligation according to the MTF Law. The assessment team was informed that the reason for that was an insufficient coordination of measures among the involved domestic authorities. MoF did not take procedural steps defined by the MTF Law to inform the MFA about names of the designated persons. Therefore, MFA was not able to propose the inclusion of the domestically designated persons to UNSC corresponding list. Having in mind the importance of UN sanction lists as a global proactive instrument to prevent and fight terrorism financing, the evaluators are of an opinion that a failure to propose inclusion of domestically designated persons in the UN corresponding lists demonstrates that Albania does not give an adequate consideration to this matter.

353.Albania has no practice of requesting other countries to give effect to the actions initiated under freezing mechanisms. As it was clarified by the authorities they consider there was no need for requesting. However, the evaluators deem, a technical deficiency, such as an absence of any specific mechanism for requesting a foreign country, may hamper initiation of such measures by Albania.

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<sup>71</sup> FATF Recommendations, Interpretive Note to Recommendation 6 (Targeted Financial Sanctions Related to Terrorism and Terrorism Financing), p. 37.

354. The assessment team was informed by all interviewed entities that they are aware of their obligations to implement restrictive measures as prescribed by the UNSCRs. Larger FIs, primarily banks (holding over 90 % of total financial system assets) do not solely rely on the GDPML web-site, the Official Gazette publications, or BoA notification on amendments in the lists in their activities as concerns the UNSC TFS. They do rather use the UN web-site directly to keep their databases updated, or in case they are part of a larger international group – use the group wide databases thus ensuring a quick implementation of the TFS. Evaluators were informed that most of these group-wide databases include also information on domestic designations made by Albania under the UNSCR 1373. Otherwise, they would include information on domestic designations as soon as published in the Official Gazette. IT tools developed by the advanced FIs allow the real time detection of possible matches of their clients with the UN lists. This enables a prompt identification of respective persons and their funds and assets kept with the RE. Measures in place for identification of the BO allow the FIs to identify also persons indirectly controlling or owning the assets involved in transactions (see also IO4).

355. However, some interviewed REs such as leasing, insurance companies and DNFBPs - especially notaries, have indicated that they do not utilise the GDPML web site to check the latest published consolidated lists. They would rather follow the data published in the Official Gazette, distributed via the relevant supervisory authorities, as a source of information on the legally binding obligation. Hence, while it can be concluded that awareness regarding the necessity to implement the UNSCRs is at an appropriate level, the ability of some REs to implement TFS without delay, is not. While the FIs as was reflected above would be in a position to identify matches with the UN lists on both, the direct and indirect (BO) controlling natural and legal persons, the same cannot be stated for the DNFBPs (see also IO4).

356. The supervisory authorities informed, that, as a part of the on-site inspection they check implementation of the TFS, testing if the list of the designated persons is up-to-date, and if the system in place is operational to ensure a prompt identification, decision making, freezing assets and reporting of a match. According to information provided by the supervisory authorities, over the period under consideration there were no breaches identified, and no sanctions applied. This however is not convincing the assessment team, as the interviews provided indications that not all of the REs met implement the TFS effectively and adequately.

#### *Targeted approach, outreach and oversight of at-risk non-profit organisations*

357. Albania has made some attempts to assess risks related to NPOs operating in the country. In 2012 the GDPML issued a document “Assessment of Non Profit Sector in Albania” and in 2015 limited analysis of NPO sector risk was conducted within the scope of the NRA. Neither of these two analyses identifies the subset of organisations that fall within the FATF definition of NPO.

358. Authorities informed the assessment team that further work was conducted in 2015-2016, separately from two risk-assessment exercises mentioned above. The GDPML, involving the GDT and the SIS, initiated a one-year-long assessment of a certain number of NPOs involved in charitable activities from the perspective of combating TF. All the assessed NPOs were of an Albanian origin. The SIS provided the GDPML with a list of NPOs considered to be exposed to TF risks, as per SIS criteria and data. The GDT provided respective data on these NPOs (e.g. data on the structure, donors, tax related information). The GDPML performed a detailed analysis extending to bank information and full supervisory documentation from the GDT. Special attention was paid to the conduct of persons within the management (directors, administrators) of the NPOs. The assessment concluded that the analysed NPOs were not involved in TF. The outcomes of this exercise were shared only with the SIS.

359. Although, as demonstrated above the NPO risk-assessment conducted by Albania was limited, and the separate analysis of the sector did not reveal TF links for the analysed subset of the NPOs, under the AML/CFT legislation Albanian authorities treat all NPOs as posing a high risk of TF. This opinion is also widely shared by the authorities. Such an approach is explained mainly by the historical reasons. According to Albanian authorities, the religious radicalisation use to be a major

problem yet in 2000-2010, with the self-proclaimed (illegal) communities being owned or controlled by, including those, listed in the relevant UNSCRs.

360. The GDT is the competent authority for systematic supervision of NPOs on AML/CFT matters since 2014. Instruction No 22 of the MoF regulates the procedures to be followed by tax authorities, as a supervisory body. The instruction is particularly important, since it requires a targeted approach to NPOs supervision on the ML/TF related matters. However, it became apparent from the interviews that the GDT conducts inspections of the NPOs exclusively in relation to performance of tax duties. There are no measures taken by the GDT to implement a risk-based supervision and no outreach activities have been conducted by the GDT to the NPO sector on the matters related to prevention for a TF abuse.

361. A further analysis revealed that in GDT there is only 1 inspector appointed to supervise approximately 3000 NPOs registered in Tirana, out of total 10000 NPOs registered in Albania. No resources are allocated for the NPOs registered out of Tirana. Hence in the view of the assessment team, there are serious resource constraints, which limit the ability of the GDT to supervise NPOs for the AML/CFT purposes.

362. According to the AML/CFT Law application of EDD measures is required when dealing with NPOs. The REs met during the on-site visit stated that they perform additional measures for NPOs to fully understand their source of funds (donations), especially if these donations are delivered from regions that are classified as posing a higher risk (see also IO 4). According to the GDPML, there were 28 STRs in total, which were submitted by the REs on NPO activities during the evaluation period. Although these appeared to be STRs related to ML rather TF cases, this statistics can be indicative for the role of the REs played as a gate keepers.

363. In addition, the GDPML has informed about 2 cases initiated based on the STRs received from the banks, in relation to NPOs being suspected in TF/radicalism/extremism over the period under consideration: 1 case in 2013 and 1 cases in 2014. The case in 2013 was related to an incoming wire transfer in the amount of 16,701 EUR, from a country in the Middle East, from the sender involved in TF. The other case was related with the misuse of the NPO funds for the radicalisation purposes. Both cases have been transferred by the GDPML to LEAs for further investigations, which have not been completed at the time of the on-site visit.

364. In 2015 the GDPML, together with the State Police, the GTD and the SIS organised a training with involvement of 45 NPOs, covering both, the ML and TF issues. However, no further outreach activities have been conducted to reach out to other members of the sector. No guidance has been provided by authorities to the NPO sector regarding the CTF measures and trends, except for one from 2011, which since then have never been revisited. No measures have been taken to inform a donor community about the potential vulnerabilities of NPOs to TF abuse.

365. The representatives of the major NPOs interviewed, strongly denied that the NPOs in Albania are at a risk of abuse for the TF purposes. They were also unaware of any initiative or outreach activities conducted by the authorities to mitigate risks associated with the NPO sector in relation to TF. This made evident for the evaluators that the efforts of the authorities to reduce TF related risks in the NPO sector are not enough transparent, and there is a lack of communication with the private sector.

366. Overall, the assessment team noted that although Albania in general has an understanding of the ML and TF risks posed by the NPO sector as such, authorities failed to identify subset of organisations that fall within the FATF definition of NPO, or features and types of the NPOs which by virtue of their activities or characteristics are likely to be at risk of TF abuse. Albania applies enhanced measures to all NPOs using "one size fits all" approach, which however does not ensure focus on the ones posing TF risks. Such approach fails also to ensure effective distribution of resources and may disrupt the activities of the legitimate NPOs and have a discouraging effect for the legitimate ones.

*Deprivation of TF assets and instrumentalities*

367. During the assessed period no positive matches were identified and assets frozen in Albania in accordance with UNSCRs 1267/1989 and 1988, but there are assets of a person, associated with Al-Qaida unfrozen in 2012. As concerns the mechanism set out in line with UNSCR 1373, Albania has an experience of freezing of assets in 2015. These are assets of a person designated by Albania's own initiative.

368. Among the REs only banks have indicated that they had matches with lists of designated persons, submitted SARs to the GDPML and immediately suspended the transactions. There was no SAR submitted by other FIs or DNFBPs. The GDPML clarified, that despite the matches were identified, the analysis of the SARs revealed that in all cases these were false positive matches, and did not relate to UN Lists. It was described, that the IT solutions of these banks enable a search of different international databases (i.e. FACTIVA), which are broader and cover more information than the UN designated persons. In the majority of these cases, banks indicated that they did not receive any feedback from the GDPML, although they would expect. In all cases transactions were carried out in 3 days after they had been initiated by clients. Albania has provided no specific guidance to the private sector on procedures to unfreeze the funds or other assets of persons and entities inadvertently affected by a freezing mechanism, except for publishing the FATF Best Practice on implementation of Recommendation 6.

369. Albanian authorities have implemented un-freezing measures in one case: the decision of UNSC to de-list Yasin Al-Qadi in 2012 from the list of persons associated with Al-Qaida (UNSCR1267). All funds, accounts, assets, immovable property, land, investments in commercial companies and financial assets of the individual were unfrozen by the Albanian authorities on the basis of the relevant decision of CoMs. The return of funds and other assets were carried out within 3 months by the ad hoc governmental commission, which was created for this purpose. Albanian authorities indicated that they did not experience any impediments in implementation of un-freezing measures. These actions had however been carried out before the MTF Law was adopted, thus the mechanisms set out in this law have not been put in practice yet.

370. Albania demonstrated that it has tools in place and practice of successful deprivation of TF assets. In accordance with MTF Law, 60,190 € and 13% of shares in a company were seized from 1 person listed in the domestic list in 2015. It is important to note that according to authorities, the company which shares were sized, at the time of the seizure had no property and assets. This particular individual was a member of the group of 13 persons sentenced for terrorist activity in 2015 (see Genci Balla case in IO 09).

#### *Consistency of measures with overall TF risk profile*

371. The assessment team identified that Albanian authorities have not performed a comprehensive assessment and nor demonstrated a sufficient understanding of the TF risks. Subsequently, there is also no specific coordinated TF mitigation measures developed on a policy level, and applied. Nevertheless, some separate authorities demonstrated an effective understanding of the terrorism threats present in Albania and in the region, as well as the mitigation measures required to address these threats.

372. Over the last years Albania took steps to improve the legal framework for the TFS implementation and develop the national framework for designation of persons. Although deficiencies in implementation of the TFS by Albania as explained above may negatively impact on overall quality of the application of mitigating measures, there have been cases demonstrating a positive practice of application of listing, freezing and un-freezing measures. Thus Albania demonstrated that it takes some measure to mitigate TF risks present in the country.

373. Absence of the effective measures to deal with the NPO sector has its negative impact on the consistency of measures taken by Albania to mitigate TF risks. As indicated above, major concerns are related to absence of the grounds for application of targeted approach to NPOs, inadequate risk based supervision over NPO sector, insufficient resources devoted to supervision, no outreach activities conducted and no guidance provided by authorities.

### *Overall conclusion on Immediate Outcome 10*

374. Albania has established a mechanism for implementation of the UNSCRs, demonstrating some characteristics of an effective system. Nevertheless, timely implementation of the TFS is not ensured. Larger FIs, primarily banks demonstrated that they have an effective system in place, which however has not been a case with the other types of REs. Albania has not developed a guidance on implementation of the TFS.

375. Albania having conducted risk assessment concerning the NPO sector eventually failed to identify the NPOs that likely to be at risk of TF abuse, and applies a high risk measures to the entire NPO sector. Concerns remain on appropriate supervision and outreach to the NPO sector.

376. Albania achieved a Moderate level of effectiveness for Immediate Outcome 10.

### *Immediate Outcome 11 (PF financial sanctions)*

#### *Implementation of targeted financial sanctions related to proliferation financing without delay*

377. There is no legislation in place or any governmental decision to implement the UNSCRs relating to PF.

378. Similarly to the mechanism on the implementation of UN TFS with regard to TF, the MFA disseminates information on amendments regarding the lists of designated persons and entities to the GDMPL, MoF, GDC, BoA and SIS as soon as relevant amendments are adopted by the UNSC. Supervisory authorities distribute received information to REs. In addition, the GDMPL publishes the consolidated UN Security Council sanctions list of designated persons and entities on its website, informing the REs not only about TF related but also on PF related TFS. However, the CoMs is vested with no powers for implementation and enforcement of the TFS related to PF. Hence, there is no effective framework in place for implementation of the UNSCRs relating to PF without delay.

#### *Identification of assets and funds held by designated persons/entities and prohibitions*

379. Larger FIs, primarily banks that are part of the international group implement the TFS relating to PF (see also IO10). FIs and DNFBPs may use the GDPML website as a source of information on UNSCRs to implement TFS. However, there is a little awareness that the lists published on the GDPML website contains data on other than TF related TFS. Considering, that leasing, insurance companies and DNFBPs, especially notaries, have indicated that they use GDPML website to check the latest published consolidated lists, and they would rather follow the data published in the Official Gazette, it is evident that the latter do not take any measures with respect to PF TFS. Thus, it can be concluded that TFS related to PF are implemented in practice only by larger FIs, primarily by banks that are part of the international groups.

380. There have been no matches identified with the UNSCRs related to the PF.

381. Considering, that there are no legislative provisions on implementation of the TFS relating to PF, even the REs that are aware of the PF TFS implementation obligations and take steps for prompt application of the respective measures, it is still unclear what steps could be taken by the entities in these circumstances, in case there is a match. FIs, DNFBPs and the state authorities do not have the relevant powers and procedures to apply adequate measures with regard to freezing of assets of designated persons and entities.

#### *FIs and DNFBPs' understanding of and compliance with obligations*

382. The understanding of REs and their compliance with obligations to implement UN TFS related to PF cannot be determined as there is no legal framework implementing the relevant obligations. As mentioned above, except for the larger FIs, other REs were unfamiliar with the UN sanctions regime related to PF.

383. While authorities have conducted 2-days training in 2016 on AML/CFT measures, including a topic on the implementation of the TF related UN TFS, there has been no outreach conducted to the financial and non-financial sectors specifically with regard to the PF and the application of

corresponding TFS. There is no country-specific guidance developed on TFS relating to PF. There is only the FATF Guidance on Implementation of Financial Provision of UNSCRs to Counter Proliferation of Weapons of Mass Destruction published on the GDPML web-site.

#### *Competent authorities ensuring and monitoring compliance*

384. There is no legal framework established to implement TFS related to PF and no competent authorities are designated, and vested with powers to ensure and monitor compliance of implementation of UN TFS related to PF.

385. Authorities, supervising the REs informed that while conducting inspections, they pay attention also to implementation of the TFS. However, there were no specific actions taken and sanctions applied by supervisory authorities with regard to compliance with the TFS related to PF regime due to absence of any respective functions.

#### *Overall conclusion on Immediate Outcome 11*

386. Although separate authorities take certain measures to ensure implementation of the TFS related to PF without relevant legislation in place, the system of combating PF overall cannot be considered to be effective. There is no legislation in place to implement TFS to comply with UNSCRs regarding the prevention, suppression and disruption of proliferation of WMD and its financing. No mechanism is in place to define powers and procedures for the state authorities to apply adequate measures with regard to freezing of assets of designated persons and entities. Competent authorities ensuring and monitoring compliance on the TFS relating to PF are not established due to the absence of adequate legal framework.

387. Albania achieved a Low level of effectiveness for Immediate Outcome 11.

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### *Key Findings*

1. Overall, the banking sector has a good understanding of ML/TF risks and AML/CFT obligations and applies mitigating measures in a manner that is commensurate to the assessed level of risk. Most NBFIs also have a good understanding of ML risks in their sector and their AML/CFT obligations. All banks and most other FIs classify their clients based on ML/TF risk, pursuant to which they apply different level of CDD including frequency of on-going monitoring.

2. The adequacy of risk understanding and mitigating measures varies across DNFBP sectors. Notaries have a key role in preventing/detecting ML in the real estate sector and have an adequate understanding of the relevant risks and AML/CFT measures. Other DNFBP sectors have less understanding of risks. With some exceptions, DNFBPs are rarely assessing clients on a risk basis and applying CDD measures according to risk. Gambling operations and DNFBPs providing company services (accountants, lawyers) apply less effective measures commensurate with the risks.

3. TF understanding has improved for banks, MVTS and FEOs following recent trainings organised by authorities and industry bodies. It thus appears that the highest-risk sectors have been prioritised, in line with a RBA. TF risks are generally not well understood by other REs.

4. CDD and record-keeping requirements are complied with by most REs, although stronger in the banking sector. When adequate CDD information cannot be obtained, FIs in general refuse business. Banks, some NBFIs (including MVTS), and notaries appear to apply adequate controls to identify PEPs and mitigate risks. Other REs do not have as robust or consistent measures in place. Banks and some NBFIs (including MVTS) apply on-going monitoring of clients based on risk. This approach is not found in some of the other REs.

5. Most FIs as well as most notaries demonstrated an adequate understanding and implementation of BO requirements. Nonetheless, supervisors continue to recommend FIs to enhance documentation

obtained for verification, which indicates there is still some room for improvement. For some REs, especially non-FIs and DNFBPs, the NBC is used as the primary or only source of BO information which may not always be accurate or contain the detailed chain of ownership for more complex structures.

6. Banks are effective in meeting their reporting obligations on the suspected proceeds of crime. Reporting has increased significantly for MVTs and notaries. Other DNFBPs sectors and FEOs, other than agents of MVTs, still show limited awareness and implementation of reporting obligation compared to the risks. TF-related reports are rare and mostly submitted by banks and MVTs.

7. Banks, MVTs and lending institutions have a good application of internal controls. AML/CFT compliance functions are generally well-resourced and involve regular internal audits and trainings. Other FIs have appointed compliance officers and have basic internal controls in place.

#### *Recommended Actions*

1. In light of the significant risk exposure of banks in the Albanian context, authorities should sustain their strong efforts to ensure that banks are kept up-to-date of ML/TF risks and apply risk mitigating measures accordingly. Some particular areas where intensified outreach appears needed are TF risks, source of wealth of PEPs, and BO documentation.

2. Beyond the banking sector, authorities should intensify their efforts to ensure that all FIs (targeting most notably FEOs that are not agents of MVTs) and DNFBPs apply CDD and EDD measures (including on-going monitoring) in line with the RBA. In particular:

- DNFBPs providing company services should receive more guidance on risks related to non-resident legal persons and legal arrangements and appropriate measures to identify BO of clients;

- Authorities should ensure that, where necessary, FIs and DNFBPs apply adequate measures for PEP identification and EDD (including establishment of source of fund and wealth);

- Authorities should take further measures to ensure that NBFIs and DNFBPs are adequately aware of reporting obligations. This should include providing more outreach on ML/TF typologies and red flags that could lead to a SAR filing.

3. Technical deficiencies (listed in the TC Annex) in preventive measures should be addressed.

388. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

#### *Immediate Outcome 4 (Preventive Measures)*

##### *Understanding of ML/TF risks and AML/CTF obligations and application of risk mitigating measures*

###### *Banks*

389. The banking sector accounts for the majority of the financial services industry in Albania (over 90% of assets) and therefore is considered the primary gateway for laundered funds to be introduced into the financial sector. All banks interviewed had a good understanding of their ML risks in the context of the national risks facing Albania. Risks that were consistently mentioned include the informal economy with widespread use of cash, tax evasion, corruption, and drug trafficking.

390. Banks demonstrated a proactive assessment and consideration of risks and are applying mitigating measures to address these risks. They are using the internal risk assessment process as a tool to support senior management when making decisions on introducing new products and branch locations. For example, when opening a branch in a rural area the risk of the informal economy is considered and mitigating measures, such as targeted in-person training of employees, are applied to address this risk. In some cases, the branch will not be opened or may need to be closed if it is determined that the risk cannot be adequately mitigated. Furthermore, due to the informal economy, banks apply mitigating measures to address occasional walk-in customers and require all basic ID checks for individuals and legal documentation and ID of administrator for legal persons. All walk-in



customers, regardless of amount of transaction, are screened against sanction and PEP lists before the transaction is initiated.

391. Banks categorise clients based on risk rating prior to establishing a business relationship. Most clients are categorised as medium risk. High risk clients typically account for less than 1% of banks' customer base. Banks with global parents in the EU have been conducting internal risk assessments and reporting internally on ML/TF risk criteria for many years prior to this becoming a requirement in Albania in 2016.

392. There is consistency across the banking sector regarding client types that are classified as high risk (PEPs, non-residents, gambling operations, NPOs) which is based on legal requirements, supervisory guidelines, or group policies. However, in relation to non-resident accounts, some banks referred to the legal requirement to classify as high risk rather than providing specific examples of ML/TF risks related to non-resident accounts. The absence of a definition of non-resident customer in the law or the guidelines has led to a discrepancy in the classification of Albanian companies with non-resident shareholders or BOs. Most banks classified this type of structure as a non-resident company and thus high risk customer, while others did not due to the direct customer having Albanian legal status. In regards to mitigating measures, banks have thorough processes to understand purpose of account and source of wealth for non-resident natural persons and request documentation on business activities, reason for business relation, and purpose of transactions for non-resident companies. To understand and verify BO of non-resident companies, banks request legal documentation such as articles of association, charters, share register, and commercial extract from country of origin.

393. NPOs make up a small percentage of bank customers (less than 1%). The AML/CFT Law requires NPOs to be subject to EDD and all banks met on-site agree with this classification due to the inherent ML/TF risk of this sector. In response, banks perform additional measures for this sector to fully understand source of funds (donations) which can often initiate from higher risk regions. The ongoing monitoring of funding is also a focus and several banks have created automatic alerts on NPO accounts if funds are received from unexpected sources/regions. Most banks do not see money being transferred from these accounts to other countries as resources are used in Albania primarily by issuing checks. While banks clearly focus on the source of funding, they did not comment on other aspects of NPOs that the Law requires them to consider such as the manner of administration or broader reputational checks.

394. The AML/CFT Law requires EDD for customers such as trusts, but banks largely chose to avoid such relations instead. As Albanian law does not provide for the establishment of trusts, these structures are not well understood. Banks prefer not have them as direct customers or even open accounts with foreign trusts in the ownership chain, primarily due to expected challenges in identifying the BOs.

395. The AML/CFT Law requires its subjects to also identify categories of business relationships, customers and transactions, other than those stipulated by law, which pose higher risks and for which enhanced measures shall be applied. Although the law only mentions ML risks in this regard (see R.10), this is understood in practice as a broader obligation. Almost all banks have classified additional (groups of) clients as high risk which are not covered specifically by the law. For example this may be based on factors such as SAR filings related to the customer (or shareholder/BO), transaction activity, or products or services used. An additional risky category identified by banks is formed by notary accounts, primarily due to notaries' role in real estate transactions. Risk mitigating measures include review by the AML Compliance department before allowing online services for notary customers, enhanced monitoring of incoming and outgoing payments from notary escrow accounts to detect any unexpected activity, and requiring documentation to support transfers. Other customers classified as high-risk, in line with Albania's risk context, are FEOs, gambling operators and construction companies. Examples of mitigating measures for FEO accounts are thresholds on the transactions and the need for approval of the compliance officer to proceed with certain

transactions. The BoA has noted however that some banks chose not to take FEOs as clients at all, if perceived as too risky.

396. Through outreach provided from supervisors, banks have a better understanding of TF risks than other REs and referred to Albania's geographic location and other factors increasing terrorist threats. Mitigating measures were described, such as specifically monitoring and recording cash transactions involving large banknotes (200/500 EUR) and adjusting the risk rating of the customer based on this behaviour, and monitoring customer activity against specific TF scenarios to create alerts on payments involving conflict zones and neighbouring countries.

#### *Other Fls*

397. The securities sector is small and a significant portion of the business (investment advice, brokerage, custodian services) is conducted by banks. Banks conducting these services were aware of ML/TF risks and apply measures to mitigate these risks. The awareness is less strong for NBFIs providing investment advisory and brokerage services.

398. The insurance market is not well developed and the majority of insurance products sold are connected to loans (mortgage) provided by banks where the bank is listed as the beneficiary. While the entities interviewed were not aware of Albania's NRA, they have an appreciation of ML/TF risks and proportionate measures in place to mitigate these risks. Entities conduct CDD to identify and verify identity of clients and beneficiaries (prior to pay-out) and if legal representative, obtain documentation to verify they have authority to act on behalf of the customer/beneficiary. CDD checks include PEP and UNSCR lists issued by authorities for both clients and beneficiaries, although not all entities have process in place to ensure they have the most up to date list. All policy pay-outs require senior management approval and are conducted through banks.

399. The two major players in the MVTS sector are part of global institutions and have adequate understanding of ML/TF risks and their obligations related to AML/CFT compliance programmes, as a result of both internal training and training received from supervisors. Authorities have also made significant efforts to train FEOs to make them more aware of risks and obligations (over 700 persons were trained in 2011-2016). FEOs which are linked to global MVTS providers (approximately 50% in volume and number) have a better understanding of the ML/TF risks and stronger controls in place than "independent" FEOs. From the approximately 200 independent FEOs, the majority of transaction volume is processed by a small number of entities (10). The BoA receives daily transaction reports from all FEOs and has targeted those with higher volumes for supervision. Therefore, according to authorities, most of the 10 larger independent FEOs have been inspected within the last 3 years. Based on these factors and the small volumes these entities process (avg. EUR 7.5m annually), the risk of the independent FEOs is deemed to have limited materiality. Recently authorities have organised trainings to strengthen the understanding of TF risks and provided TF typologies to MVTS and FEOs.

400. The customer base for lending institutions (microfinance, SLAs, and NBFIs) is approximately 45-60 % from rural areas. These entities have an adequate understanding of their risks. This includes tax evasion, as the small size of businesses and dependency of the administrator/founders' involvement increase risk of misusing personal and business accounts. Some of the entities evaluate customers from an AML/CFT perspective including assigning a risk rating (supported by a questionnaire for clients, and other information e.g. whether the customer is transparent or resistant to disclose information). Risk mitigating measures include standard refusal of certain categories of customers (gambling operators, other financial intermediaries), providing payments only through banks, and thorough processes to check that loans are used for stated purposes.

#### *DNFBPs*

401. Notaries' awareness of ML threats inherent to their gatekeeping role in the economic system is adequate. Supervisors have conducted significant awareness training in recent years (see IO.3) which has led to a good understanding among notaries of ML typologies in the real estate sector and need to implement controls. The legislation obliges every transaction of immovable property to pass through

the notary. Since 2014, it is prohibited to use cash in real estate transactions and notaries have been instructed by authorities to ensure that bank accounts are always used. Notaries provided examples of how they compare the contract value with the market reference price for all real estate transactions to try to prevent cash exchange outside of the notary escrow account at the bank.

402. Real estate agents are involved in only 8% of immovable property transactions. Agents believe that, in spite of the overall high risks of ML related to real estate, these risks mostly materialise outside of their remit. They claimed that they would not engage in transactions with unregularised property, which are generally believed to form the highest risk (see IO.1), as going through an agent would mean too much exposure for a client seeking to launder money. This is generally in line with the view of authorities. Authorities are nonetheless aware that, as the role of agents is growing, they will also become riskier, and more outreach will be needed.

403. Accountants and auditors within global firms are familiar with ML risks and their obligations under the AML/CFT Law. However, it did not appear that due diligence always included a focus on ML risks and measures applied to clients requesting legal services, such as company formation or Albanian representative offices, do not appear commensurate with the higher ML risks inherent in these services, in particular when it concerns non-resident clients. As the same time these services are not requested frequently in Albania. An AML declaration within the engagement letter is used as one of the preventative measures in the due diligence process for these types of clients, which indicates firms may use legal documentation to mitigate their risk rather than through due diligence measures. Certified accountants operating within smaller firms or as sole proprietors have a limited understanding of how they could be used for ML/TF purposes. Training provided by industry bodies has not included a focus on AML/CFT risks.

404. Lawyers have an adequate understanding of transactions which pose a higher risk to ML, namely real estate transactions, legal person formation, non-resident clients, or clients requesting significant services through email. While lawyers are applying basic CDD measures, there appears to be some resistance to fully take up AML/CFT responsibilities. Therefore, it is a concern that sufficient risk mitigating measures would not be applied in cases where it is warranted.

405. Gambling operators did not consider their sector high risk for ML/TF despite the use of cash in their operations, due to the small size of the typical bet. Some mitigating measures are applied such as software systems tracking bets with varying degrees of sophistication, limits on bets programmed in the electronic machines, and increased on-floor monitoring when larger amounts of cash are used.

#### *Application of CDD and record keeping requirements*

##### *FIs*

406. FIs and in particular banks demonstrated a good understanding and application of the CDD and record keeping obligations. The authorities including prosecutors, law enforcement and the GDPML did not express concerns related to the information collected (see IO6 para. 155).

407. FIs are identifying and verifying the identity of their customers. All FIs met on-site stated that they would not establish a business relationship or would terminate existing business relationship with a customer if they were unable to collect or update all necessary data. Valid ID (passport) and authorisation to act on behalf of the company are required for legal representatives of companies and documentation to verify the identity of the BO is also required.

408. Banks provided examples of how performing CDD led to business relations being refused, including due to the transnational, risky nature of customers' businesses or inability to identify BO. Having in mind the risks related to cash, all banks interviewed conduct thorough due diligence related to cash transactions including the need to understand source of funds. Banks provided examples of cases where source of funds could not be substantiated which led to refusing the transaction and filing a SAR.

409. CDD by lending institutions often includes visits to customers' addresses prior to approving a loan. For non-deposit taking institutions, banks are heavily involved in the process to disburse loans

and receive loan payments from customers on behalf of the lending institution. The CDD process applied by banks supplements the CDD processes by the lending institutions and helps reduce the risks. Banks confirmed they are checking the ID of the walk-in customer prior to accepting the deposit into the lender's account.

410. MVTs demonstrated a good understanding of CDD obligations. Valid ID from all customers is required prior to processing the transaction and third party transfers are prohibited. Customer information is entered into systems and screened against PEP and sanction lists prior to transaction. Further measures include requesting details on the relationship between sender and receiver and purpose of transfer. The origin and destination country of payment is assessed and if deemed higher risk a transaction is escalated to specialised team for review prior to releasing the transaction.

411. FEOs require ID checks for transactions above 100,000 ALL (EUR 750) but some entities also take copies of IDs in case of non-resident customers regardless of the amount, or for transfers close to the threshold. CDD by e-money providers includes ID verification. In both sectors, source of funds checks are limited.

412. Banks offering investment advisory, brokerage and custodian services only serve existing bank clients or require new clients to open an account with the bank and therefore be subject to its CDD process. Investment advisors primarily act as agents for private placements and companies issuing corporate bonds. CDD consists of identification, understanding shareholder structure, due diligence on source of funds and wealth, and risk assessment of customer profile. Banks providing custody services work closely with the issuer (which is another bank or FI) to obtain customer information, however would also apply its own checks against sanction/PEP lists. For secondary market transactions, the custodian requires the customer to open an account at the bank and normal CDD process is conducted. Source of funds checks are conducted for cash deposits.

413. Information on the insurance sector's application of CDD requirements is also contained in the section above on the mitigating measures taken to address risk. As a further point, the pay-out of any life insurance benefit must be completed through a bank account however the insurance company would also require ID (passport) of beneficiaries and documentation supporting the circumstances of pay-out (death certificate).

414. BO requirements are generally well understood and all FIs interviewed confirmed that they would obtain information until the ultimate natural person is identified. Banks stated that they would not enter into a business relationship unless the natural person owning or controlling the client could be identified and provided examples of refusing to open accounts when the BO could not be identified. BoA's recommendations to banks to improve the process of identifying the BO by obtaining the required documents as provisioned in the law appear to have led to significant improvements in recent years. The assessment team has noted that the BoA continues to uncover implementation gaps in this area<sup>72</sup>, but BoA maintains that the nature of the gaps identified has diminished in seriousness and that clear progress is noticeable.

415. When identifying the BO of a legal person registered in Albania, all FIs stated they obtain information from the NBC. For non-resident legal persons, FIs usually require an apostilled version of an extract from the foreign register. Banks also require documents to check the organisation and functioning of the legal entity and focus on control of the company when identifying BO and not only shareholding. There is particular scrutiny for non-resident LEs. Among NBFIs, evaluators noted a degree of overreliance on the information contained within registries (NBC and foreign) to identify BO. Except for banks, limited examples were provided of other tools used by FIs to obtain or verify this information. There did not seem to be an appreciation from all FIs of the risk of the information maintained in the register being inaccurate or perhaps not displaying the 'true' BO. While the GDPML

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<sup>72</sup> 4 recommendations to improve the process of BO identification were issued in 2012 based on 10 inspections, 5 recommendations based on 8 inspections in 2013, 3 recommendations based on 5 inspections in 2014, 9 recommendations based on 7 inspections in 2015 and 4 recommendations based on 6 inspections in 2016.

has provided some guidance in this area (to banks, in relation to “hidden” control/shareholding by PEPs), there is a need for further training.

416. On-going monitoring mechanisms vary across the financial sector. Banks and MVTS engage in continuous transaction monitoring with the help of sophisticated IT systems that employ built-in scenarios to identify unusual activities or connections. Examples of scenarios relate to tax evasion, smurfing, and specific TF related scenarios. Alerts are created from those scenarios which are then reviewed by compliance staff to further assess the activity and if needed submit a SAR. Many global banks use systems provided by parent institutions (13 out of 16 banks are part of international groups). Customer and BO information is recorded in banks’ internal systems and screened daily against commercial databases which include sanction and PEP lists (see further below).

417. Most banks are performing a review of account files based on the risk rating of that customer. For example, the profile of the client is reviewed once a year for high risk clients, once every two years for medium risk and once every 3 years for clients rated as low risk. Other banks and FIs conduct periodic reviews of accounts regardless of the risk profile and request updated information including confirmation of BO.

418. As part of on-going monitoring, microfinance institutions and SLAs conduct onsite visits to the customer premises to ensure appropriate use of loan proceeds. Institutions have internal loan systems which maintain customer data. For FEOs, larger operators with multiple branch offices have internal IT systems to register the customer information. Smaller firms are using excel or other manual processes to record customer information. In both cases however (large and small FEOs) there is no systemic process to monitor transactions for unusual activity.

#### *DNFBPs*

419. The application of CDD measures varies between the DNFBP sectors. Some DNFBPs did not have cases where business relationships were refused for incomplete CDD.

420. Notaries showed a good knowledge of their CDD requirements obligations in general. They expressed some challenges in validating the authenticity of the identification provided by their clients. A pilot project was undertaken by the MoJ in 2015 to address the challenges but it was abandoned as too cumbersome. Supervisors are encouraged to further train notaries in ID verification. Notaries request source of funds for transactions, although they generally found that banks go even further in such checks than they do. Banks receive guidance on procedures to follow for notary escrow account transactions and will require the legal documentation as support prior to transmitting funds. In real estate transactions, this would be the purchase/sale contract and ownership certificate. Cash deposits into notary accounts are prohibited and banks confirmed they question the source of funds transferred into the notary escrow account.

421. Many statutory auditors work for global firms that have group-level procedures in place for CDD. Due diligence includes basic measures and some firms mentioned more detailed procedures to identify BOs. It did not appear that BOs were always appropriately identified if a structure was more complex. At the same time, it was noted that complex structures are not very common in Albania.

422. Certified accountants performing bookkeeping services often are individual operators and therefore generally do not have documented procedures around CDD. CDD measures applied are basic (ID verification). They do not provide company formation services but assist when companies are increasing equity capital (shareholdings). For these transactions, they review source of funds but the focus on ML/TF risks seems limited.

423. Prior to establishing a business relationship or conducting a transaction, lawyers covered by the AML/CFT law are performing CDD measures. The majority of their clients are legal persons and CDD consists of checking information in the NBC. If the entity is foreign, they ask for copies of registration documents from country of residence. Lawyers do not use power of attorney to open bank accounts on behalf of their clients as banks require the presence of the administrator, even for non-resident clients. Regarding BO, lawyers are applying a 25% threshold and require ID verification of the natural

person. The method by which the natural person is identified for legal persons with more complex ownership structures was of concern.

424.Regarding gaming operators, CDD is required by the law for customers placing bets or winning over 100,000 ALL (750EUR)<sup>73</sup>. Gaming operators claimed to be familiar with their customer base and would require ID for anyone they did not know. In contrast the national casino requires ID check for all customers when entering the casino. Identification information is scanned, entered into the casino's database and checked against PEP and sanction lists. CDD includes source of funds declaration for bets placed over the threshold however, this check seems more tick the box exercise rather than enabling the detection of possible ML activity. For sports betting, cash is usually used to place bets and winnings below 150,000 ALL (1100 EUR) can be paid in cash but for winnings above this threshold the customer is required to withdraw the money from a bank. For the national casino there is no requirement to obtain winnings from a bank regardless of amount. The typical limit to place a bet is 1000 EUR, which is not set by a law but by the operators themselves.

425.Some sports betting operators have systems in place to track bets by individuals while others review for unusual activity within each shop (value and frequency of bets in total). The national casino and e-casinos have dedicated employees to supervise the amount of cash individuals are using to play machines or table games and winnings over the threshold must be paid out by the cashier who checks ID.

426.Customers of real estate agents include both natural and legal persons. CDD measures for individuals include ID verification, source of funds checks, and internet searches. CDD on legal persons includes checking the NBC for ownership, articles of formation, and ID verification of administrators. Source of funds checks for legal persons appear limited and reliance is placed on notaries or lawyers especially when ownership structure is complex or involves foreign entities.

427.The DPMS met on-site were aware of the prohibition on cash transactions over the threshold of 150.000 ALL (1150EUR). Sales over this threshold must be done through bank accounts (card transactions). According to the representatives, the proportion of cash transactions has been decreasing in recent years and is used mostly for low value purchases. ID of the customer is taken for each sale to a customer of 20.000 ALL or more (approx. 150EUR). For legal person customers, the NBC is checked and ID of the natural person is taken, and proof of authorisation if the person making the transaction is different than the registered legal representative. Persons selling their goods to DPMS are asked whether they sell their own goods or on someone else's behalf and ID is taken regardless of the amount of the transaction. Data is entered into digital client registers. Persons trying to sell large quantities of gold or loose diamonds would be considered suspicious and reported, but no such cases had allegedly occurred.

### *Record Keeping*

428.FIs have a good understanding of record keeping requirements. Banks maintain records in line with the AML/CFT Law for 5 years since the last transaction. BO information is also maintained along with customer correspondence. Supervisors have not come across serious record keeping weaknesses in recent years. DNFBPs were mostly aware of the record keeping requirement. However, gaming operators seemed to have concerns regarding the privacy and data protection laws on registering customer ID and somewhat uncertain about the number of years records were maintained (between 3 and 5 years).

### *Application of EDD measures or specific measures*

429.EDD measures applied by FIs for high risk clients include compliance officer and senior manager approval prior to on boarding, a deeper analysis and questioning of business activity and purpose for account, evidence of documentation (contracts, audited financial statements), transaction history and public media searches, evidence for source of funds and destination entity/purpose (if payment

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<sup>73</sup> A new gaming law was adopted in 2016 and will be in full effect in 2018 which requires CDD measures for every customer regardless of the amount of bet/winnings.

request). All banks and several other FIs require more frequent and thorough on-going monitoring for high risk clients; however, this was not mentioned consistently by NBFIs or other sectors.

430. FIs review potential customers against PEP lists and sanction lists; however the mechanisms used and thoroughness of the process differs across sectors. Smaller institutions screen potential customers against the PEP and sanction lists provided by the GDPML and BoA, and existing customers on periodic basis. Larger institutions are using automated screening tools through commercial software (which contains GDPML and BoA lists plus others) to systemically screen customers prior to on boarding or executing the transaction as well as on an on-going basis.

#### *PEPs*

431. The Albanian legal framework covers both foreign and domestic PEPs. Domestic PEPs are defined in the AML/CFT Law as those persons who are subject to the Law on Asset Declaration (see R.12). HIDAACI provides the GDMLP at least twice a year with an update on the PEPs, which is made available to the private sector through GDPML's website. PEPs are removed from the official domestic list once they leave public office and thus may no longer be identified as potential PEP by REs which do not use commercial databases (some NBFIs and most DNFBPs). Banks and MVTS (and some large DNFBP firms) use commercial databases or internal lists of parent institutions (which includes the local list) to determine whether potential customers and their BOs are PEPs. Periodic checks are undertaken on existing relationships to detect new PEP status. Lists include family members but checks to identify close associates appear less thorough.

432. Enhanced measures by FIs include senior level management approval, annual review of relationship, and verification of source of funds and occasionally source of wealth (audited financial statements required if PEP has business interests). There are some challenges to obtain source of wealth. One bank recently completed a project focused on PEP review with a dedicated screening based on the PEPs publicly declared wealth. Inconsistencies between the declared wealth and banking behaviour were presented to senior management which resulted in the termination of several relationships. Authorities could flag this as a good practice for other entities.

433. DNFBPs were generally aware of EDD requirements for PEPs, however examples provided of the actions taken did not necessarily meet all of the requirements and can be interpreted that there seemed to be limited understanding on what enhanced measures would entail (albeit notaries seem to have a better understanding). Several DNFBP sectors face challenges in identifying foreign PEPs. Although open sources may also be checked, the list of domestic PEPs on the GDPML website is the main source used. Additional guidance from authorities on enhanced measures for PEPs would be welcomed.

#### *Correspondent banking*

434. Some banks in Albania provide correspondent banking services to other Albanian and foreign banks. During supervision the BoA reviews banks' policies for due diligence when selecting correspondent banks. There have been some weaknesses in this area and the BoA has issued recommendations for improvements. One of the challenges that correspondent banks in Albania have is maintaining correspondent relationships, as de-risking in the sector is an issue. This applies more to domestic banks and is less of an issue for banks with a global parent.

#### *Wire Transfers*

435. MVTS entities apply a RBA and take appropriate measures prior to processing transactions as well as on-going monitoring. They have commercial systems provided by global parents to review for PEP and international sanction lists and internal systems to record customer details and screen transaction information. When receiving transfers, the names are automatically checked by the system and when sending payments, the agents check the beneficiary name prior to sending (originator is checked already as customer). If there are any hits with lists, the transaction is escalated for further review and if determined to be a true match, the transfer is not completed.

436. SWIFT transactions are subject to real time screening by banks and hits on sanction lists would raise an alert. Banks provided examples of enhanced measures for wire transfers involving customers from higher risk regions abroad, such as application of filters to review all details of the payment message. SWIFT transactions are also subject to screening by banks for unusual transaction patterns and scenarios incorporating originator and beneficiary data (e.g., activity in high risk jurisdictions).

#### *New technologies*

437. While the banking sector is the most developed financial sector in Albania, there is limited use of sophisticated products and new technologies. This is recently starting to increase with e-money offerings and B2B platforms. Banks were well aware of the need to assess the risks of new technologies and products, and consider this as part of internal risk assessments. Global banks in particular gave examples of assessing the local risks in relation to new products introduced at group level, adjusting the risk rating based on local risks, and taking additional measures for these products in Albanian compared to EU parent locations.

#### *Targeted financial sanctions*

438. The general level of awareness regarding implementation of TFS was satisfactory. Larger FIs, primarily banks, integrate the lists of designated persons communicated by the authorities in their operational systems. Smaller FIs and DNFBPs confirmed that they check lists although there are some concerns over the depth and timeliness of their checks. See further IO.10.

#### *Higher-risk countries*

439. Especially those REs that are part of larger global groups generally had a good understanding of countries which have been identified as posing a higher risk for ML/TF by the FATF and the need to apply EDD in these cases. In general, geographical risk is one of the common factors used by REs to assess customer risk.

#### *Reporting obligations and tipping off*

440. There has been a significant increase in the number of SARs reported from 2014 onward, as demonstrated by the data in the table below. This is primarily due to increase in reporting from banks, MVTS and notaries, which corresponds to significant training and other forms of outreach (including supervision and fines) provided to these entities.

Table 26: SAR reporting in 2011-2017

REs	2011	2012	2013	2014	2015	2016	2017
Banks	329 (TF-1)	352 (TF-3)	420 (TF-4)	822 (TF-8)	585 (TF-2)	619 (TF-15)	686 (TF-10)
MVTS	7	73	45	74	79 (TF-4)	209 (TF-14)	165 (TF-1)
Notaries	17	19	15	122	303	205	254 (TF - 1)
FEOs	1	14	8	16	17	14	20
Lending institutions	0	0	0	2	1	2	10
Leasing	0	1	0	4	7	15	5
Electronic payment providers	0	0	0	0	19	6	2
Accountants/Auditors	1	0	2	4	1	1	0
Lawyers	0	1	1	2	0	0	0
Total	355	460	491	1046	1012	1071	1142

Note: Gambling operators and real estate agents submitted 0 STRs during the reference period.



441. Banks demonstrated a good understanding of reporting requirements. Although the legislation does not explicitly cover attempted transactions (see R.20), several examples of attempts leading to SARs were described. The GDPML, BoA, and Albanian Banking Association (ABA) have organised trainings on ML/TF typologies and SAR training. More feedback on specific filings may still be beneficial for banks to further enhance reporting behaviour and determine appropriate follow-up action. See also IO.6.

442. With respect to notaries, GDPML has clarified that over 100 different notaries file SARs each year. Thus, the sudden increase in reporting by notaries is not due to a small concentration in the sector. Reports have been mostly submitted by notaries from the large cities, in line with the volume of activity, exposure to risks, and outreach activities by authorities. Nonetheless, authorities would be encouraged to expand their successful outreach approach to other areas in the country, including more remote ones, where there is a greater use of cash and informal economy.

443. TF-related reports have been submitted mostly by banks, and recently also by MVTs and in one occasion by a notary. Most of these reports relate to (potential) hits on sanction lists or higher risk jurisdictions for TF risks, although banks also provided examples of SAR filings (and subsequent blocking or monitoring orders) related to NPOs. In the last couple of years, the GDPML has increased training related to TF risks and typologies for MVTs and banks but should continue to raise awareness among all REs.

444. FIs were generally aware of the prohibition on tipping off and had some processes in place to avoid tipping off and manage the relationship during the time period before the GDPML responds on a SAR or when a blocking order is issued. GDPML can exceptionally authorise a specific transaction to go through if it is believed that continued suspension will tip-off a customer when a SAR has been filed. A case example was provided to illustrate this.

445. The level of reporting beyond banks, notaries, and MVTs is quite low, which is at times inconsistent with the risk profile (e.g. for REs providing company formation services). The GDPML and other supervisors should conduct more outreach to raise awareness of ML/TF risks in these sectors to encourage SAR filings when red flags are identified or clients are refused due to suspicious activity. Several REs provided examples of refusing clients but rarely considered filing SARs in these cases. Lawyers stated that professional secrecy would generally not prevent them from reporting, but showed gaps in awareness of obligations.

#### *Internal controls and legal/regulatory requirements impending implementation*

446. The BoA, as a result of inspection work in the last 5 years, has provided recommendations to supervised entities (from all financial sectors) to improve internal controls in the field of AML/CFT, in terms of higher frequency, larger scope, and more focus on due diligence and EDD. It concerns 9 recommendations in 2012, 3 in 2013, 1 in 2014, 4 in 2015 and 4 in 2016.

447. As mentioned previously, banks use commercial providers to screen counterparties against international sanction lists or use internally developed lists incorporating international sanctions. The domestic PEP list and domestic terrorist list are integrated into these internal screening systems. Customers classified as high risk are subject to more frequent on-going monitoring based on internal proceedings for risk rating and risk management.

448. Banks interviewed seemed sufficiently staffed to manage the AML/CFT programme within the bank. Each compliance team had a responsible person designated for AML/CFT compliance, typically the head of the AML/CFT department. Banks also confirmed they have branch managers designated as responsible persons for AML/CFT compliance or depending on size may have a separate branch compliance officer. The compliance teams have autonomy, unlimited access to information, and are accountable to the Board of Directors and have direct access to the CEO. Banks follow the three lines of defence model and have close interaction with the first line (business) which facilitates the prevention and detection of ML/TF.

449. Banks confirmed that AML/CFT training is required for new staff and mandatory training annually which varies in content and intensity based on function of staff. For example, basic AML/CFT training is provided for all employees, advanced training for customer facing employees and specific training for branch managers and others exposed to specific risks and heightened responsibilities. In person training is conducted for branches in order to provide opportunity for discussion and tailor the training topics (e.g. addressing typologies related to a specific region in Albania).

450. All banks have an internal audit function which is active in reviewing AML/CFT compliance processes and systems within the bank. Banks with global parents are also audited by group internal audit functions to ensure the subsidiary is adhering to group standards.

451. The two global MVTs operators have a centralised unit responsible for AML/CFT compliance monitoring. They review any alerts generated from the monitoring system regarding transaction activity and potential hits from sanction lists. This unit is also responsible for filing SARs and acts as a control point if the system blocks transaction from proceeding due to specific criteria. Front office staff cannot process payment in these circumstances without approval from the unit. MVTs companies conduct general AML/CFT training twice per year for employees and have provided training on TF risks specific to location and business of operators. MVTs operators are subject to internal audit reviews by parent institutions which focus on AML/CFT components.

452. Larger FEOs, such as those which are also agents for one of the global MVTs, have access to commercial databases to screen customers. However, while there are often repeat customers which include legal persons, there are limited systems that will monitor the currency exchange activity to enable smaller FEOs to detect suspicions.

453. DNFBSs with larger firms have designated a responsible person for AML/CFT compliance. In accounting firms this is typically the risk management partner. Large accounting firms require every employee to complete annual ML training (received internally from the global parents) and maintain records to ensure this is completed. For other institutions, depending on their size or ownership (global parent), the robustness of internal controls varies.

#### *Overall Conclusions on Immediate Outcome 4*

454. In reaching the conclusion on the rating of IO.4, the assessment team takes into account materiality and risks in the Albanian context. The banking sector, which accounts for the large majority of the financial industry, has a good understanding of ML/TF risks and applies AML/CFT mitigating measures accordingly. Compliance is also enhanced by the fact that many banks are part of international groups and thus apply AML/CFT group policies and are subject to group internal audits.

455. It is widely believed by REs that, in spite of the existence of a significant informal economy, funds will need to be channelled through the banking system at some point in order to be laundered effectively. Various NBFIs (e.g. lending institutions) only do business through bank accounts. Cash transactions are increasingly subject to restrictions, forcing more and more transactions engaged in by various DNFBS sectors (e.g. real estate, precious metals and stones) through banks. Given that the banking sector is still considered the primary gateway to introduce laundered funds into the financial sector, it is critical that they maintain robust controls to detect ML and TF. Authorities are well aware of this and have focused their resources on bringing about and consolidating improvements in the banking sector, with noticeable success. This approach should be sustained.

456. In line with risks and materiality, authorities have also focused their resources on the notary sector. These efforts have had a positive impact as notaries have shown significant progress in recent years in assuming their gatekeeper responsibility in the real estate sector and implementing proportionate mitigation measures and reporting of suspicious activity.

457. At the same time, evaluators note that sizable improvements are needed for some of the other REs, which – although overall less material – also form important (complementary) gatekeepers for access to the financial sector. This does not mean that the assessment team identified serious

overreliance on banks. NBFIs did not deny the importance of their responsibility to conduct their own CDD processes alongside banks. However, their understanding and implementation of the RBA and thoroughness of preventive measures varied.

458. NBFIs posing higher risk for ML/TF include MVTs and FEOs. The two major MVTs operating in Albania are part of international companies and their understanding of sectoral risks and compliance with AML/CFT requirements is satisfactory. There has been a significant effort made by authorities to train FEOs across the sector. However, measures applied by those FEOs linked to MVTs companies (roughly half of the sector) are still significantly stronger than by 'independent' FEOs.

459. Regarding DNFBPs, gambling operators have limited understanding of risks and a rather formalistic approach to CDD measures. More guidance to this sector is needed. Although materiality and risk exposure of real estate agents may have been limited so far, it is important that agents improve their implementation of AML/CFT measures, in light of development of their profession and the general high risk of ML through real estate. DNFBPs providing company services to LEs (accountants, lawyers) need to improve implementation of preventive measures in line with risks (most importantly in relation to BO in complex structures and reporting).

460. Overall, Albania shows a substantial level of effectiveness for Immediate Outcome 4.

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### *Key Findings*

1. Supervisors have procedures in place to prevent persons with a criminal background (convictions and on-going proceedings) from being the holder, BO or manager of banks and other FIs in the initial licensing approval process, although the process to identify other indicators of criminal activity or criminal associations is not as thorough. Other than possible checks through on-site inspections (which are limited for NBFIs), there are no systemic processes for supervisors to ensure that they are aware of changes to the integrity profile after market entry.
2. It is not proven for all DNFBP sectors that sufficient controls are in place to prevent persons associated with criminal elements from entering the sector. Additionally, the on-going monitoring process for auditors/accountants may not be sufficient to identify changes in integrity profile after licensing.
3. The BoA maintains a good understanding of ML/TF risks and coordinates with the GDPML. The FSA has an adequate understanding of ML/TF risks. In general, the primary DNFBP supervisors' understanding of ML/TF risk is not adequate and does not consider specific typologies. ML/TF risks are well understood by the GDPML.
4. The BoA, FSA, and GDPML have all recently adopted or enhanced a RBA to supervision and have updated internal supervisory manuals to further this approach. Overall, they are making progress in assigning an AML/CFT risk rating to individual FIs and adapting inspection plans based on ML/TF risks (with GDPML most advanced in this approach). Given the importance of the banking and foreign exchange sectors in terms of size and exposure to ML/TF risks, the BoA human resources dedicated to AML/CFT supervision are not sufficient.
5. The GDPML has started to modify its supervision of DNFBP sectors based on its understanding of the ML/TF risks. However, its resources are limited which creates a challenge to effectively supervise the high-risk DNFBP sectors, considering the number of REs. Primary DNFBP supervisors conduct

limited supervision in general and inspections do not include AML/CFT components (with the exception of the MoJ for notaries, albeit to a limited extent).

6. The sanctions framework is only partially effective and has limited proportionality and dissuasiveness. Supervisors, except for the GDPML, have applied limited sanctions for breaches of AML/CFT obligations. The GDPML has been active in issuing fines but has no powers to increase fines for entities with repeat violations, or to impose any other sanctions. This combined with the very limited AML/CFT sanctioning actions by other supervisors (potentially due to technical gaps in the legal powers), limits the effectiveness and proportionality of the overall sanction regime. For banks, the majority of remedial actions taken are limited to recommendations, which according to BoA monitoring, have been implemented by individual banks.

7. The GDPML and BoA have coordinated ML/TF trainings with banks and other supervised entities such as MVTs, FEOs and micro-credit institutions. Notaries have also received ML training and guidance coordinated by the GDPML through the MoJ. However, other DNFBPs, including the gaming sector, auditors, accountants, and lawyers which are considered high risk for ML/TF, have not received sufficient training and guidance regarding ML/TF risks and AML/CFT obligations.

#### *Recommended Actions*

1. Competent authorities should enhance the controls to prevent criminal infiltration of FIs and DNFBPs:

##### For FIs

- The licensing authorities for FIs (BoA, FSA) should create a comprehensive framework to assess applicants (owners/shareholders and administrators) from a risk-based perspective, with scope and depth of appropriate checks to be escalated pursuant to indications of lack of transparency in ownership or control or criminal elements.
- These authorities' assessment process should be sufficiently robust to identify indicators for applicants' criminal activity beyond convictions and on-going legal proceedings, to include applicants' possible connections to criminal associates.
- While the GDPML is a good source of information and should be a component of the framework, these authorities should not overly rely on a "clean" report from GDPML.
- BoA and FSA should develop systemic, timely processes for on-going monitoring of existing licensees (including offsite mechanisms), to ensure any changes to the fit and proper conditions are properly reported.

##### For DNFBPs

- Additional measures should be implemented to allow all existing DNFBP licensing authorities (GSA, MoJ, POB, National Bar Association) to check the criminal background (beyond final convictions) and criminal connections of individual licensees and persons controlling or managing DNFBP companies.
- In light of the recent enhancements to the relevant legal framework for gambling, the GSA should take action to ensure that all gambling licence holders meet the new licensing standards.
- The POB should urgently implement the foreseen strengthened oversight structure responsible for licensing; evaluate whether there is a need to 'reassess' existing licensees under the new structure; establish systems for on-going monitoring; and adopt additional measures to prevent criminal

infiltration within the 25% controlling interest in auditing/accounting firms which can be held by persons/entities who are not licenced auditors.

- Measures should be introduced to allow controls on real estate agents.

- The MoJ should clarify within the Law on Notaries its power to suspend or remove licences without the proposal and approval of the Chamber of Notaries.

2. Risk-based AML/CFT supervision should be enhanced for FIs and introduced for DNFBPs, through the following measures:

#### FIs

- Staff resources should be increased to allow for the BoA to have dedicated AML/CFT supervision staff.

- As planned, the FSA should urgently create a risk-based supervision manual for collective investment funds, and should use the data obtained from the recently completed offsite process to develop a risk-based AML/CFT inspection plan for all entities under its supervision.

- The FSA and BoA should take further measures to coordinate inspection plans to include all entities licenced by both the FSA and BoA (beyond custody).

- The FSA and GDPML should continue improving their coordination, to ensure inspection plans and results are shared in a timely manner.

- As new products, technology, and services are starting to be developed in the Albanian financial sector, the BoA and FSA should continue to seek guidance to ensure they develop necessary knowledge of more complex instruments and the related ML/TF risks and AML/CFT requirements.

#### DNFBPs

- The primary DNFBP supervisors should, in coordination with relevant industry bodies, take actions to gain a better understanding of ML/TF risks within their sectors.

- DNFBP supervisors should introduce AML/CFT components in inspections and develop risk-based inspection plans.

- Resources for GDPML supervision should be increased in order to support DNFBP supervisors in higher risk sectors.

3. The overall sanctioning regime and the independent powers available to GDPML, BoA, FSA, and DNFBP supervisors should be reviewed to ensure the overall process is effective/efficient and the legal framework allows application of a range of proportionate and dissuasive sanctions for AML/CFT breaches to all REs (both at entity level and for directors/managers).

461. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35.

#### *Immediate Outcome 3 (Supervision)*

462. Primary supervisors for FIs and DNFBPs (BoA, FSA, GSA, MoJ, NCA, POB) also have responsibility to supervise compliance with AML/CFT requirements. Additionally, one of the duties and functions of the GDPML is supervising the activity of all subjects to the AML/CFT Law regarding compliance with AML/CFT requirements.

#### *Licensing, registration and controls preventing criminals and associates from entering the market*

463. FIs are required to be licenced by either the BoA or the FSA. Except for the real estate sector and DPMS, all DNFBPs have a licensing requirement.

#### BoA – Banks and NBFIs

464. The BoA requires information during the licensing process to prevent criminals from holding, or being the BO of, a controlling interest, or holding a management function in a bank or NBFi. Each person (natural and legal) with a “qualifying holding”<sup>74</sup> is assessed for reputational concerns. For natural persons as owners or qualifying shareholders, the BoA requires certificates from relevant authorities to evidence lack of criminal conviction and on-going criminal investigation. For non-resident persons, a certificate demonstrating clean criminal history from the applicable foreign authority is required. The BoA performs source of funds checks; however, the focus of these checks seems to primarily relate to prudential aspects and not potential integrity or criminal aspects. As an additional tool, the BoA often checks open source data for reputational and integrity concerns of new shareholders. However the BoA considers information obtained through GDPML as the main source of information on the suitability of owners and qualifying shareholders prior to approving a licence.

465. Any changes to qualifying shareholding must be approved by the BoA following the same criteria as initial licensing as described above. During the on-site examinations, the BoA will check that any changes in shareholding have been properly notified to the BoA. The BoA has not identified any cases of when they were not properly notified.

466. Regarding administrators (management), the BoA requires support for clean criminal record and no on-going criminal investigation. Once approved, the BoA checks administrator status during on-site inspections. Recently (Dec 2017), the BoA requires banks to perform an annual reassessment process to ensure administrators’ suitability continues to be in line with the initial approval criteria related to propriety. If any circumstance or fact identified in this reassessment process has an impact on the administrators’ suitability then the BoA would be notified. During on-site supervision, the BoA will assess this process.

467. The BoA liaises with supervisory authorities in other jurisdictions regarding the business reputation and fitness and propriety of proposed administrators in banks. (see also IO.2). Additionally, the BoA requires the consent of the foreign supervisory authority for a foreign bank to be a qualifying shareholder in a bank located in Albania. However, if a foreign FI is not the direct shareholder of the local bank but an indirect shareholder (further up the ownership chain), the BoA did not require the same consent. Furthermore, the BoA does not apply this approach consistently with NBFIs that have a foreign FI in its ownership chain (i.e, in case of foreign bank shareholder is based in EU).

468. 9 of the 16 licenced banks in Albania are subsidiaries of European parents and since 2014 fall under the EU Single Supervision Mechanism. Therefore, for the two changes in shareholding after 2014 where qualifying holding was transferred to an Italian bank, consent was also sought from the European Central Bank (ECB). The BoA is in the process of signing a MoU with the ECB to further the exchange of information related to the fitness and propriety of prospective directors and managers.

469. The Law on SLAs only requires one administrator (CEO) plus the chairman of the management board and audit committee to be approved by the BoA prior to licensing. The SLA itself is required by law to assess fitness and propriety of other management staff and keep the supporting documents, which could be checked by BoA during onsite visits. However, due to the limited supervision by BoA of SLAs, the effectiveness of the SLA’s assessment and monitoring related to fit and proper checks is unknown.

470. During the assessment period, there were no initial licensing applications for banks, but there were initial applications for NBFIs and changes to qualifying shareholders in both banks and NBFIs.

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<sup>74</sup> A “qualifying holding” is defined in Art. 4 as a direct or indirect holding which represents 10% or more of the capital or the voting rights, or which makes it possible to exercise a significant influence over the management or policies of the legal person in which the holding exists.

However, there were no cases where the BoA rejected an application for a change in qualifying shareholding and no examples were provided to suggest that initial checks revealed questionable or incriminating information which required the BoA to apply a more thorough due diligence process in order to obtain comfort to approve the licence or change in shareholding. Furthermore, the BoA has not rejected any individuals applying for administrator positions for a criminal conviction, on-going criminal proceeding, or association with criminals and there are no examples of an administrator removed after initial approval. While basic checks are undertaken as described in para. 479 which generally are in line with legal provisions, there was limited evidence to suggest that BoA would apply greater scrutiny to an applicant based on its risk profile. There are no procedures (or laws) in place to specifically target criminal associates (individuals associated with or potentially controlling “clean” entities/individuals but not directly involved in ownership or management of the applicant). It appears that authorities do not fully appreciate the risk that such a scenario would occur and do not apply strong methods to mitigate this risk. BoA takes comfort in GDPML’s checks, whereas GDPML suggested that checks on associates would be BoA’s responsibility.

#### BoA – Foreign Exchange Offices and Money Value Transfer Services

471. A large number of MVTS and FEOs are operated by agents of two large international MVTS companies. Others are small entities or individual entrepreneurs and in the majority of cases, the founder also engages in the business activity. Before a licence for an FEO or MVTS company is issued, the BoA requires certificates of a clean criminal record for owners, directors and staff. This includes evidence of no criminal convictions or on-going criminal investigations. All changes of shareholders, BOs and management must be notified to the BoA and certificates of no criminal record or on-going criminal investigation must be provided.

472. Prior to entering into a contract with a new agent, the MVTS is required to collect documentation and perform reputational checks. The legal entity (or legal representative) and individuals are checked against the commercial database used by the MVTS. All new employees are required to have a clean criminal record and provide a certificate attesting no criminal investigation to the MVTS. The MVTS retains all documentation on the agent and sends this to the BoA within 5 days of signing the contract. During BoA onsite inspection, a sample of agents is selected for review to assess MVTS is fulfilling these procedures. No examples were provided of BoA coming across problems with MVTS checks on criminal background of agents or employees.

473. The BoA has removed 2 licences of FEOs in 2016 due to integrity concerns for shareholders/managers which were communicated to BoA by GDPML (pursuant to GDPML inspections). In 2017, the BoA undertook a large scale offsite analysis resulting in the removal of 40 licences of FEOs for reasons of inactivity, suspension or liquidation (identified through their breaching of the requirements to report regularly on their business activity to BoA). Through this exercise, it was further identified that 1 FEO had failed to notify the BoA for a change in ownership, administrator or address, leading also to licence removal. In rare cases over the past years, BoA has removed licences of FEOs as a sanction for breaches of AML/CFT requirements (see core issue 3.4).

474. It thus appears that there are some important checks in place to prevent persons with criminal backgrounds from infiltrating the MVTS and FE sectors. However, the fact that the sole removals of FEO licences for integrity concerns were done on the basis of GDPML onsite inspections, combined with the fact that the BoA itself has too limited resources for onsite inspections of FEOs, raises questions on the effectiveness of BoA on-going monitoring.

475. For the past several years, the BoA has coordinated with other authorities to formalise the currency exchange market and decrease the number of unlicensed operators. One of the tactics used to help address the unlicensed operations was to lower the capital requirement needed to apply for a licence. The efforts by authorities are believed to have contributed to an increase in the number of FEOs (from 301 in 2011 to 417 in 2017), and enable the BoA and GDPML to better monitor the activities of these entities. Carrying out financial activities without a licence is a criminal offence and as such falls under the competence of the state police. When identifying/investigating potential cases, the ASP seeks information from BoA to confirm that the activity is unlicensed. The ASP provided data

on the enforcement of this offence. Statistics show a total of 28 convicted defendants in the 2012-2017 period (see table below) – although evaluators note that the two case examples provided to support the convictions related to individual street exchange operators (50/100 EUR).

Table 27. Enforcement of criminal offence for carrying out financial activity without a licence

Years	Proceeding in investigation	Defendants under investigation	Proceedings sent to court	Defendants sent to court	Convicted defendant
2012	21	13	11	13	7
2013	7	4	3	3	4
2014	8	4	4	4	5
2015	9	7	7	7	9
2016	7	2	2	2	2
2017	6	1	1	1	1

#### FSA

476. The FSA is the licensing authority for the insurance, securities and voluntary pension and investment fund sectors. Due to the various activities the banking sector plays in Albania, some banks are also licenced by the FSA for custody, investment advisory and/or brokerage services. Banks must get prior approval from BoA before applying for the licence with FSA which is then added to the bank’s licence as additional activity.

477. In general, the securities market is still underdeveloped and most activity involves government securities, however recent activity indicates the sector is expanding. The FSA granted a licence for a new stock exchange in Albania and in July 2017 the FSA licenced the second depository bank for investment funds. Furthermore, the FSA approved licences for 2 agents promoting an online brokerage platform owned by Cypriot entities. In these cases, the FSA coordinated with the Securities and Exchange Commission of Cyprus regarding the applications.

478. The laws governing the licensing of entities by the FSA contain various provisions to prevent criminals from becoming a shareholder or manager. In general for all entities, the FSA requires information on criminal history for shareholders and administrators through official documentation or self-declaration forms, which are checked against the relevant online system of the MoJ. FSA also requests information from the GDMLP on the applicant prior to approving licences or changes in shareholding. This has been the procedure even prior to the signing of a MoU between the two institutions in 2015.

479. No cases exist where FSA identified a criminal trying to obtain ownership or management of a FI under its supervision and rejected or revoked a licence. The FSA provided one example of rejecting the application for an agent of an insurance company (insurance companies need to seek approval by FSA also for their agents), due to conviction in 2014 from forgery. This conviction was identified during the check of the MoJ system, as the agent had failed to mention it in his auto-declaration form.

480. While the assessment team positively notes the FSA’s efforts, it also determines that the relevant legal frameworks are subject to some inconsistencies and gaps (see also R.26). That is, the provisions on convictions are limited in scope for some sectors<sup>75</sup> and the laws do not clearly require checks on

<sup>75</sup> Namely:

- The Law on Insurance requires an absence of convictions for the past 5 years instead of taking into account a full history. Only organising and operating fraudulent and pyramid borrowing schemes, ML and TF appear outside of the scope of the 5-year limitation. According to the FSA however, the 5 year limitation only relates to minor offences in practice and is an additional requirement of the law to prevent criminals to enter in the insurance market. In the view of the evaluation team, this is not clear from the law.
- The legal framework for checks on convictions for shareholders of brokerage companies, investment advisory companies and entities conducting securities transactions covers only founding shareholders; and no provisions on changes to



on-going investigations or other indications of criminal activity beyond convictions<sup>76</sup>. In practice the FSA checks whether there is any pending legal matter on the candidate before the courts to have a better view. The provisions further do not include elements to identify whether individuals exercising ownership and management are associates to criminals. The FSA states that it would feel confident to reject also licences in case of other evidence of criminal activity or associations, on the basis of the general legal requirement that applicants must have integrity. The Law on VPFs and the Law on CIUs contain some provisions on thresholds for fit and proper checks which appear rather confusing to the assessment team<sup>77</sup>, although in practice the FSA says that it would conduct checks on all shareholders with 5% or more holding.

481. Changes to significant shareholding for insurance, VPF and CIFs must be approved by the FSA and the same fit and proper requirements as for founding shareholders would apply. With regard to managers, it is the responsibility of the entity to ensure that the relevant person fulfils the legal requirements on fit and proper at all times (on an on-going basis). The FSA monitors the fitness and propriety of shareholders and managers offsite and onsite on a case-by-case basis. It has not come across breaches of obligations (where they exist) to notify FSA of changes in shareholding, or problems with propriety of managers. Yet on-site inspections have been limited to date and the approach to conduct offsite checks does not appear to be a systematic procedure.

482. Overall, it seems the practices in place partially compensate for the potential legal gaps, as described. In the absence of practical examples, it is difficult to assess to extent to which the gaps could pose problems. Authorities would in any case be encouraged to solidify and expand their approach to initial licensing checks and on-going monitoring, through more comprehensive regulation and implementation of more systematic control systems.

#### GSA – Games of Chance

483. The Gambling Supervising Authority (“GSA”) is the licensing authority for all games of chance in Albania. There is 1 national casino and other games of chance include sports betting, electronic casino, bingo, and the national lottery. Prior to granting a licence, the GSA requires evidence that all owners within the structure up to the natural person have a clean criminal record. Applicants for a licence must provide the GSA with evidence of no criminal convictions (by final decision) and evidence of no on-going criminal investigation. Any changes to ownership/control would also require approval and clean criminal record.

484. There has been no new licence applications since the new Law on Gambling was issued in 2015 which has new provisions related to market entry. The GSA had not identified any cases of owners

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shareholders or on managers. FSA advised that in practice it follows and approves by Board decision each change of shareholding after conducting fit & proper tests.

- Agents of investment management companies are not required to be checked and approved by the FSA. Instead, the FSA relies upon the company to alert them of new agents and provide the relevant documentation. The FSA stated it would review agents and the fit and proper checks conducted by the company during on-site inspections but limited inspections have been undertaken.

<sup>76</sup> E.g. the Laws on Insurance, VPFs and CIFs require FSA to specifically consider (beyond convictions) whether there is evidence that a person is engaged in fraudulent or improper business activities, thus criminal activity unrelated to business is not explicitly covered. The laws for brokerage companies, investment advisory companies and entities conducting securities transactions only cover convictions.

<sup>77</sup> The Laws instruct the FSA to assess whether ‘significant owners’ (defined as those owning 5% or more of shares/voting rights) have not been convicted of a crime whereas they state at the same time that individuals convicted of crime cannot hold a ‘controlling interest’ (defined as 30% or more of shares/voting rights). Authorities explained that this means that someone who has been convicted for a minor criminal offence which does *not* affect adversely his evaluation to be proper (and so he can hold 5% or more) could still not hold a controlling interest (30% or more) and as such forms an additional requirement of the law to prevent criminals to enter the markets. The evaluation team, while not reading such interpretation into the law itself, finds that it would in any case go against the spirit of fit and proper tests. As authorities admit themselves, an irrelevant minor offence conviction many years ago would not influence someone’s propriety, would thus not necessarily need to prevent someone from holding interest in a FI, and would not form a strong additional protection against criminals entering the market.

involved in criminal activities or rejected any licence applications under the previous law. The new law includes specific criteria on the licensing requirements for the various categories of gaming operators and extends criminal record checks to administrators/managers which were not covered previously. Additionally, all casino employees provide evidence of clean criminal record to the casino licensee prior to employment. Authorities should ensure all administrators/managers of holders of licences issued prior to the new law meet the current standards. Due to the high risk of ML in owning gaming institutions, supervisors are encouraged to also adopt procedures to identify *indications* of criminal activities (beyond convictions and current criminal investigations) to include criminal associations, whenever there is a change in shareholding or new licence request.

485. Illegal gambling operations have been a serious and pervasive problem in Albania which led the government authorities to conduct a specific police operation targeting this activity. In 2013, operation “End of Madness” accounted for 720 criminal offenses of unauthorised gambling and the value of equipment seized during this operation was EUR 8.5 million. The operation was a coordinated effort with the ASP and GDT covering the illegal market and the GSA focusing on measures related to licenced subjects offering illegal/unlicensed activities.

486. Although these efforts have led to more formalisation of the gambling market, there are still challenges. The GSA continues to conduct active checks for unlicensed activity in coordination with other authorities. It has twenty inspectors who, in 2016 alone, approached over 6000 addresses in targeted local operations to identify breaches of the Law on Gambling and to detect unlicensed operations. These are followed up by confiscations of equipment, administrative fines or referral to LEAs for criminal prosecution. While the GSA detects cases of unlicensed gaming during its inspections, other authorities have the power to impose criminal charges in these cases. If the violations do not constitute a criminal offence, the GSA can impose confiscation of equipment as an administrative sanction. The table below shows the significant work the GSA has done to apply these powers. The GSA estimates that the number of illegal operators in the sector has decreased from 30% to 10% in the last few years due to these efforts.

Table 28: Number of inspections and administrative measures by GSA

Year	No. of onsite Inspections	No. of Confiscations (non-licenced)	No. of Fines (licenced)
2013	1241	439	70
2014	4157	973	74
2015	5025	839	67
2016	6318	1105	44

487. Regarding online gaming, in 2013 the GSA made an official request to the telecommunications agency to close down approximately 4000 international internet sites that were offering online gaming to Albanian residents through international IP addresses. While included in the 2015 Law on Gaming, there have been no licences issued for Albanian online gaming as the bylaws on licensing are not yet adopted. Applications are expected once the bylaws are approved. The authorities are encouraged to ensure that the legal framework to be adopted will contain high standards for licensing of online gaming operators. The authorities would also be encouraged to continue to actively monitor for illegal websites offering gaming activities to Albanians, and take corresponding mitigation actions.

#### MoJ – Notaries

488. Notaries must be licenced by the MoJ. The Law on Notaries does not allow individuals convicted of criminal offense to obtain or maintain a notary licence. Prior to licensing, the notary must submit a certificate demonstrating no criminal convictions and no on-going investigations. Applicants must also complete an exam prior to applying for a licence and be a member of a chamber of notaries. The Law on Notaries is under review to strengthen the criteria to become a notary. Once the notary is

licenced, the courts report to the Chamber of Notaries in the judicial district any final court decision (i.e., criminal conviction, bankruptcy) which would prohibit the notary from assuming a public function by law, and therefore, licence removal by the MoJ. Furthermore, when there is an on-going criminal proceeding against a notary, the MoJ assesses the significance of the offense and determines if suspension of the notary activity is warranted.

489. From 2012 to 2016 there was one case where the MoJ did not approve a new notary licence due to integrity reasons and 6 cases where the MoJ suspended or revoked the licence of a notary due to convictions or on-going court proceedings. However, according to the Law on Notaries it appears that the chamber of notaries must propose and approve this action before the licence can be suspended or removed. The MoJ should consider streamlining this process so that it is not dependent on the chamber of notary to take action.

#### NCA – Lawyers

490. The NCA is the responsible body for licensing lawyers in Albania. Applicants must provide certificate evidencing no criminal convictions, however no evidence relating to on-going criminal proceedings is required 'due to presumption of innocence'. Once lawyers are licenced, there does not appear to be a requirement for the lawyer or courts to update the Chamber of any criminal conviction however, the courts have provided this information to the Chamber on several occasions. In 2013, the Disciplinary Committee of the Chamber started its activity under a new structure for oversight. Since that time, it has revoked 3 licences, all due to fraud (embezzlement of funds) and suspended 3 licences. Furthermore, it was informed of 4 court decisions to suspend the attorneys' practice, which are binding on the Disciplinary Committee.

#### POB – Statutory Auditors and Accountants

491. Interviews on-site indicated that the licensing/certification requirements for auditors and accountants are a complicated mixture between various institutions. It has been recognised for a long time (see 4<sup>th</sup> round MER, p. 289) that one primary supervisor must be appointed for oversight of auditors. In April 2017, the existing POB ("POB") responsible for licensing statutory auditors and accountants was restructured as an independent body with broader supervision authority. Prior to approving a licence, the applicant must provide evidence of clean criminal record and attestation they are not under criminal proceedings to the POB. In order to practice, the licensee must maintain membership in a professional body that requires adherence to ethical standards. There were no cases of refusal/suspension of licence because of criminal records during the licensing or after licensing period.

492. In order to be registered as an audit/accounting firm, the Law on Statutory Audit requires the firm to maintain a good reputation and be majority controlled (75%) by statutory auditors, who are required to comply with the fit and proper criteria outlined in the previous paragraph.

#### DPMS

493. There is no licensing requirement for DPMS and no controls in place to prevent criminal infiltration of this sector. However, as the Law on Tax Procedures 2014 does not allow cash transactions above 150.000 ALL (approx. 1100 EUR) threshold, technically DPMS do not fall under the FATF standards. Compliance with the limit on cash transactions is reviewed during inspections performed by the GDT. Failure to comply with cash payment rules is subject to an administrative fine imposed by the GDT. Due to outreach and awareness campaigns conducted by the GDT, it has found through the results of its inspections that most taxpayers are aware of this requirement and violations are minimal. Furthermore, BoA is formally appointed as AML/CFT supervisor of DPMS<sup>78</sup> but in reality it has not assumed this role.

#### Real estate agencies

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<sup>78</sup> According to Decision No. 343 of 2009.

494. Real estate agents must register their business in the NBC. There are no controls in place to prevent criminals and their associates from beneficially owning or controlling real estate agencies.

#### *Supervisors' understanding and identification of ML/TF risks*

##### BoA

495. The banking sector comprises 90.4% of the total assets in the financial sector in Albania and the BoA, responsible for its supervision, has a good understanding of the ML/TF risks in this sector. The BoA was actively involved in contributing to the NRA in 2012 and again in 2015. The BoA is also a member of the AML/CFT IITWG (see IO.1), which has contributed to the enhancement of its understanding of risks in liaison with other state authorities. The BoA regularly coordinates with the GDPML in order to discuss ML/TF risks and inspections of supervised entities. Some mechanisms for coordination with the FSA are also in place, but the BoA should increase its coordination with the FSA to ensure a comprehensive understanding of ML/TF risks, especially due to banks also being licenced for certain products and services related to securities and investment funds.

496. Historically, the BoA assessed the ML/TF exposure within the overall reputational risk rating of banks based on on-site visits and information obtained from the GDPML. Banks did not receive a separate ML/TF risk rating by the BoA. In June 2016, the BoA significantly enhanced the offsite reporting requirements by implementing a ML/TF questionnaire including qualitative and quantitative information such as risk categories of clients, incoming/outgoing transfers, SARs, and suspicious cases analysed by entities which were not reported. In June 2017, the BoA started to receive the results from this questionnaire and it is adjusting its supervision plan accordingly. As a result, the BoA has applied a ML/TF risk rating to individual banks. Prior to this, the BoA would have had more challenges in maintaining an understanding of the ML/TF risks of individual institutions.

497. The BoA focuses its resources on the banking sector due to the prominence of banks in the financial sector and its understanding of the risk at the sectoral level for NBFIs and other supervised entities is not as strong. In July 2017, the BoA adopted a dedicated manual for supervision of NBFIs and FEOs which it has started to use to plan its supervision approach. In the assessment system described in this manual, only 7% weighting is given to ML/TF risk. However, the BoA has also applied the new offsite AML/CFT questionnaire process described in the previous paragraph to NBFIs, SLAs, and the two major MVTs and has assigned a ML/TF risk-rating to individual institutions. At the time of the on-site visit, a dedicated questionnaire for FEOs was being drafted. At the same time it is noted that approximately half of the FEOs are also agents of MVTs and that information submitted by MVTs for the AML/CFT questionnaire includes assorted data on agents. Furthermore, all FEOs report on a daily basis to the BoA on volume of transactions. Thus, to some extent BoA also receives information to help it understand risk exposure of the foreign exchange sector.

##### FSA

498. The FSA has a general understanding of the level of ML risks in their areas of responsibility and has taken initiative to increase its understanding of product and service risks. For example, the FSA is working with SECO to better understand risks related to online brokerage platforms and to obtain advice on a new Law on Securities (to be completed in 2019). During 2017 and onward, the FSA, with the assistance of SECO through a dedicated project<sup>79</sup>, further aims to develop its capacities on the supervision and regulation of the investment funds and develop its capacities to be prepared for the issuance of the bonds by joint-stock companies and local government. The FSA is encouraged to continue enhancing their knowledge of ML/TF risks through closer liaison with other authorities in Albania (i.e., attend technical WGs for AML/CFT).

499. The insurance sector is considered low risk in the NRA which is in line with the opinion of the FSA. This is mainly due to the small size of the life insurance market, the absence of unit linked products, the low policy amounts, and very low premiums. Additionally, most life insurance policies

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<sup>79</sup> The project "On the Strengthening of Supervisory Capacities of the Albanian Financial Supervisory Authority: Focus on the Capital Market Development".

(approximately 65%) are linked to loan products and required for bank financing (i.e., mortgage loans) or are related to employer group life insurance (15%). The remaining includes approximately 2000 insured persons with individual term life policies, which have inherently greater ML risk. Cash is rarely being used to pay premiums and would be subject to due diligence from the bank prior to deposit which helps to mitigate the risk of this activity.

500. With regard to VPFs, the FSA established a dedicated Risk Committee in 2016 which performs an annual risk assessment of the sector, including ML risks as one of the many parameters. The first assessment rated the ML risk as medium low impact and low probability. However it is not clear based on the Manual what specific ML criteria are considered when establishing this rating.

501. While the FSA has a general understanding of risks, and shows some positive developments, it is not in a position to fully understand the risks of all of its supervised entities. This is due to the low number of onsite inspections and the lack of information from off-site supervision. The FSA does not categorise the risk of individual institutions and does not maintain an understanding of risk for each licensee.

502. Since the on-site visit, the FSA has adopted several amendments to the AML/CFT Regulation for entities under its supervision (Regulation No. 58), including a new obligation for entities to provide a risk categorisation of client types. According to the FSA, this will facilitate a RBA to on-site and offsite supervision. Entities were required to provide this questionnaire by April 2018, which will be used as a resource when planning the 2019 risk-based supervision schedule. FSA has followed BoA's example in this regard, which demonstrates constructive coordination between authorities.

#### GDPML

503. The GDPML has a general authority to supervise all REs for implementation of the AML/CFT Law. In recent years, the RBA in supervision has been a focus of the GDPML and is gradually replacing the rule-based approach. In 2015, the GDPML conducted its first risk assessment of the REs at sector level. The GDPML strives to allocate resources to those categories of entities that have higher risk for non-compliance or where there is a greater risk that they will be used for ML/TF purposes.

504. The GDPML amended its Compliance Analysis Manual in 2016 to enhance its RBA to supervision. One of the areas of focus was more cooperation with other supervisors such as the BoA, FSA, and other DNFBP supervisors, where relevant. The Manual also requires the GDPML to categorise its supervised entities according to ML/TF risk level (high, medium low) and include this as a key factor when developing its onsite and offsite supervision plan. The risk rating of individual entities is still underway.

#### Other DNFBP supervisors

505. During the interviews the primary DNFBP supervisors displayed a low level of understanding of ML/TF risks. Lack of information reported from supervised entities contributes to this. During the interviews it was sometimes demonstrated that the REs had a better understanding of specific risks than the supervisor.

506. The GSA did not have a direct contribution on risk profiles in NRA but agrees with the results on gambling sector as high risk. Other than this general understanding, it was not evidenced that the GSA risk rated the different licenced activities or individual operators it supervises. There is no supervision manual guiding inspection activity and the GSA is not receiving ML/TF offsite reporting from REs.

507. The MoJ has a moderate understanding of ML risks and an awareness of the higher risk transactions conducted by the notaries it supervises. It considers real estate transactions, transactions involving share transfers of LEs, and transactions involving purchase/sale of cars over 1 million ALL threshold as posing the highest risks.

508. The NCA seems to have a limited understanding of ML/TF risks in the sector which was also confirmed when meeting with individual lawyers. From their perspective, the role of lawyers in the

AML/CFT regime has diminished in the past few years as the notary function has taken on greater responsibility for real estate transactions. Additionally, the NCA indicated that it is challenging for them to obtain information on the activities conducted by REs. This prevents the NCA from having an understanding of the risks posed by individual law firms.

509. The POB has recently benefitted from support from the World Bank to develop its RBA to supervision. While it has not yet undertaken any activities in this regard, it has endeavoured to understand the composition and activities in the accounting and auditing sectors and develop a sense of the ML/TF risks. At this time there is no risk rating applied to individual firms or services. The POB is planning to conduct 15 inspections selected on a RBA in 2018 and expects to be fully operational by early 2018. The POB is also working with professional bodies to receive information from REs to help assess risk of individual institutions. The POB is in the process of recruiting the additional staff that will be responsible for inspections.

*Risk-based supervision of compliance with AML/CFT requirements*

**BoA**

510. The table below provides an overview on the number of on-site inspections undertaken by BoA in the period under review. It includes both dedicated AML/CFT inspections, as well as inspections where AML/CFT issues were part of a broader supervisory inspection, which is the majority of cases.

Table 29: On-site AML/CFT inspections by BoA

	A <sup>80</sup>	B <sup>81</sup>	A	B	A	B	A	B	A	B	A	B	A	B
	2011		2012		2013		2014		2015		2016		2017 (Jan-Sep)	
Banks	16	9	16	10	16	8	16	5	16	7	16	6	16	5
CEOs	301	1 0	322	7	333	1	356	0	397	42	42 8	5	417	0
MVTS	2	1	2	0	2	0	2	0	3	3	3	0	3	0
NBFIs	17	3	19	6	19	1	20	1	24	0	28	2	28	4
SLAs	126	0	126	0	121	0	113	0	111	1	13	0	13	2
SLA Unions	2	1	2	1	2		2	1	2	1	2	0	2	0

*Banks*

511. The BoA follows the Supervision Policy Document and the 2014 Reputational Risk Supervision Manual for bank supervision. The documents indicate the weighting for each risk element (e.g. organisational risk, credit risk, operational and reputation risk). Reputational risk only comprises 10 per cent of the overall risk weighting. Furthermore, ML/TF risk is only one of the 4 components of reputational risk (formed by: AML/CFT risk, foreign operations, transparency & publication of information, other reputational risk). The BoA does not have dedicated personnel for AML/CFT supervision. Three individuals are responsible for reputational risk.

512. Thus, supervision by the BoA has been based on a matrix that includes only a small component for ML/TF risk which may not have resulted in on-site inspection programmes that reflects the actual ML/TF risk of the sector/entity. However, as mentioned the BoA has recently made significant changes to its approach to offsite inspection (including a ML/TF questionnaire) which enhanced its overall RBA.

513. The AML component of an inspection includes CDD – identification of clients and BOs, EDD – client risk rating and measures applied to high risk clients, on-going monitoring, and reporting

<sup>80</sup> A - Number of Entities

<sup>81</sup> B - Number of AML/CFT inspections either stand-alone or part of general inspection

requirements. The inspection also includes a review of policies, procedures, internal controls, responsible person in head office and in branches, training programmes for staff, and analysis of SAR cases. Onsite inspections are always undertaken by at least 2 inspectors and may include others depending on the size and characteristics of the bank or if it is a combined AML and prudential inspection.

514. Once a year, the BoA exchanges information with the GDPML relating to their inspection findings which are considered as an input into the supervision plan. The cooperation between the BoA and the GDPML is good and helps to ensure a more comprehensive understanding of the ML/TF risks in the banks. This notwithstanding, evaluators noted that the BoA significantly relies on the GDPML to contribute to AML/CFT inspections. During 2011-2016 the BoA conducted only 5 AML/CFT specific on-sites, 4 of which were in 2011, without assistance from GDPML. Due to the importance of the banking sector in the financial markets, the evaluators would have expected more frequent on-site dedicated AML/CFT inspections by BoA as primary supervisor. Although the evaluators value the good cooperation between the two institutions, the BoA's reliance upon the GDPML to conduct AML/CFT inspections indicates a need for more staffing or dedicated AML/CFT training for BoA reputational risk supervisors.

515. While the BoA and the FSA have a MoU in place and have conducted some joint inspections when banks engage in activities licenced by both supervisors, these do not cover AML/CFT compliance.

#### *Other supervised entities*

516. The BoA recognises the need to improve supervision of MVTs, FEOs and NBFIs. The same 3 people focused on reputational risk for banks, under which ML/TF risks are included, are responsible for AML/CFT supervision of NBFIs. These resources are not sufficient.

517. In 2015, the BoA focused its resources on conducting inspections of FEOs that are the major operators by volume. This selection was made based on the daily transaction reports the BoA receives from FEOs. Furthermore, in 2015 all 3 MVTs companies were inspected. This included the two companies dominating the market. As part of the onsite process, a sample of their agents is taken to assess the internal control system of companies related to AML/CFT measures to be taken by the agents.

518. The number of leasing companies and other lending institutions (factoring, microcredit) has increased in the past 5 years yet the frequency and intensity of the AML/CFT supervision for leasing and factoring companies has not yet been risk-based.

#### FSA

519. The FSA has enhanced its framework for AML/CFT supervision compared to the 4<sup>th</sup> round MER. Nonetheless, it has only recently adopted a risk-based methodology for AML/CFT supervision for some of its sectors and has yet to develop an inspection plan under this approach. The AML Supervision Manual for insurance was amended in 2016 to introduce a RBA to life insurance inspections. In 2016, the manual for risk-based supervision of VPFs was approved which includes ML/TF risks. However, inspection activity has not yet been adapted to consider ML/TF risks. As described above, following BoA's example, the FSA has recently (February 2018) created a questionnaire to require its supervised entities to complete a self-evaluation of risks. This will assist further with implementing a RBA to on-site and offsite supervision.

520. For securities, including collective investment funds and custody services, risk-based methods to supervision are yet to be adopted. As mentioned, the FSA is receiving guidance from SECO on updating its approach to supervision of securities companies and brokers. A separate manual for investment funds is expected to be completed by the end of 2018. In the interim, the FSA applies the VPF supervisory manual to other investment funds.

521. The FSA has conducted limited AML/CFT inspections. Two out of the 3 management companies for CIFs and VPFs in the country have been inspected in the reference period 2011-2017 (one in

2015, one in 2016). One out of the roughly 20 entities in the securities sector was inspected (in 2013); and 4 inspections took place in the life insurance sector (2 - 2015, 2 - 2016, 1 on-going in 2017 at the time of the on-site visit). In 2011, 2012 and 2014, there were no AML/CFT inspections conducted by the FSA at all.

522. The FSA relies heavily on the GDPML when conducting AML/CFT focused inspections and has always included one specialist from the GDPML in any AML/CFT inspection. While the assessment team concurs in general with the authorities' view of low risks posed by the sectors under FSA supervision, it still believes there to be a considerable lack of AML/CFT inspections conducted by the FSA, especially as the number of entities has been increasing<sup>82</sup>. In June 2017, the FSA changed its organisational structure to create separate supervisory departments for each of the areas under its supervision (including separate unit for AML/CFT). The FSA believes this will better allocate resources to focus on AML/CFT inspections.

523. The FSA recognises the need for better coordination with the GDPML at the beginning of each year to plan the inspection schedule and share the findings. Since the evaluation on-site visit, the FSA and GDPML have coordinated to develop an AML/CFT supervision plan for 2018 and included GDPML's proposed areas of inspection into the programme.

#### GDPML

524. The GDPML takes an active role for AML/CFT supervision. It coordinates with other authorities to exchange data to help inform its inspection plans, and is working towards an AML/CFT risk rating for each entity. The table below indicates the overall risk-sensitive approach the GDPML takes, albeit within the limited resources it has available. While the sectors in the shaded rows in the table do not fall under the FATF standard, the GDPML also conducts supervision of these sectors due to assessed AML/CFT risk. The gaming and real estate sector are believed to pose very high risks for ML, which is reflected in the efforts made in the construction sector, notaries, and gaming.

525. FEOs are also considered high risk, yet the table below indicates that the number of inspections has actually decreased. According to the GDPML, this is a result from the shift from a rules based approach to supervision to the RBA. Since 2016, data collected (including through exchanges with the BoA) has indicated there are approximately 20 FEOs that pose higher risks compared to the other roughly 400 FEOs in operation. The GDPML selected entities based on volume, CTRs, and the entities assessed level of AML/CFT awareness based on supervisory outreach conducted, to focus resources more effectively on those institutions with a greater ML/TF risk profile.

526. Real estate agents do not have a designated AML/CFT supervisor other than the GDPML. Due to resource constraints and other areas of focus with higher risk, it is a challenge for the GDPML to effectively supervise these entities. It should be noted that real estate agents themselves are not considered high risk by the GDPML due to the low number of real estate transactions involving agents (see IO.1). Furthermore, GDPML has observed that most of the real estate market consists of international companies with often a heightened level of compliance and due diligence. The GDPML is however aware that the role of agents is increasing and that their supervision should be amplified.

Table 30: On-site and off-site AML/CFT inspections by GDPML

REs	2011		2012		2013		2014		2015		2016		2017	
	On	Off	On	Off	On	Off	On	Off	On	Off	On	Off	On	Off
Banks	9	-	5	-	7	-	7	-	6	7	9	-	5	4
NBFIs	-	1	4	22	-	-	2	1	6	2	8	-	4	-

<sup>82</sup> From 2013 to 2017, the number of entities engaged in securities increased from 44 to 54; the number of life insurance companies and intermediaries/reinsurance from 15 to 35; the number of depositaries for CIFs and VPFs from 3 to 5. The number of CIF and VPF management companies remained stable at 3.



FEOs	25	111	20	87	2	110	19	8	22	6	12	1	14	19
MVTS	-	-	2	2	-	-	1	-	1	-	1	-	-	-
Notaries	8	45	6	54	1	19	4	67	13	1	21	28	5	4
Gaming	10		7	45	-	-	3	-		8	6	-	3	3
Accountants/auditors	14	1	-	45	-	27	3	16	5	1	1	1	-	1
Insurance and VPFs	6	-	-	6	-	-	1	-	2	-	2	-	2	-
DPMS	-	-	2	-	-	-	3	-	-	-	-	-	-	-
Real estate agents	1	1	-	2	-	8	2	-	-	-	4	-	-	-
Lawyers	-	-	-	-	-	-	-	-	3	-	-	-	-	-
SLAs	-	-	-	-	-	-	-	-		4	2	-	1	-
Securities	-	-	-	-	-	-	-	-	-	4	-	-	-	-
Construction companies	13	61	15	4	-	10	18	-	15	7	8	14	12	17
Travel agencies	3	-	-	-	-	-	1	-	-	-	-	-	1	-
Car dealers	1	-	-	19	-	-	8	1	-	-	3	1	-	5
Transport companies	-	-	-	-	-	-	-	-	1	-	-	-	-	-
Artworks	-	-	-	-	-	-	-	-	1	-	-	-	-	-
Subtotal	90	220	61	286	10	174	72	93	75	40	77	45	47	53
Total	310		347		184		165		115		122		100	

#### Other DNFBP supervisors

527. The GSA does not include AML/CFT aspects in the supervision plan or during inspections and relies on the GDPML to perform AML/CFT supervision. There is no ML/TF RBA applied and focus of GSA inspections is compliance with the Law on Gambling.

528. The POB responsible for supervising accountants and auditors is in the process of creating a RBA for AML/CTF supervision. Historically, reviews conducted by industry bodies have not included AML/CFT components.

529. The MoJ has not adopted a ML/TF RBA to supervision. There is no supervisory manual guiding inspection methodology. Within the last 5 years, the MoJ has conducted 197 onsite inspections and 78 offsite inspections. Notaries are selected for inspection primarily due to complaints received. While some of these inspections have identified breaches in AML/CFT law, there were no dedicated AML/CFT inspections. AML/CFT elements of supervision focused on reporting by notaries to the GDPML, with mandatory threshold reporting in particular.

530. The NCA only performs limited supervision of lawyers which is based on consumer complaints and not ML/TF risks. It does not appear to be an active supervisor in general and is not supervising for AML/CFT aspects. This was also confirmed through the lawyers met on-site, as some had been inspected by the GDPML but they had no communication or interaction with the NCA.

#### *Remedial actions and effective, proportionate, and dissuasive sanctions*

531. The supervisors for the financial sector (BoA, FSA, GDPML) do not have individual powers through the laws to impose a range of proportionate and dissuasive sanctions. Instead, they must coordinate.

532. The BoA and FSA issue mostly recommendations, whereas the GDPML has been active in issuing fines for breaches of AML/CFT obligations identified during inspections, in line with its sanctioning power under the AML/CFT Law (see Table 31 below and R.35). The GDPML does not have a gradual system in place where it can first issue warnings or orders. Furthermore, on its own, the GDPML does not have powers to impose sanctions other than fines or to increase sanctions for repeat violations.

The GDPML can request the primary supervisors, being the licensing authorities, to remove licences. However, in the view of the assessment team, it is not explicit that the sectoral laws provide the primary supervisors with the authority to remove licence for AML/CFT breaches for all types of entities (see R.27, R.28 and R.35). It has happened only once that BoA removed a licence upon request from the GDPML due to AML/CFT breaches (for a FEO, in 2013)<sup>83</sup>. Additionally, this has only occurred in the FEO sector where the legal provision clearly provides the BoA this authority.

Table 31: Fines for AML/CFT breaches imposed by GDPML

Year	REs	Fines	
		Number	Total amount (EUR)
2011	Banks	5	94,865
	Insurance	1	7407
	MVTS and FEOs	7	27,044
	Notaries	2	6667
	Accountants & auditors	2	12,593
	Gambling	3	14,815
2012	Banks	1	29,630
	MVTS and FEOs	9	76,296
	NBFIs	2	18,518
	Notaries	2	4445
	Gambling	1	3704
2013	Banks	2	62,963
	MVTS and FEOs	6	42,222
	Notaries	5	12,593
2014	Banks	5	32,815
	MVTS and FEOs	7	31,852
	NBFIs	2	5926
	Notaries	29	71,852
	Gambling	3	18,519
2015	Banks	2	44,445
	Insurance	1	14,815
	MVTS and FEOs	8	50,370
	NBFIs	3	6296
	Notaries	4	20,000
2016	Banks	5	79,259
	MVTS and FEOs	5	25,926
	NBFIs	2	7407
	Notaries	11	25,185
	Gambling	4	26,667
2017	Banks	5	125,926
	MVTS and FEOs	1	2222

533. The FSA stated that it generally does not identify any serious AML/CFT breaches during inspections. However it must be kept in mind that AML/CFT inspections so far have been very limited

<sup>83</sup> It is recalled that BoA also removed two licences of FEOs in 2016 upon GDPML's request due to integrity concerns on managers/owners which arose during GDPML inspections; see core issue 3.1.

as described in paragraph 536. For the two joint inspections with GDPML in the insurance sector in 2015, one led to identification of more serious breaches (in checking original documents) which were punished by a fine imposed by GDPML. The 2016 joint inspection in a life insurance company resulted in a recommendation issued by FSA for improvements, which will be followed up in 2018.

534. The BoA has addressed AML/CFT deficiencies identified during inspections of banks through recommendations which have included the following themes:

- Deficiencies relating to creating and updating accurate risk rating to clients ;
- Weaknesses in identifying BO;
- Need to increase the number of analysed cases and deficiencies identified in these cases;
- Minor deficiencies in internal control structure and policies; and,
- Weaknesses applying on-going monitoring in line with risk.

535. With the exception of 2012 and 2015, the BoA issued limited recommendations to other entities (NBFIs) under its supervision over the past years.

536. The BoA maintains that it has powers to issue sanctions to REs for AML/CFT breaches such as fines, which could be increased in case of repeated breaches, and removal of an administrator. Even though it is not specified in the laws and regulations which sanctions could be applied for AML/CFT breaches (except for FEOs), the BoA believes it has discretion to issue sanctions as part of their authority to supervise implementation of the AML/CFT Law<sup>84</sup>. Nevertheless, the BoA would prefer to request the GDPML to impose a fine in case they came across an AML/CFT breach serious enough to warrant a sanction. Similar to the BoA, the FSA stated that it would also refer cases to GDPML to issue fines. Whereas in the 4<sup>th</sup> round MER it was found that GDPML would need to do its own onsite inspection to impose a fine upon such referral, the authorities now advised that issuing fines would be possible after organising a hearing, without the need for another inspection. It has occurred only once that a financial supervisor informed GDPML of a breach that potentially warranted a fine<sup>85</sup>.

537. BoA has only imposed sanctions on FEOs and never on other entities under its supervision. For the 42 inspections of FEOs in 2015, BoA found AML/CFT deficiencies in 26 offices. It issued 8 written warnings, imposed 14 fines (totalling 2436 EUR) and revoked 4 licences. In 2016, 2 out of the 5 inspections of FEOs identified AML/CFT breaches, which were addressed through written warnings.

538. BoA believes that banks take recommendations seriously and have improved their systems and controls when required. It is also understood from the onsite interviews that in general banks implement recommendations and remedy breaches. Therefore, BoA believes that further remedial actions (sanctions) were not necessary. Nonetheless, analysis of the sanctioning activity of the GDPML gives rise to some doubts on the effectiveness of recommendations of BoA and the general absence of sanctions (beyond FEOs) imposed by the financial supervisors. For example, in each year from 2011 to 2017, banks received fines from GDPML and the total amount is EUR 269,903 (or approx. EUR 20,000 per fine). Since 2011 the same 16 banks have held a banking licence in Albania and there have been many recommendations issued by BoA and 25 instances of fines by the GDPML, indicating that banks, in general, may not be deterred by the remedial actions applied. The evaluators also note that, 2 out of the 6 BoA inspections of banks in 2016 were joint inspections with GDPML which resulted in fines on these 2 banks, whereas BoA itself has never imposed fines on banks following independent inspections.

539. The GDPML has also issued sanctions to the DNFBPs pursuant to inspections, in particular on gambling operators and notaries (see Table 31). The DNFBP sector in general does not have adequate AML/CFT supervision from its primary supervisors nor do these supervisors always have clear

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<sup>84</sup> The evaluators have some minor doubts on this as explained under R.35 in the TC Annex.

<sup>85</sup> It concerned information provided from BoA to GDPML. The fine was not imposed. Authorities advised that the information related to cases which BoA estimated should have been reported as SARs, whereas the entity was already in communication with the GDPML on these cases but could not divulge that to BoA.

powers to sanction AML/CFT breaches (see R.28). Therefore, these supervisors have not applied effective remedial actions.

540. The MoJ can impose sanctions in cooperation with the NCN when inspection results find a violation by the notary. While the MoJ can apply a warning and issue minimal fines to notaries (maximum EUR 380), the law requires approval from the Chamber before a licence can be removed. However, there were several cases provided by the MoJ that resulted in the revocation or suspension of the notary licence. However it was not clarified if this action related to AML/CFT breaches rather than breaches of other laws. The MoJ should consider removing the requirement to obtain Chamber approval in its Law to remove the licence of the notary and increase the available sanctions (higher fine).

541. Although the GSA is very active in imposing confiscations on unlicensed operators as well as in fining licenced operators for breaches of the Gambling Law (see core issue 3.1), it does not impose sanctions for AML/CFT breaches.

542. The accounting and auditing sector has not received sanctions since 2011, limited to 2 fines at that time, imposed by GDPML. No sanctions have been applied to lawyers, DPMS, or real estate agents.

*Promoting a clear understanding of AML/CTF obligations and ML/TF risks and impact of supervisory actions on compliance*

#### Trainings and meetings

543. The GDPML maintains on-going communication with REs to provide guidance and feedback as well as individual meetings to clarify compliance expectations. Meetings are also held with supervision authorities and professional bodies representing industry groups. GDPML's engagement with the industry further encompasses periodic training activities organised with the REs as well as their supervisors and associations. These activities include topics that are related to the entities' level of compliance with the AML/CFT legislation, sanitised cases, application of CDD and EDD measures, international sanctions and designated persons, and best international practices. In the last few years, the focus of the GDPML has been on FIs and notaries.

544. Additional attention has been shown toward the training and raising awareness around TF including typologies, challenges and solutions, for banks, MVTS and FEOs. For example, GDPML's compliance department has used the information reported by MVTS for GDPML strategic analysis purposes (see IO.1, IO.6) to share information with MVTS compliance units to help them understand typologies and red flags that could be an indicator of potential ML or TF in their businesses. There have been corresponding improvements in the number of SARs filed by MVTS, from 79 in 2015 to 209 in 2016 (including an increase in TF related SARs). For other FIs than banks, MVTS and FEOs, training and outreach have concentrated on ML with limited focus on TF.

545. The BoA, GDPML, and the ABA organise annual training seminars for bank compliance officers. Separately, the BoA typically meets quarterly with the ABA and bank compliance officers to maintain an understanding of the challenges banks are facing, provide guidance on AML/CFT matters, and discuss themes found through recent inspections and how banks should be addressing these areas. Recent topics covered by the BoA and GDPML include SARs, risk assessment, BO identification, and EDD for PEPs.

546. The notary sector is one area which clearly demonstrates the positive impact the supervisors and professional body have had on the level of ML/TF risk awareness and AML/CFT compliance. GDPML has been actively training notaries (see Table 32), and has coordinated in recent years with the MoJ and the Chamber for further joint trainings (1 - in 2015 and 2 - in 2016). These trainings focused on suspicious activity and threshold reporting. Notaries stated that they proactively raise topics for additional training to the Chamber and then later receive guidance addressing these topics. GDPML has also provided training on BO identification and UNSCR lists. The effectiveness of these efforts is demonstrated through the increased number and quality of SARs filed by notaries and their

increased understanding of obligations corroborated by evaluators on-site (see also IO.4). During inspections, the GDPML has noticed an increase in the notaries' level of compliance when obtaining BO information.

547. Except for notaries, DNFBBs have not received adequate AML/CFT training and outreach. GDPML has provided trainings in the gambling and accountancy sector, but since 2014 only a low number of persons have been trained. These efforts are not sufficient to achieve a high level of understanding by DNFBBs, and primary supervisors have not taken action to complement GDPML's actions. Once fully operational, the POB is expected to have capacity to organise its own workshops and develop coordinated trainings with professional bodies and other supervisors.

548. The FSA underlines the need for compliance with the AML/CFT Law during meetings with new licence holders, and organised training with GDPML for some of the REs under its supervision in 2015.

Table 32: Trainings of REs organised by GDPML (2011-2016)

Subjects	No of persons trained					
	2011	2012	2013	2014	2015	2016
Banks	94	116	84	120	285	108
FEOs	182	179	151	70	73	77
NBFIs	5	50	0	68	115	188
Gambling operators	22	0	15	12	0	6
Notaries	44	71	75	237	73	127
Accountants & auditors	34	88	63	1	0	1
Insurance companies	6	18	0	0	35	1
VPF institutions	6	3	0	0	5	1
TOTAL	421	589	401	699	689	628

### Guidance

549. Both the BoA and the FSA have issued a Regulation which contains guidance for its supervised entities regarding implementation of AML/CFT obligations, which were updated multiple times in recent years to strengthen guidance on the RBA<sup>86</sup>. The FSA keeps its supervised entities informed of any changes to the regulation through letters. The BoA facilitates a regular dialogue with its supervised entities on the Regulation (mostly with banks, through the ABA). There have been some (minor) differences of opinion between authorities and the banking industry on interpretation of the Regulation and its coherency with the AML/CFT Law, and authorities are aware that there is a need for further alignment.

550. The GDPML, through MoF Instructions, has issued guidance both for FIs and for DNFBBs, in 2012<sup>87</sup>. These Instructions mostly give some examples on how to identify BOs and further instructions on how to file SARs, but they do not provide indicators for internal risk assessments or risk categorisation of clients. Interviews with DNFBBs further suggest that the guidelines are not very effective in increasing their understanding of AML/CFT measures unless combined with inspections and training activity. For example, some DNFBBs which did not receive training indicated that there are too many information sources to clearly understand their obligations; and other DNFBBs suggested that it would be better to have targeted guidance with specific instructions to their sector on how to implement the law.

<sup>86</sup> BoA Regulation No. 44 (adopted in 2009, amended in 2013 and April 2017) and FSA Regulation No. 58 (adopted in June 2015, amended in December 2015 and in February 2018 (after the on-site visit), see inter alia R.1 and R.10.

<sup>87</sup> MoF Instructions No. 28 and 29 respectively.

551. The GDPML publishes its annual report to provide general feedback to the REs. It contains examples of trends and typologies encountered, common compliance deficiencies identified through supervision, and SAR reporting typologies. The GDPML also has a dedicated restricted website for REs providing the domestic PEP list and domestic terrorist list and giving a platform for filing SARs. Interviews indicate that REs, including smaller ones, are largely aware of this website and use it.

#### Inspections and remedial actions

552. The supervisory activities carried out by the GDPML and the BoA have increased the banks' awareness of their ML and TF risks, and facilitated the development of internal controls and CDD measures to manage risks. However, the BoA's recommendations have covered the same recurring issues over the years across the banking sector which could indicate that they may need more outreach to ensure the recommendations have a stronger effect. Furthermore, according to the 2015 and 2016 annual reports of the GDPML, the main deficiencies identified during supervision of REs have not changed which could indicate REs overall are not adjusting compliance programmes to address the thematic issues identified by supervisors. Authorities maintain that, although the themes are the same, the nature of the deficiencies is different and has become less serious.

553. The increased inspections in the notary sector and the issuance of fines have had an important effect on compliance. Notaries are well aware that they can receive fines and even lose their licence over failure to implement the AML/CFT law.

554. While the BoA has increased its inspections of FEOs and sanctioned 26 offices in 2015, it has not yet been able to determine if the actions it has taken have resulted in a change of behaviour, due to lack of off-site reporting and follow inspections.

555. AML/CFT inspection activity and remedial action by the FSA has been very low. Overall the FSA has conducted limited actions to improve compliance by the entities they supervise. This is partly in line with the low risks posed by the sectors under its supervision, but given the sectoral developments there is a need to step up actions.

#### *Overall Conclusions on Immediate Outcome 3*

556. With the exception of real estate agents and DPMS, measures to prevent criminals from controlling or holding a management function in FIs and DNFBPs are applied by the various licensing authorities (fit and proper checks). However, the scope and depth of checks varies between sectors, and for many sectors their effectiveness is not evidenced through cases where licences have been denied or administrators denied approval, either at time of initial request or after market entry. With high levels of corruption and OC in Albania, utilising the ownership and control of FIs and DNFBPs to launder proceeds of crime is a significant risk. Complex ownership structures and hidden BOs can be used to further the criminal's efforts in this regard. Therefore, authorities should enhance the control systems to prevent criminal infiltration of FIs and DNFBPs.

557. The BoA has a good understanding of ML risks in the banking sector and has recently (July 2017) applied a ML/TF risk rating for individual banks, NBFIs, SLAs and the large MVTs. The GDPML and FSA are also transitioning into a RBA to supervision, with the former being much further advanced in the process. BoA has been active in inspecting banks, but it does not have sufficient resources for dedicated AML/CFT supervision or for inspections of other FIs under its supervision. Inspection activity by FSA has been very limited. None of the DNFBP supervisors other than the GDPML include AML/CFT components in supervision plans and few even consider AML/CFT supervision their responsibility. The GDPML's resources are insufficient to compensate for these gaps.

558. BoA and GDPML have imposed supervisory measures on REs following inspections where deficiencies in implementation of AML/CFT obligations were identified. Evaluators have doubts however on the effectiveness of the sanctions framework. Given that each supervisor individually imposes a limited range of measures, the framework appears rather incoherent. BoA has addressed deficiencies from banks only through recommendations whereas GDPML has been actively imposing fines.

559.BoA and GDPML have made significant efforts to enhance compliance of banks with AML/CFT requirements through inspections, training and other forms of outreach. GDPML in cooperation with the MoJ and the Chamber of Notaries has conducted significant outreach to notaries to make them sensitive to their gatekeeper’s role in real estate, which has also proven effective in increasing their understanding and compliance. Significant efforts have also been made by authorities in recent years to come down on unlicensed foreign exchange and gambling activity.

560.Overall, Albania achieved a moderate level of effectiveness for Immediate Outcome 3.

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### *Key Findings*

1. Albania has not carried out a specific assessment of the ML/TF risks associated with different types of LEs created in the country, except for the NPOs<sup>88,89</sup>. The understanding of ML/TF risks posed by LEs is weak. Nevertheless, Albania has taken some measures to prevent the misuse of LEs.
2. Basic information and legal ownership information can be promptly obtained from the NBC and the DCoT at any time. However, the NBC and DCoT do not specifically collect and maintain BO information, except for when the legal owner and BO are the same. Information held by the NBC and DCoT in relation to changes to registered basic information cannot be considered fully accurate and current.
3. BO information is obtained and maintained individually by FIs and DNFBPs in the course of their CDD obligations. However, timely access to this information by the competent authorities is hindered by having to first establish which FI or DNFBP the legal person or arrangement has a business relationship with.
4. Legal arrangements cannot be formed or established in Albania. There do exist, however, LEs registered and operating in Albania with a legal arrangement (trusts or other similar arrangements) in the ownership structure. Albania has not conducted a specific analysis of ML/TF risks posed by legal arrangements (LEs with such a ownership in the chain), but Albania treats them as posing a high risk, and requires the REs to conduct EDD measures.
5. The sanctions available for non-compliance with information and transparency obligations by LEs registered with NBC do not appear to be proportionate and dissuasive, and are non-existent for the DCoT.

#### *Recommended Actions*

1. Albania should conduct an in-depth analysis of the ML/TF risks associated with different types of LEs (also considering specifics of the ones with the legal arrangements in their legal ownership structure, as well as the use of the nominee arrangements). Albania should communicate the findings to the relevant competent authorities and REs, and implement appropriate mitigating measures.

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<sup>88</sup> The term NPO is used to refer to the type of the LEs in accordance with the definition of Art. 2(4) of the Law of the Republic of Albania “On NPOs”, “associations, foundations and centres whose activity is conducted in an independent manner and without being influenced by the state”.

<sup>89</sup> “Assessment of the Non Profit Sector” 2012.

2. Albania should introduce mechanisms to ensure that basic information held by NBC and the DCoT is accurate and current.
3. Albania should ensure that competent authorities have timely access to adequate, accurate and up-to-date BO information.
4. Albania should consider enabling the striking off of LEs when the entity has not had any statutory filings made in a given period (e.g. 3 years).
5. Albanian authorities must improve the resources available to the DCoT in respect of the maintenance of the register of NPOs and public access to the information maintained therein.
6. Albanian authorities should implement proportionate and dissuasive sanctions for non-compliance with information and transparency obligations by LEs registered with NBC. Corresponding sanction regime shall be set out with respect to NPOs registering with the DCoT.

561. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

#### *Immediate Outcome 5 (Legal Persons and Arrangements)*

##### *Public availability of information on the creation and types of legal persons and arrangements*

562. Information on the creation of various types of LEs in Albania is publicly available. The legislation does not provide for the establishment and operation of legal arrangements in Albania.

563. According to authorities the details of the different types of LEs<sup>90</sup> and how each can be found are described on the web-site of the National Business Centre (NBC) (<http://www.qkb.gov.al/home/>). Service windows at the NBC also hold hard copy versions of the information for the formation of different LE types, fees and application forms.

564. LEs can be formed entirely online through a secure web-portal. Access to the portal is via e-Albania which requires pre-registration before applications can be submitted. Hard copy applications can also be submitted at the NBC service windows. All scanned documents then form part of the company records which are also available as part of any online enquiry. The time for applications to be considered is 24 hours when submitted at the physical service-windows of the NBC and 8 hours for applications submitted online. Prior to a company being registered an applicant can track the progress of an application online. Applications can be handled directly by the Administrator of the company or a legal representative (e.g. a lawyer using a power of attorney for that purpose or a notary).

565. Although the legal arrangements cannot be formed or established in Albania, there is no prohibition either. According to authorities there are 49 LEs registered in Albania with a trust or similar structure in the ownership structure. There are no additional provisions (documents, other particularities) set out for registration of LEs with such a specific ownership structure.

566. There are around 50.000 LEs registered in the NBC in Albania as of 2017 (September). The most commonly used types of LEs established in Albania are limited liability companies (48,665) followed by the joint stock companies (1,621). Since 2010 there was observed a steadily growing trend which correlates to Albania's economic growth. The total number of the LEs increased by some 48% in these years.

567. NPOs (foundations, centres and associations), are registered by the DCoT. Information on how NPOs can be established and the legal basis for registration is provided on the DCoT web-site ([www.gjykatatirana.gov.al](http://www.gjykatatirana.gov.al)). There is no online registration or information access available for the

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<sup>90</sup> Except for NPOs (associations, foundations and centres).



NPOs register. Information is publicly available, upon the written request, and provided within 2-15 days, depending on urgency.

568. Evaluators noted that despite the previous MER calling for the register of NPOs to be computerised (for the sake of completeness, accessibility and accuracy), this has still not occurred and continues to be a manually updated register.

569. The number of NPOs registered in Albania is estimated to be approximately 10,000. Out of these 10,000 registered NPOs, Albanian tax authorities estimate that approximately 2,000 of these are active in any year. As of 2017 associations constitute the considerable part of the registered NPO sector, followed by centres and foundations.

*Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

570. Albania has not carried out an assessment of the ML/TF risks associated with different types of LEs created in the country and their possible misuses, except for the NPOs<sup>91</sup>. The NRA only briefly addresses specifically the shelf corporations and trusts, neither of which there is much evidence of use of in Albania. The 2015 NRA (see IO1) underplays the role played by LEs in the Albanian economy, despite being used to purchase real estate which itself has been identified as one of the main conduits for ML in Albania, particularly by foreign nationals. According to the data on the criminal offences and based on the provided examples it can be inferred that in practice, LEs are used in committal of economic crimes. There are specific factors identified in the NRA having a risk increasing effect on the banking sector in relation to the LEs. There was a low level of understanding demonstrated by authorities and private sector entities as to the ML and TF risks posed by LEs in Albania.

571. Albania has indicated that, as of 30.09.2017, 49.15% of LEs have some element of foreign ownership. Based on the provided information it appeared that, setting up LEs in Albania is attractive mainly to nationals of neighbouring countries (e.g. Italy, Kosovo, Greece) seeking inwards investment opportunity or asset holding opportunities in Albania<sup>6</sup>. By itself, foreign inwards investment does not present an additional ML/TF risk. However, in light of the Albanian authority's recognition of the risk posed by the real estate sector that this sector may use LEs and these LEs may themselves be wholly or partly foreign owned, the potential for misuse of such LEs is very high. Albania has not sought to identify or mitigate this risk adequately.

572. It was offered by interviewees to the evaluators that tax mitigation was a key attraction to the use of Albanian domiciled companies over domestic corporations elsewhere. Tax evasion statistics in Albania and the case examples provided by the authorities (see also IO 7) indicate that a number of these avoidance structures are tax evasion structures using LEs.

573. In Albania there is a practice of establishing LEs using the services of larger accountancy/audit firms and lawyers. It was identified by the evaluators that in practice their activities are restricted to the collation of the necessary documentation in order to submit an application for registration. Lawyers and accountants are used by their clients to establish a LE or to help in the process, due to their better knowledge of the legislation. There was no evidence to suggest that these professions offer registered office, bank account operation, management, corporate directorships or nominee shareholdings. These professions also denied having shelf-companies available for use as LEs can be formed with very small delay.

574. As indicated in the NRA, the vulnerabilities related to performance of CDD, in particular by the banking sector, are related to the use of business accounts by clients for purposes that do not correlate to the activity purportedly performed by the LE and involvement in business relationships with businesses operating two or more sets of books.

575. The NRA also highlights that there are vulnerabilities related to the identification and verification of the BO of LEs, but does not further elaborate on this. Based on the interviews

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<sup>91</sup> "Assessment of the Non Profit Sector" 2012.

conducted with the FIs, it seems that some REs adopt a rather narrow approach to the BO concept (e.g. considering the obligation fulfilled by satisfying themselves on the identity of those holding or controlling 25% of the LE) and do not make additional efforts to apply other measures to determine if there are other persons behind of the LE who de facto exercise the decision making or otherwise exercise control. Furthermore, although banks were generally found to take adequate measures to identify and verify the BO of LEs, some implementation gaps still exist (see IO4).

576. It was noted from interlocutors that many REs (with the notable exception of banks, and to some extent notaries) over rely on the NBC registered shareholding data to satisfy themselves regarding BO requirements. However, the NBC does not possess information on the BO of the LEs, as it does not specifically collect and maintain BO information, except for when the legal owner and BO are one and the same (which will often be the case in the context of Albania with simple ownership structures).

577. There are no legal mechanisms provided to the NBC for striking off “dormant” LEs. The NBC has stated that they have not performed an analysis of the number of “dormant” companies that may exist in the register and do not possess any information on that matter. The presence of substantial numbers of “dormant” companies, if they exist, presents vulnerability. Such LEs may have business relationships with FIs and other trading partners, at the same time when the basic information held at the NBC and the BO data held at the FIs may not be always accurate nor up to date. Hence, while no conclusions can be made on the presence of such vulnerabilities, these cannot be disregarded.

578. There is no TCSP sector present in Albania but there are a number of foreign web-sites offering Albanian companies allegedly through the use of local notaries and lawyers. The NBC also confirmed the lack of knowledge of a concentration of registered office addresses that could otherwise point to the presence of a TCSP sector.

579. During the interviews, notaries confirmed that foreign established legal arrangements are being used in a small number of property purchases and that there are no impediments to having foreign trust structures in the transactions. The interviewed banks, on the other hand, all denied that foreign legal arrangements existed in their client base. Banks confirmed that it would be possible for foreign legal arrangements to open accounts with most of them (see also IO4). Although there is no specific analysis of ML/TF risks posed by legal arrangements (or LEs with such a ownership in the chain), Albania treats this as a high risk scenario. Hence, the AML/CFT law recognises the use of legal arrangements (LEs with such a ownership in the chain) as one which would require EDD to be conducted by the REs.

580. A formal risk assessment of the NPO sector was conducted in 2012 and in light of the fact of the continued increase in numbers of registrations the risk assessment may be outdated as it may not adequately address risks present in this sector at this point in time. In light of the funding sources, activities of some the NPOs and the vulnerabilities for the radicalisation and recruitment of foreign fighters, the evaluators consider the TF risk in this sector to be of considerable importance (see also IO9 and IO10).

581. Based on the conducted interviews it appeared that there appear to be unregistered businesses in rural areas, which may also present an undocumented ML/TF risks.

#### *Mitigating measures to prevent the misuse of legal persons and arrangements*

582. Authorities have not demonstrated that the potential misuse of LEs for ML/TF has been adequately understood by the private sectors and therefore adequate mitigation measures have not been appropriately applied.

583. The basic information including registered shareholding data on LEs is published on the NBC website and it is freely accessible by any interested party. Data kept by the DCoT on the registered NPOs can be obtained at any time by a written request. The applied approach ensures a certain level of transparency of LEs and NPOs. However, neither the NBC nor DCoT have any legal obligation to verify the information filed, and neither do they do so in practice.

584. Neither the NBC nor DCoT have powers to strike off LEs from the register due to inactivity in filing of documents, etc.<sup>92</sup>. As provided by Albania, it appears that around half of the registered LEs and the NPOs are inactive. It is therefore highly likely that a considerable number of legal persons exist on the register whose statutory records are not up to date impeding the timely and accurate retrieval of information by LEAs should these be required.

585. The NBC has no knowledge of the number of LEs having issued bearer shares. Issuance and use of bearer shares was previously permitted under Albanian company law and not subjected to any mitigation measures. Current registration requirements under company law have the effect of prohibiting the issuance of bearer shares. Albanian FIs have confirmed, through contact by the GDPML, that there are presently no Albanian entities with bearer shares as their customers.

586. In Albania transactions in cash performed between tax payers (natural and LEs) are restricted to 150,000 ALL (approximately 1,100 EUR). All the transactions above this amount must be performed via FIs. Considering the threshold, in practice this means that all the LEs conducting business activities interact with FIs. In line with the AML/CFT requirements for the REs, on performance of the CDD measures, the latter should require comprehensive information on the customer, including the nature of its business, ownership and control structure, which also includes information on the BO. Hence the provisions of the tax legislation in conjunction with the AML/CFT measures in place contribute to a reduction of the risks related to misuse of the LEs.

*Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons*

587. In Albania basic information on the LEs can be obtained upon a written request by anyone from the NBC using the online portal, and for NPOs from the Count of Tirana. Whilst timeliness of basic information access is considered to be appropriate, the adequacy, accuracy and currency of information of LEs is called into question.

588. The NBC and the DCoT poses all the required basic information of LEs and NPOs respectively (see also R. 24).

589. Neither the NBC nor the DCoT have obligations to collect or hold BO data. BO data can be obtained from the REs with which a LE has a business relationship. LEAs would first have to determine which RE the LE maintained a business relationship with before seeking access to BO records. Although there is no obligatory requirement for LEs to open a bank account when established, the cash transactions threshold applied by Albania would in practice oblige the LE to utilise the services of a FI. The outcome of this is to require Albanian companies to hold a bank account in practice and from where competent authorities can therefore obtain BO data.

590. Due to the unfamiliarity with legal arrangements in Albania, the level of awareness of how to obtain BO data for foreign legal arrangements was not demonstrated by the REs. Most REs interviewed apparently turn down any business where a legal arrangement is involved although this was not an absolute practice. Hence, is it questionable, to what extent the REs can be used as a source of information.

591. In general terms it should be noted that during the on-site visit the evaluators were informed that most of the businesses in the rural areas are not registered. Concerns about the unregistered sector were expressed also with regard to the NPO sector. This led the evaluators to conclude that information held with the NBC and the DCoT is incomplete.

592. According to the legislation in place, the LE is responsible for the truthfulness and veracity of the facts and data provided to the registries. The NBC fully relies on the parties submitting information for registration. Verification of the documents by the notaries is required only in case a copy of the document is submitted to the registry, which does not oblige them to check the accuracy of the information in documents.

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<sup>92</sup> Art. 48 of the Law on the National Registration Centre "Cancellation is performed: (a) voluntarily on the request of the subject, (b) based on a definitive court decision (c) in the cases provided by special laws".

593. LEs are required by law to complete their registration within 15 days from the start of its activities<sup>93</sup> or date of incorporation<sup>94</sup>, and submit any changes to its data within 30 days of a change occurring. The NBC has no powers or effective deterrent measures to ensure currency of data submitted for registration, except in the case when post factum it is revealed when the LE by itself has submitted documents to the NBC. The only measure to be applied by the NBC is the sanction for the late submission of the documents, which as is discussed below, cannot be considered as an effective mitigation measure (see also the statistics on applied measures below).

594. There are no time limits set for the registration of an NPO or registration of the changes of the registered information on NPOs maintained by the DCoT. Hence, in this case there are no powers and tools available to apply any measure that could prevent NPOs from late submission of data both for registration of an NPO nor for the registration of changes. Therefore, neither information held by the NBC for LEs nor by the DCoT for NPOs can be considered as current.

595. The BoA and/or the GDPML conduct on-site verification of CDD processes including BO information requirements. In common with most jurisdictions the quality of CDD documentation held by FIs is higher than for other sectors. Access by the BoA and FSA to BO data held by regulated entities is unhindered by any legislative provisions or administrative process.

596. The PO, and LEAs make a good use of the online portal held by the NBC to access basic information on LEs for their operational needs. All of a LE's records (basic information) is available online via the NBC portal. This will provide unrestricted access (other than personal data) to all of the LEs' records including financial statements, register of members and officers. To secure the evidence at a later stage, following the rules of CPC, the LEAs and PO written requests are submitted to the NBC. In general, the requests are dealt with immediately, from 1 day to 10 days maximum, depending on the urgency of the request. The DCoT has indicated that it rarely gets requests from the competent authorities concerning the registered NPOs. However, information on NPOs would likely be more complex due to the manual nature of the record keeping of the DCoT and if the NPO does not have a bank account, would likely not be to the standards that FIs apply. The response is provided within 15 days, or upon urgency.

597. LEAs confirmed that should there be a requirement to obtain BO data on an Albanian legal entity they would need to, through the GDPML, ask each and every FIs if it held an account for the LE in question and if so then seek to obtain KYC records on the BO from the FI. This process was described as taking around 10 days to complete.

598. The GDPML also has demonstrated a practice of cooperation with its foreign counterparts in obtaining basic and BO data on LEs. Evaluators were informed, that these types of data are requested infrequently. On average time of response to/from foreign FIU is stated to be 30 days. The GDPML had no cases where this cooperation has been refused.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

599. REs not applying adequate CDD processes, including BO information are subject to administrative sanctions ranging from 100,000 ALL to 1,000,000 ALL (€746 - €7,460) in the case of natural persons and 300,00 ALL to 3,000,000 ALL (€2,238 - €22,380) for legal persons. Where an RE fails to meet EDD measures these administrative sanctions are 200,000 ALL to 2,000,000 (€1,492 - €14,920) ALL for natural persons and 400,000 ALL to 4,000,000 ALL (€2,985 - €29,850) for legal persons.

600. Administrative sanctions are applied at LE level but the employee and/or Administrator responsible for the breach can each further be subject to additional sanctions of 20,000 ALL to 200,000 ALL (€149 - €1,490) and 50,000 ALL to 500,000 ALL (€373 - €3,730) respectively.

601. Responsibility for the imposition of these sanctions falls upon the GDPML.

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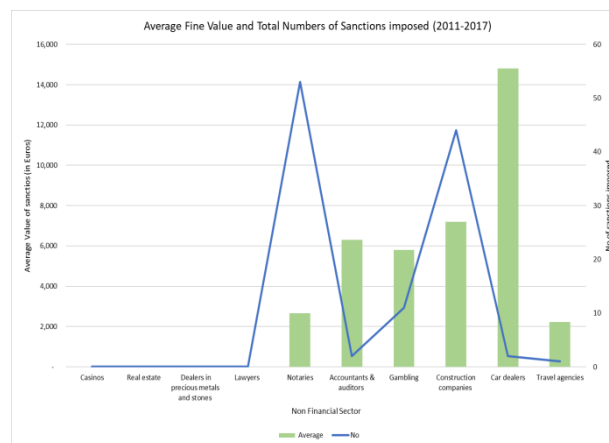
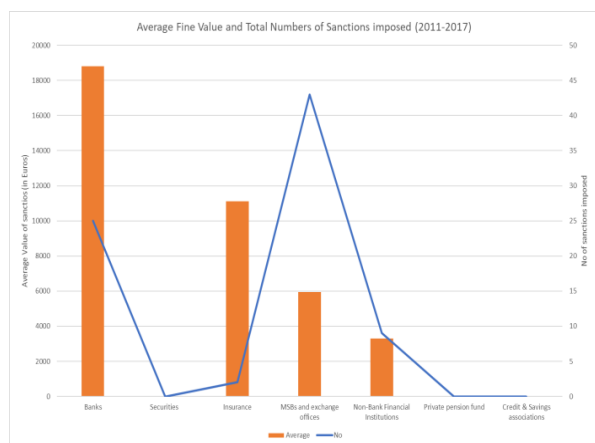
<sup>93</sup> Simple partnerships and branches or representation offices of foreign companies

<sup>94</sup> LEs.

602. Over the last 7 years the GDPML have imposed a number of these across financial and non-financial sectors as shown in the charts below:

Figure 1 - Sanctions imposed in the financial sector (2011 to 2017)

Figure 2 - Sanctions imposed in the non-financial sector (2011 to 2017)



603. In the financial sector the average fines imposed on banks are higher than others (circa €18,000) but it is the MSB sector that has the highest frequency of fines (43). In the non-financial sector is car dealers and notaries that have the highest average fines and frequency respectively.

604. Whilst these statistics do not breakdown the cause of the sanction (e.g. failure to conduct CDD, EDD, etc) they demonstrate, however, that they are used frequently in some sectors and not at all in others. Perhaps the most striking absence of sanctions is in the areas highlighted in the NRA of being amongst the highest risk for ML: Casinos, Real Estate, Precious Metals and Lawyers all of which have not had sanctions imposed on them over the years in question. The average value of these sanctions do not seem to be proportionate in their application to the underlying asset or mechanism through funds could be laundered, for example the average fine of €15,000 for a car dealer (where only a few sanctions have been issued) against an average €7,000 for a construction company or bank sanctions, where a breach in systems could have implications for the entire customer base, at €18,500 (although these have been applied with greater frequency).

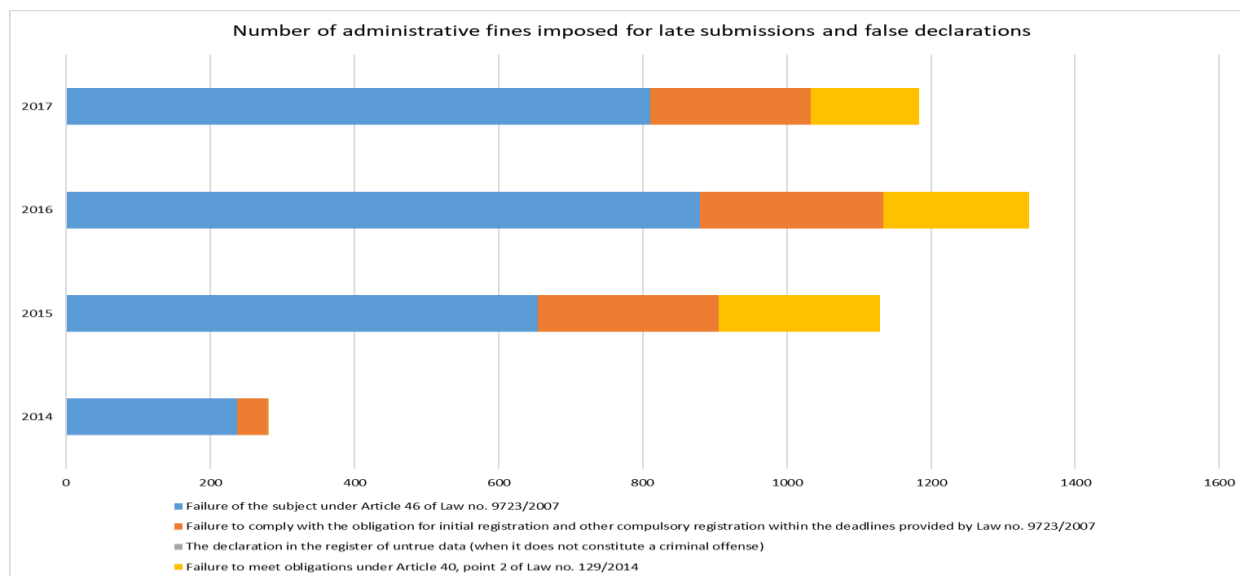
605. In reaching an overall conclusion for the sanctioning regime the number of administrative sanctions is broad in scope and application and is evidently used by the GDPML for a variety of breaches of the requirements across the different sectors in a proportionate manner. Their amounts, however, are small in comparison to other jurisdictions and are therefore not likely to act as a deterrent to future breaches.

606. The sanctions that can be applied to the LEs by the NBC are administrative measures with fine of up to 15.000 ALL (€110). The same level of fine is set out for any type of breach under the NBC Law. In case where the breach of NBC Law constitutes a criminal act, respective measures shall be applied according to the CC.

607. The chart below shows the most common types of breaches by LE for which administrative sanctions have been imposed. It is clear that no such sanctions have been imposed for supplying false or incorrect data to the NBC. There has been no criminal sanction applied to LEs for breach of the NBC Law.

608. Overall it can be inferred from the analysis that the sanctions available and applied by country lack proportionality and dissuasiveness to ensure the compliance of the LEs with the information requirements.

Figure 3 - Numbers of sanctions applied by NBC (2014 to Sept 2017)



609. There is no deadline set for NPOs to apply for registration of changes regarding information kept by the DCoT, no sanctions can be applied.

#### Overall Conclusion on Immediate Outcome 5

610. The overall lack of awareness regarding the possible risks of misuse of legal persons (both LEs and legal persons more generally) and in particular NPOs for TF is of concern. Information on the creation and on types of legal persons in Albania is publicly available. Authorities and general public can access basic and legal ownership information of legal persons. There are certain reservations with regard to timeliness and doubts in place over the adequacy and accuracy of basic and BO data maintained by the authorities and REs. The level of sanctions applied by competent authorities for the failure to comply with information requirements does not amount to an adequate and dissuasive regime.

611. Albania has achieved a Moderate level of effectiveness with Immediate Outcome 5.

## CHAPTER 8. INTERNATIONAL COOPERATION

### Key Findings and Recommended Actions

#### Key Findings

1. Although Albania has reportedly provided MLA with an appropriate level of cooperation, the general legal mechanism for executing foreign MLA requests is very complex (involving too many authorities with their respective deadlines) with the potential for delay.
2. There is no systemic prioritisation of incoming MLA requests and the case management system is not in place in all authorities involved in MLA.
3. Several letters rogatory sent abroad are reported to have been sent out too late, are incomplete and have other technical deficiencies.
5. The information exchanged by the GDPML is used for the GDPML analyses, referrals to the LEAs and also to support the LEAs investigations of ML, associated predicate offences and TF. Since for the processing of international requests and spontaneous disseminations the GDPML has access to the same range of information used for the analysis of SARs, issues raised under IO6 on the guarantees for the timely provision of the information affect negatively the ability of the GDPML to provide

internationally requested information in a timely manner. Moreover, some delays have been reported to the assessment team by other countries.

7. The BoA and FSA seek information from foreign supervisory authorities of central banks when approving applications for managerial roles and change of controlling interests in supervised entities, albeit there is some concern that information requests do not fully extend to indirect shareholders. The FSA has obtained other forms of international cooperation relating to guidance on international best practices including when transitioning to a RBA for supervision.

8. International cooperation on BO data is hampered by the deficiencies identified in IO5 regarding timely access to the BO data.

#### *Recommended Actions*

1. Take legislative steps to simplify the existing legal framework for executing foreign MLA requests.
2. Encourage direct cooperation between counterpart judicial authorities and the use of bilateral agreements to obtain admissible evidence.
3. Develop a case management system which also allows for the systemic prioritisation of MLA cases for all authorities involved.
4. Technical deficiencies of outgoing MLA requests noted in the NRA should be adequately addressed to avoid delayed or incomplete execution.
5. Actions should be taken by the authorities, as recommended under IO6, to ensure the timely provision of information by the GDPML to its foreign counterparts when this information is held by the LEAs, other state authorities or the RES.
6. As the majority of banks in Albania are subsidiaries of foreign banks, the BoA should ensure they have proper mechanisms in place to exchange information with foreign supervisors regarding AML/CFT supervision and inspections.

612. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

#### *Immediate Outcome 2 (International Cooperation)*

##### *Providing constructive and timely MLA and extradition*

613. The geographical location of Albania and the country's ML/TF risk profile both underline the importance of an effective international cooperation in criminal matters. Factors particularly relevant in this field include the high number of domestic ML offences related to foreign proceeds where there is a need to prove the criminal origin of the property as well as the prevalence of predicate offences committed in an essentially trans-national manner, such as the production of and trafficking in narcotics which necessarily involve more countries in the region and beyond. Likewise, terrorism-related offences (or attempts) so far prosecuted had also been (planned to be) carried out in a regional context and required a response coordinated by authorities of the neighbouring countries.

614. Provision of legal assistance in international criminal matters by Albanian authorities is based on a large network of cooperation arrangements for MLA and/or extradition including bilateral agreements and international treaties alike, such as European Conventions ETS 024 and 030 with their respective Protocols as well as European Conventions ETS 141 and CETS 198, adequately covering all neighbouring and/or EU countries relevant for ML predicate offences or regional TF issues.

615. According to the statistics made available to the assessment team, Albania only receives a moderate number of foreign MLA requests, ranging from 82 to 159 per year in total figures throughout the period subject to evaluation (with an average 110 to 140 requests annually). Typical criminal offences in those incoming requests involved drug trafficking and other forms of organised criminality, violent offences (murder, robbery) and counterfeiting. Subsequent to the on-site visit,

however, the Albanian authorities provided different statistical data on incoming MLA requests either or not relating to ML/TF (253 cases for 2011, 319 for 2012, 406 for 2013 then, after a gap, 661 for 2015 and 524 for 2016). These figures are much higher than those provided beforehand so the evaluators could not verify, which statistics are to be considered reliable.

616. As far as ML-related foreign requests are concerned, the statistics (to the extent they are reliable) show a limited but steady volume: there were 5 to 13 MLA requests per year and 1 to 3 per year for extradition (within which range the annual figures did not indicate any specific tendencies). TF or terrorism-related foreign requests only occur sporadically: there were 4 TF-related MLA requests in 2016 (and not any in the preceding years) and 1-2 terrorism-related MLA requests per year while no requests for extradition in such cases occurred in the evaluation period.

617. Albania has executed all incoming MLA requests and no foreign letter rogatory has ever been rejected. Furthermore, no ML and TF or terrorism-related extradition requests have ever been refused by Albania. The required time for executing foreign requests ranged between 30 and 180 days (MLA) and 90 to 180 days (extradition) in general. Statistics on execution times, however, only indicate the maximum term occurring in a given year which did not allow for a more profound analysis and therefore no conclusions could be drawn as to the timeliness of the execution.

618. Despite the legislation on the strict application of dual criminality rules when providing MLA (even beyond coercive actions – see c.37.6) no foreign requests have been so far refused on this ground. Reference was made to a recent TF-related incoming request where notable differences in the name and coverage of the respective criminal offences in the two jurisdictions posed no obstacle to the execution of the letter rogatory. While this is a positive experience, the evaluators need to note that this technical shortcoming of the legal framework still has the potential to unavoidably restrict the capacity of Albanian authorities to adequately respond to foreign MLA requests.

619. The Albanian authorities could not provide more detailed breakdown of the MLA/extradition statistics as to which countries were involved, what proportion of the communication with counterpart authorities was conducted through the use of direct channels, what sorts of investigative actions were asked for in letters rogatory and whether the execution of foreign requests was affected by any specific difficulties.

620. Nonetheless, the NRA contains a more detailed analysis of incoming MLA requests for the years of 2013-2014, which confirms the dominance of requests arriving from neighbouring and regional countries. In totality, most requests came from Greece, Kosovo and Italy in both years. Unfortunately, no figures were available for the preceding or subsequent years and neither could it be known exactly from which countries the ML/TF related requests had been sent.

621. Direct cooperation is provided for by recent amendments in domestic legislation (see R.37) and also by instruments such as the Strasbourg MLA Convention (in which context Albania declared in 2006 that practically all courts and POs are considered as judicial authorities for direct contact). Although no statistics are available, the GPO reported a significant increase in the number of MLA requests directly sent to the POs in recent years (although without any breakdown as to which POs were concerned and not providing any data on outgoing requests). In case of direct communication, the request is also transmitted via INTERPOL. Furthermore, a limited number of MLA requests from EU member states have already been successfully submitted to the GPO, on a case-by-case basis, through the EUROJUST channel<sup>95</sup>.

Subsequent to the on-site visit, the evaluators were provided with a number of case examples relating to the execution of foreign requests received directly and/or via INTERPOL channels from foreign judicial authorities. On the other hand, most of those cases were quite identical (requests coming from Italian authorities) and aimed at simple procedural acts (communication of acts to natural persons in Albania).

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<sup>95</sup> Formal negotiations to conclude an Albania- EUROJUST Cooperation Agreement were completed after the on-site visit and that the procedures are being finalized on both sides for signature in autumn 2018.



622. Feedback from various countries that have requested MLA from Albania (not exclusively in ML/TF cases) generally indicates an appropriate level of cooperation and good relationship between Albanian and counterpart authorities, although some countries made reference to problems about the timeliness of the Albanian responses in which case the execution times ranged from 6 to 18 months. However, other countries reported of execution times from 3 to 4 months and about having generally smooth cooperation with Albania and the evaluators were also made aware of exceptionally fast and effective execution of foreign requests too (see below).

623. No cases were reported where extradition (either generally or in relation to ML/TF) was refused because of the nationality of the individual and thus there is no practice in domestic prosecution of such cases.

624. According to authorities there have been no cases where Albanian nationals were extradited to other countries on the basis of specific bilateral treaties (such as the one with the United States).

625. The regime for sending and receiving requests for MLA is centralised and, as far as the execution of foreign letters rogatory is concerned, it is admittedly too complex. As it is discussed under Recommendation 37, this regime might involve as many authorities as the MoJ, the GPO, the competent local PO and the competent court. Even if the applicable legislation (consisting of the MLA Law and the CPC) provides for relatively strict deadlines for all stages, the complexity of the procedure would easily lead to delays even if all deadlines are kept.

626. Case management system (CMS) for MLA issues has only been installed within the GOP but not yet in the MoJ where the lack of such a system has created difficulties in processing data in a statistical sense (see also Criterion 37.2)

627. Although a CMS for ML issues is planned to be established also in the MoJ in the near future, the two systems will operate separately which appears to be counterproductive. In general, there is no specific mechanism available to prioritise MLA requests.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

628. As it is discussed under IO7 a significant proportion of ML offences subject to investigation or prosecution in Albania are related to foreign predicate crimes. However, whereas it is obvious that the criminal origin of the proceeds needs to be adequately proven even if the predicate offence was committed abroad, the assessment team noted a remarkably high level of prosecutorial reliance or over-reliance on MLA (formal letters rogatory) in obtaining evidence on the criminal origin. Some of the authorities met during the on-site visit implied that formal MLA requests are applied in such cases with an apparent automatism even if it would not always be necessary or could be substituted by circumstantial evidence.

#### Case example 12: Optimal use of MLA

Albanian authorities requested MLA in relation to the Italian citizen who transferred money from Slovenia to Albania providing a false declaration as to the source of the assets (see more in details under IO7). In this case Albanian authorities requested MLA only to the extent that was necessary to refute the false claims of the defendant (ie. to prove he actually had no property or business in Germany so the assets could not have been obtained by selling a chain of grocery stores in Germany as he had declared) instead of identifying the actual criminal offence the money had been derived from.

629. Dependence on obtaining evidence from abroad is, however, effectively counterbalanced by legislation providing that data, documents etc. obtained as a result of bilateral cooperation between counterpart authorities such as Police, GDC or Tax authorities as well as bilateral treaties for the facilitation of the implementation of MLA treaties (see below) can directly be admitted as evidence before the court, without obtaining the same by use of a subsequent letter rogatory, on the condition that the respective bilateral cooperation is based on an agreement that was ratified by the Parliament

in the form of a law<sup>96</sup>. Albanian authorities provided the evaluators with an exhaustive list of such legally ratified agreements as potential vehicles to obtain admissible evidence even at early stages of a criminal procedure so that no formal request is needed to be sent out.

Case example 13: Use of evidence obtained on the basis of a bilateral agreement<sup>97</sup>

An Italian citizen was found at Tirana (Rinas) Airport carrying 350.000EUR in cash while attempting to cross the border to fly to Italy. An investigation was initiated both for ML and failure to declare money in exit of the territory of Albania (Art. 287 and Art. 179/a CC) together with a parallel financial investigation in which the money was seized by a court order. The Italian authorities were informed about the facts and the competent Italian PO initiated a criminal investigation for tax evasion against the individual. After discussion by phone and via email between Albanian and Italian prosecutorial authorities, the latter submitted, by direct email, a MLA request based on the Albanian-Italian bilateral agreement for the facilitation of the implementation of the European Conventions on Extradition and MLA (ratified by Law No. 9871 of 11.02.2008). Upon receiving the request, the competent Albanian PO made immediate steps for its execution and within a week, the Italian authorities were provided, via email from counterpart to counterpart, with copies of the investigation files, bank records, seized documents, information about the seized money and other relevant facts pertinent to the case. At the same time, the Italian counterpart authority provided information about the past activities and records of the suspect in Italy for the purpose of identifying possible underlying predicate offences.

630. As indicated in NRA, technical deficiencies of MLA requests, such as requests being sent out too late with inadequate identification of the requested investigative assistance or lack of proper explanation, have increased the delay of the execution in recent ML cases. In addition, in some cases sending formal MLA request could be avoided or substituted. The assessment team received feedback from a certain country according to which most of the MLA requests this country had received from Albania were deficient - containing insufficient information to link evidence sought to the alleged offences, relevance of the evidence sought was unclear or no background on the investigation was provided etc. As a result, less than half of the respective MLA requests could be executed completely or partially.

631. Factors mentioned above have resulted in higher number of outgoing ML-related requests since 2014. Whereas the respective figures were negligible until 2014, there has since been a rapid increase with remarkably long execution times:

- 45 MLA requests out of 257 in 2014 were related to ML;
- 61 out of 308 in 2015;
- and 98 out of 313 in 2016 that is, one-third of all cases (the ratio was only one-fifth in 2014). It needs to note that subsequent to the onsite visit, the Albanian authorities provided different statistical data on outgoing requests in general (a total of 748 in 2015 and 574 in 2016) with no explanation to the discrepancy.

632. Other proceeds-generating crimes represented in the outgoing MLA requests include various trafficking offences and crimes against property (fraud). As for requests related to TF or terrorism (T) the figures are rather negligible:

- 2014: MLA/2 (terrorism-related) extradition/0
- 2015: MLA/2+5 (TF + terrorism) extradition/1 (TF)
- 2016: MLA/0 extradition/1 (TF)

<sup>96</sup>Art. 116 of the Albanian Constitution provides that bi/multilateral treaties and agreements ratified by the Parliament have priority or prevail upon domestic legislation (including the CC and CPC). Because of this, whatever is foreseen by such agreements and treaties have priority over the provisions of CPC and therefore information, documents and data received using such instruments can be used and admitted as evidence before the court.

<sup>97</sup> Case number 95XX/2017 at Tirana District Prosecution Office

633. According to the GPO statistics, most of the cases (including ML cases) where MLA was requested were conducted at district POs in major cities of Albania (typically in Tirana, Durrës, Shkodër) as financial-economic hubs where the majority of the population live as well as by the SCPO. The countries most frequently asked for legal assistance were neighbouring EU member states such as Italy and Greece.

634. A large number of outgoing legal requests (including but not limited to ML/TF related cases) were based, wholly or partly, on the 1990 and 2005 CoE Conventions for Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism (ETS No. 141 and CETS No. 198). Throughout the years from 2014 to 2016 the number of such requests doubled (from 65 to 131) and the trend remained the same in 2017. Countries most frequently addressed by such requests are Italy and Greece, just as in case of MLA requests in general (see above).

635. No statistics were available to the assessment team to estimate in how many cases foreign assistance was requested or provided in relation of freezing/seizing assets or to execute confiscation orders. No such cases were reported to the assessment team although there was at least one case where the repatriation of assets frozen abroad was successfully requested, on the basis of CoE Convention CETS 198, from a foreign country (see below). There are no legal instruments or practice for sharing confiscated assets with other countries.

**Case example 14: Successful identification of assets abroad**

An Albanian citizen “VA” was convicted in 2002 for large scale pyramid scheme frauds committed in the 1990s. Years later, in 2010 the GDPML was informed by the Hungarian FIU about a suspicious transaction involving the attempted transfer of 327.000 USD from a Hungarian bank account. The bank account had originally been opened by “VA” back in 1996 time when he deposited there 328.000 USD. The Hungarian FIU also detected that at the same time, another Albanian citizen “AA” (the son of “VA”) opened another bank account at the same Hungarian bank where he deposited 647.000 USD and these funds (altogether 975.000 USD) were left there as dormant deposits for 14 years until “VA” attempted to obtain some of those assets. Because of the suspicion that the funds have actually been proceeds of the pyramid scheme fraud committed by “VA” the Albanian authorities initiated a ML investigation in which a letter rogatory was submitted to the Hungarian authorities for the seizure of the amounts on the two bank accounts. “VA” and “AA” were found guilty for ML<sup>98</sup> and, as part of the sentence, the Albanian court also ordered the confiscation of the 975.000 USD which, however, has yet to be executed via MLA.

*Seeking and providing other forms of international cooperation for AML/CFT purposes*

The GDPML

636. The GDPML actively exchanges information on ML/TF with foreign counterparts both spontaneously and upon request, which is further facilitated by the 44 MoUs signed with foreign FIUs, but the lack of a MoU is not an impediment for the exchange.

Table 33: Statistics of information exchange between the GDPML and foreign counterparts during the period 2012 – 2017

International cooperation	2011	2012	2013	2014	2015	2016	30.04.2017
<b>INCOMING REQUESTS</b>							
Foreign requests received by the FIU	45	35	50	52	64	55	18
Foreign requests executed by the	37	11	18	42	46	34	17

<sup>98</sup> Convicted by verdicts of Tirana District Court nr. 1000 (01.04.2016) and nr. 4023 (18.11.2015) respectively.

FIU							
Foreign requests refused by the FIU	0	0	0	0	0	0	0
Spontaneous sharing of information received by the FIU	25	15	6	10	14	20	4
TOTAL (incoming requests and information)	70	50	56	62	78	75	22
Average number of days to respond to requests from foreign FIUs	30	30-45	30	30	30	30	30
Refusal grounds applied	-	-	-	-	-	-	-
<b>OUTGOING REQUESTS</b>							
Requests sent by the FIU	38	13	18	45	52	37	26
Spontaneous sharing of information sent by the FIU	17	25	17	21	5	6	4
TOTAL(outgoing requests and information)	55	38	35	66	57	43	30

637. The GDPML is a member of the Egmont Group and exchanges information through the ESW. Regarding the non-members of the Egmont Group, the GDPML has exchanged information with the Financial Intelligence Centre of Kosovo (FIC Kosovo), before it became a member of Egmont Group, and the exchange of information with FIC Kosovo was done using the GoAML platform which is encrypted.

638. In addition, a number of safeguards for data protection and confidentiality were presented by FIC Kosovo in relation to the exchange of information, including both technical and legal measures.

639. On the other hand, the international cooperation with FIU of Kosovo was mentioned during the on-site several times as very important and productive (including the case when the terrorist plot for the games was interrupted). Bearing in mind that, the geographical position of Albania and the international character of the ML and TF, the good and effective cooperation with that country is considered by the evaluators more than necessary and the fact that these requests were filed and the received requests executed by GDPML is assessed as a positive one.

640. The statistics of information exchange between the GDPML and the FIC during the period 2012 – September 2017 shows that 9 requests and 7 spontaneous disseminations were sent by the GDPML, and 17 requests and 3 spontaneous disseminations were received by the GDPML.

641. No requests for freezing of funds from a foreign FIU were received in the last years. However, in couple of cases the GDPML has used its power to request freezing from foreign partners. Although the funds in the presented practical example were withdrawn very quickly and were not frozen, the following case is a good example of instantaneous actions undertaken by the GDPML and the use of the international cooperation to prevent laundering of the proceeds acquired from fraud.

**Case example 15: GDPLM cooperation - Computer fraud investigation**

The analysis of a computer fraud case established that 838.323,83EUR were transferred from the account of a company in Albania to Hungary by unidentified persons. The GDPML requested information from FIU Hungary about the person who opened this account, any suspicious activity reported to Hungarian FIU about the account, and to freeze the transaction. The Hungarian FIU answered that the funds are not available. 700000EUR were further transfer from the bank account to another Hungarian bank account and later were withdrawn in cash. The remaining part of the incoming funds (approx. 138000EUR) was withdrawn in cash in separate operations. ML investigation was launched and both bank accounts were frozen by the Hungarian Police.

642. There are no legal provisions empowering the GDPML to exchange information with non-counterparts. According to the authorities, no requests from non-counterparts have been received by the GDPML.

643. The GDPML actively requests information from foreign FIUs. This is done both to support the analytical functions of the GDPML itself, and upon request of the LEAs to support ML/TF investigations, although the statistics provided are insufficient to conclude on the balance in the use of the GDPML's powers to request information internationally and the use of the LEAs' own channels, which is further commented below.

644. Despite of the lack of explicit legal provision empowering the GDPML to exchange information on associated predicate offences, according to authorities such information is actively exchanged, primarily to support the investigation of OC, drug trafficking, human trafficking, corruption. In all such cases the potential link to ML of the proceeds is indicated, which according to the authorities makes it impossible to separate the laundering of the proceeds from the predicate offence. Examples have been provided to the assessment team with regard to exchange of information for crimes like drug trafficking, corruption, cybercrime.

645. The GDPML requests both available and accessible information to its foreign counterparts. Besides any SARs, CTRs and other information received by other FIUs, the GDPML requests also information held by other foreign authorities and also by the REs, primarily BO information and account movements. This information is used for the GDPML's analyses and by the LEAs also in the pre-investigative phase of ML and associated predicate offences. In all cases, prior dissemination consent from the foreign counterpart is requested.

646. Although there are no written rules for the prioritisation of foreign requests and spontaneous disseminations, it has been established that there is a long-standing practice producing good results. Any request/spontaneous dissemination is first checked for any link to an opened case and if needed channelled to the opened case. This practice proved to be efficient in terms of avoiding overlapping, timesaving and more efficient use of the information available and accessible. Incoming requests which are related to a case are transferred to the analyst working on the case, and others are handled by the specialists in charge of international exchange in the Legal and Foreign Relations Directorate. At the time of the on-site visit there were 4 specialists in the Directorate and one more was in the process of recruitment. Since this Directorate is also engaged in the processing of requests from LEAs which are not related to a case opened within the GDPML and as it is commented in IO6 the number of these requests is large, the assessment team has some concerns with regard to the adequacy of the human resources.

647. According to authorities requests are usually executed within 30 days. Exact time necessary for the execution of the request varies depending on the type of information requested. Interim replies are also sent if the additionally requested information is large in volume and if the request is urgent.

Nevertheless, some cases of delays in the provision of information by the GDPML to its foreign counterparts have been reported to the assessment team by other countries.

648. The GDPML is authorised to use the full range of powers under the AML/CFT law in order to obtain information requested by its foreign counterparts. All databases accessed for the analysis of SARs, are also used for the processing of international requests and spontaneous disseminations and issues standing for the access to information and its timeliness in IO6 are also relevant for this immediate outcome. Additional information from other state authorities and REs is also requested and the 15 days' timeframe for the answers is sufficient according to GDPML. Information requested from the ASP is usually provided within 15-30 days, which might lead to a delay in the international exchange. Concerns about the lack of explicit legal provisions empowering the GDPML to set shorter timeframes when requesting information from REs and state authorities, which is further commented in IO6, is also valid for the international cooperation.

649. No undue limitations are in place for the provision of international cooperation. Open investigation itself is not an impediment for the provision of international cooperation and in such cases the GDPML co-ordinates with prosecutors.

650. Although there is no explicit legal requirement for the GDPML to send feedbacks to foreign FIUs, the GDPML confirmed this is done on important cases only and when requested by the partner.

651. The GDPML actively sends spontaneous disclosures to its foreign counterparts and also uses the information from received disclosures for referrals to LEAs.

Table 34: Use of spontaneous disclosures by the GDPML

Year	Spontaneous disclosures to foreign FIUs	Spontaneous disclosures from foreign FIUs	Referrals based on spontaneous disclosures from foreign FIUs		
			Prosecution	ASP	Other
2012	25	15	1	4	-
2013	17	6	4	5	-
2014	21	10	8	6	1
2015	5	15	5	7	1
2016	6	21	3	5	-
2017 (Jan-Sept)	10	13	-	2	-

**Case example 16: GDPML cooperation - ML conviction**

The GDPML received information from its counterparts in a EU country that Albanian citizen 'A' had a 'sleeping' bank account for more than 10 years, with a sum of 1250000USD, which he wanted to transfer to a country known as a 'fiscal paradise'. The GDPML conducted checks which established that this citizen had previously been convicted for fraud and the assets derived from the offense were confiscated. The GDPML immediately requested its counterparts to temporarily block funds and seize the amount. The case was referred to the Prosecutor, criminal proceeding was registered and the person was convicted for ML. The request of Albanian Prosecutor's Office for the return of the funds has been accepted by EU country.

**Case example 17: GDPML cooperation - ML conviction**

A non-resident citizen 'L' (citizen of an EU country) deposited the amount of 500,000EUR in a EU country bank, other than his country of origin. The declared source of this amount was the sale of several shops owned by him in a third EU state. Citizen 'L' made 2 transfers within the week, with the description "return for non-realisation of investment". Both transfers had the same beneficiary, his compatriot 'F', who had a permanent residence in Albania where he had opened several businesses. Citizen 'F' transferred received funds from 'L' to an 'A' company in Albania (whose sole partner was the 'L' citizen) holding in his personal account the amount of 10000EUR. 60000EUR (funds received from 'L') was immediately withdrawn from the company 'A' account and 400000EUR were sent to country of origin of 'L'. RE did not allow transfers to the EU and notified the GDPML, which found after cooperating with its foreign counterparts that the transferred amount had been deposited in all banknotes of 50EUR. In addition, all individuals involved in these transactions had been recognised for years by LEAs in the country of origin where they were investigated and convicted of a series of financial crimes committed in cooperation with each other and other persons. Based on this information, the case was sent to the LEAs. The funds were seized and the case was registered in court. Citizens 'L' and 'F' were convicted for ML<sup>99</sup>.

Based on the information received through rogatory letter it was proved that "L" never owned properties in that country and also he had a long criminal activity in another EU member state (fraud, forgery etc). At the end Citizen 'L' was convicted with 7 years of imprisonment for ML and the amount of 500.000EUR was confiscated<sup>100</sup>. In the same case Citizen 'F' was also convicted for ML as a stand-alone ML case.

#### Case example 18: GDPML cooperation – initiation of criminal proceedings

In the framework of international cooperation the GDPML was informed by a foreign counterpart about 2 Albanian citizens who are part of a criminal group of narcotics trafficking. GDPML gathered the information on these 2 Albanian citizens and their family members from the GDPML's databases, from the bank and the CORIP regarding their accounts and assets. Criminal records were also provided by the Police for one of the persons. Following the comprehensive analysis of the information collected, the GDPML informed the counterparts about the circulation of high amounts in the banking system, assets on their behalf and dissemination consent was requested. The information was referred to LEAs and feedback was received that criminal proceedings were launched by the Prosecution.

652. The security of the submission and storage of the information is guaranteed by the use of the ESW, including separate computer and relevant security measures are in place. The security measures include periodic back-up of the sensitive data by the GDPML's, surveillance systems, normal operation of computer hardware, protection from the cyber risks as well as the unauthorised access to information, and enhancing of staff capabilities (meetings and training seminars organised by the domestic institutions or international projects).

#### LEAs

653. The ASP actively exchanges information with foreign counterparts on the basis of bilateral or multilateral agreements and/or through the EUROPOL and INTERPOL. The receipt, management, coordination and execution of requests is done by the National Office INTERPOL Tirana, Tirana National Bureau Europol, liaison officers seconded in Albania, Albanian officers seconded to other countries, CARIN network (two contact points, one assigned at the State Police and one at the Prosecution). The internationally exchanged information by the ASP is channelled through the INTEPOL, EUROPOL, SELEC and CARIN communication channels and the exchange follows the rules of the respective organisations, including the requirements for protection of the information.

<sup>99</sup> Decision no 986 dated 16.7. 2013 (First Instance and Court of Appeal - Tirana)

<sup>100</sup> This decision is final and confirmed also by the Court of Appeal with Decision no 326 dated 02.04.2014.

Table 34: Statistics on the number of incoming and outgoing requests received/sent by the LEAs.

International cooperation	2011		2012		2013		2014		2015		2016		2017	
	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF
<b>INCOMING REQUESTS</b>														
Foreign requests received	50		65		70		109		123		128			
Average time of execution (days)							(within 24h, max 30 days)							
<b>OUTGOING REQUESTS</b>														
Number of requests sent	45		58		62		123		163		228			

654. The number of the requests sent on ML cases show that the international police cooperation is widely used to support ML investigations but no requests have been received or sent on TF.

655. In addition, the assessment team was informed by the ASP that during the period 2012 – 2017 it has received 378 requests by foreign authorities and has sent 1 553 requests as shown in the table below. The requested information is mainly identity identification, assets search, identification of BO, criminal acts such as international drug trafficking.

Table 35: Requests received/sent over 2012-2017

Years	Received requests	Sent requests	Total number
2012	10	35	45
2013	1	13	14
2014	35	88	123
2015	95	272	367
2016	112	547	659
2017 (Jan - Sept)	125	598	723

656.No written rules are in place for the prioritisation of the execution of international requests. The requests are executed according to the specified urgency and at the earliest convenience and according to the authorities the average time for response is 30 days.

657.For the execution of the received requests, the ASP can use all its powers to access information directly and indirectly through written requests to state authorities or private sector. In this regard possible issues related to the guarantees for timely provision of information commented in IO6 are also relevant for this immediate outcome. The information on BO and financial information is requested mainly through the GDPML and not through the police channels for exchange of information. There are no undue limitations for the provision of international cooperation by the ASP. The assessment team has not been informed on any refusals for the provision of the requested



information made/received by the ASP. Safeguards are in place for the protection and confidentiality of the information received through the international exchange (see also R.40).

658. There are no separate statistics on the number of cases of launched investigations triggered by international requests. In the case of police indications, the stinging includes all cases initiated from sources, confidentiality, intelligence network, information from other structures within the Albanian country, from open sources, as well as from homologues and non-homologues. The main sources of information from international channels are revenues from INTERPOL, Europol, SELEC, Police Liaison Officers, CARIN Network, Egmont Group (through FIU), counterpart structures of the region countries based on bilateral and multilateral agreements, non-international counterparts such as the British Customs Service, FRONTEX, etc.

659. According to the authorities, cases of referrals of criminal offenses and financial investigations with indications from the channels for the international exchange of police information are numerous, and mainly joint investigations have been conducted with Germany, the Netherlands, Greece, France, England, Italy, Belgium, etc. from joint operations are also coordinated by Europol.

660. Some case examples illustrating the launching of criminal investigations based on information received through the international cooperation have been provided to evaluators (see the example below and IO6 Case example 2).

**Case example 19: LEA cooperation - the Kleber Analysis Project**

In August 2013, the ASP was informed by INTERPOL Athens about the criminal investigations by the Greek police regarding the citizen A.T. from Tirana, who lived in a hotel in Athens and had rented a flat. A considerable amount of counterfeit and forgery documents such as Schengen visas, identity cards, passports, photographs, names of different persons, etc. were seized during the prosecution.<sup>101</sup> In joint investigation with experts from other EU country police it was found that Schengen visas found in Athena were used to enter the Schengen area (such as: France, Germany, Belgium, Holland) from 17 countries in the Middle East and Asia. Criminal proceeding was registered and information was also sent to the Greek police investigating the case for ML, counterfeiting, and finding criminal assets. In addition, financial investigations were carried out on assets of A.T. in Albania. In July 2014 a joint consultative meeting was held on this case at Europol The Hague between the participating parties Albania, Greece, Germany, France, Spain and Belgium. This international operation called "Workshop" has now transferred to the Kleber Analysis Project (AP Kleber) coordinated by the Operations Department at Europol, The Hague.

661. According to the authorities, the Tax Administration cooperates with international organisations such as IOTA, OECD, CEF, etc. in the areas of fiscal policy, tax administration, international taxation, for the negotiation and implementation of double taxation avoidance agreements, for international accounting standards, for tax audits of multinational companies, for reorganisation of companies, for price transfer etc. There are no official statistics regarding the international requests sent/received by the GDT in relation with its investigative functions, but some case examples have been presented to the assessment team which however contain some sensitive information.

**Supervisory Authorities**

662. The BoA liaises with supervisory authorities in other jurisdictions to obtain information on the business reputation of proposed administrators in banks (see table below). In addition to outgoing requests, the BoA received 18 requests related to fit and proper checks from foreign supervisory authorities from 2012 to 2016.

Year	No of Requests	Regulatory Authority
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<sup>101</sup> 9000 counterfeit and forged documents, 25 050 euro, one laptop, 3 mobile phones, evidence of direction of Albanian and Italian vehicles on behalf of A. T, etc.)

2013	6	National Bank of Bulgaria (2 requests) National Bank of Serbia Banking Agency of the federation of Bosnia and Herzegovina, National Bank of Macedonia, Banking Regulation and Supervision Agency Turkey
2014	3	National Bank of Ukraine National Bank of Serbia Bank Authority of Kosovo
2015	5	Central Bank of Cyprus Banking Agency of the Federation of Bosnia and Herzegovina (2 request) National Bank of Macedonia National Bank of Romania
2016	2	National Bank of Slovenia Banking Agency of the Federation of Bosnia and Herzegovina

663. When a foreign bank submits an application requesting a qualifying holding in an Albania bank, the BoA requires the foreign bank to submit the consent of its supervisory authority as part of the licensing process. Five cases were provided by the BoA to illustrate that consent was provided from the foreign supervisor when there was a change in qualifying holding to a foreign bank. However, in cases where the direct shareholder requesting the qualifying holding is not a bank but is owned by a bank (indirect shareholder) the BoA did not require the same information (i.e, a holding company directly owned by a foreign bank). Additionally, it is not clear if this requirement extends beyond banks to other foreign FIs.

664. From the 4th round MER, the BoA initiated a MoU process with authorities in two EU countries that have several subsidiaries located in Albania (France, Austria). However, the MoU's were not finalised in a timely manner and now, with the introduction of the Single Supervisory Mechanism, the BoA is in the process of signing a MoU with the ECB. While the BoA has participated with the ECB in a joint on-site supervision of an EU parent bank with a subsidiary in Albania, it did not include AML/CFT aspects in the ECB joint inspection. The BoA should ensure they have proper mechanisms in place to exchange information with supervisors with dedicated responsibility for AML/CFT supervision (not limited to ECB which is focused on prudential supervision).

665. The FSA is a signatory to the multilateral IOSCO MoU and has provided information to a foreign supervisor under this mechanism (bilateral agreements between countries that are signatories are not required), however it is unclear if AML/CFT information was requested.

666. In cases where the FSA has concerns regarding the integrity of a foreign shareholder or BO, the FSA liaises with the foreign supervisor to obtain an opinion on their standing. During the review of a licence for an investment management company with a controlling shareholder (51%) that is operating and licenced in FYROM, the FSA exchanged information with Macedonian authorities related to "company performance".

667. In order to obtain more knowledge on product risk, the FSA is working with SECO to better understand risks related to online brokerage platforms and to obtain advice on a new Law on Securities (to be completed in 2019). In 2016, the FSA signed agreements with the Swiss and Slovenian supervisors to exchange information on supervision of the insurance and investment fund market.

668. Both the BoA and FSA have several MoUs in place with foreign supervisors (central banks), however the exchange of information regarding AML/CFT supervision and inspections seems limited and no specific examples were provided to the assessment team.

*International exchange of basic and beneficial ownership information of legal persons and arrangements*

669. The requirement to maintain and hold BO data falls upon the REs under the AML law. Evaluators were satisfied that the FI, NBFIs and most DNFPs sectors interviewed showed high levels of understanding of how to obtain sufficient data from LEs, including complex structures to enable them to accurately obtain meaningful and accurate BO data where LEs are concerned (see IO4).

670. Access in a timely manner to BO data is severely hampered by the absence of either a central register of BOs, holding the BO data at the NBC or even because of a lack of bank account register.

671. LEAs confirmed that should there be a requirement to obtain BO data on an Albanian legal entity, and the subject did not appear on the NBC register, it would need to firstly, through the GDPML, ask each and every FIs if it held an account for the legal entity in question and if so then seek to obtain KYC records on the BO from the FI. This process was described as taking a few days to complete.

672. It was confirmed that requests from foreign FIUs seldom include requests for Basic or BO data. There are, on average, 50 FIU-to-FIU requests per annum in total. Where the request includes ownership data, this is generally satisfied with an extract from the NBC register as this generally includes the BO as the registered shareholder. The GDPML takes, on average, 30 days to respond to foreign FIU requests. No requests have been refused in the past 6 years.

#### *Overall Conclusions on Immediate Outcome 2*

673. Albania provides MLA with an appropriate level of cooperation, but the general legal mechanism for executing foreign MLA requests is too complex which might pose a major delaying factor contributing to issues of timeliness, together with the lack of systemic prioritisation of incoming MLA requests. However, direct cooperation between counterpart authorities and/or the use of bilateral agreements ratified by the Parliament to obtain admissible evidence at early stages are present and the evaluators encourage their application.

674. The NRA noted some serious issues with letters rogatory sent abroad (in terms of delays and incompleteness or other technical deficiencies. Although recent positive case examples were provided to demonstrate the opposite, the Albanian authorities should satisfy themselves that the deficiencies have generally been addressed.

675. Despite the serious technical deficiencies regarding the requirement of dual criminality generally in MLA matters (beyond coercive measures) no letter rogatory has been refused upon this basis and the authorities were reported to interpret dual criminality rules with adequate flexibility.

676. The international exchange of information on ML/TF and associated predicate offences between the GDPML and its foreign counterparts is executed through secure channels and measures to protect the information are in place. The information exchanged is used both for the GDPML analyses and referrals to the LEAs and also to support the LEAs investigations of ML, associated predicate offences and TF. When processing of international requests and spontaneous disseminations the GDPML has access to the whole range of information used for the analysis of SARs, and therefore issues raised under IO6 on timeliness are also applicable.

677. The LEAs actively exchange information with their foreign counterparts on ML, while there are no requests related to TF. The international police cooperation is conducted primarily via INTERPOL, EUROPOL, SELEC and CARIN channels and/or a number of liaison officers. Case examples have been mentioned during the interviews. The lack of specific statistics does not allow a conclusion to be made on the extent to which financial investigations have been launched on the basis of incoming requests received via the channels for international exchange of police information. The level of use on the international cooperation of GDT and GDC for their specific investigative functions cannot be assessed due to the lack of separate statistics on international requests and/or case examples.

678. Albania has achieved a moderate level of effectiveness with Immediate Outcome 2.

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the MER.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2011. This report is available from <https://www.coe.int/en/web/moneyval/jurisdictions/albania>

### *Recommendation 1 - Assessing Risks and applying a Risk-Based Approach*

3. These requirements were not part of the FATF Standards before 2012 and therefore were not assessed under the previous rounds.

4. *Criterion 1.1* – Albania is on the second iteration of its National ML/TF Risk Assessment process with the latest revision having been conducted in 2015 (an update of its 2012 NRA). Both the 2012 and 2015 NRA were multi-stakeholder processes led by the GDPML. Overall, the use of sources and assessment of risks appear reasonable, although there are areas which would have benefitted from more in-depth analysis, especially in relation to corruption, informal economy, TF risks and risks for abuse of legal persons (see IO.1).

5. The assessment of ML/TF risks in Albania has not been limited to the ML/TF NRA project, but has also taken place within typology and sectoral analyses of the GDPML and within the context of inter-sectoral strategies against crime. Most notably, the National Strategic Document ‘For the investigation of financial crimes 2009-2015’ (NSD) was based on (undocumented) analysis of risks posed by organised and financial crime activities, including the laundering process, and the capacity of state institutions to control these risks.

6. *Criterion 1.2* – Art. 22 (II) AML/CFT Law gives GDPML the authority to “periodically review the effectiveness and efficiency of the national systems for ML and TF” by requesting various data from other authorities. On this basis, the GDPML coordinated in both instances the NRA process, with the participation of other state bodies united in an IITWG. The 2012 and 2015 NRAs were submitted to the CCFML responsible for planning the directions of the general AML/CFT state policy (see further R.2). In 2017, a new Regulation for the functioning of the CCFML was approved, which sets out explicitly that the CCFML is responsible for the approval of the NRA and any related action plan (Art. 2(5) CCFML Regulation No. 1 dated 13.02.2017).

7. *Criterion 1.3* – Albania first undertook a NRA in 2012, which was updated in 2015. The 2015 NRA is based on data up to 2014. Albania is planning to update its ML/TF NRA in 2018 under a joint EU and CoE programme. Another separate TF NPO risk mapping exercise is also envisaged in 2017-2019 in the context of a CoE regional initiative.

8. *Criterion 1.4* – Both the 2012 and 2015 NRAs were disseminated to the authorities that have members in the CCFML, BoA, FSA, LEAs, GDT and GDC. The 2015 NRA was also communicated to the GSA, Military Intelligence Agency, Bank Association, Chambers of Notaries and Lawyers and Institute of Authorised Chartered Auditors. It was also sent to the commercial banks operating in Albania and the two main MVTs companies. The high-level findings of the NRA were published on the website of GDPML<sup>102</sup>. As a general approach, NRA findings are also shared by financial supervisors and the GDPML through trainings and in the context of inspections. Mechanisms to provide information on risk assessment results are thus in place. Nonetheless, they could be enhanced with regard to some of the sectors, in particular where AML/CFT trainings and inspections have so far only covered small numbers of entities.

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<sup>102</sup> [www1.fint.gov.al/al/statistika/vleresimi-i-riskut](http://www1.fint.gov.al/al/statistika/vleresimi-i-riskut)

9. *Criterion 1.5* – Following the NRAs, no action plan or other strategic document was prepared with measures to address the identified risks. The authorities consider that general strategies against organised and financial crime offer enough leverage to address the priorities identified in the NRAs. In particular, the 2009-2015 NSD included an Action Plan with 7 objectives (see c.1.1). Strategic objectives for authorities are currently set by several inter-sectoral strategies against OC, drug trafficking and terrorism with related Action Plans up until 2020. The BoA, FSA and GDPML have all recently adopted or enhanced their RBA to supervision. There are various other examples of initiatives that have been undertaken by competent authorities in recent years to address identified risks. However, the assessment team has some concerns over the extent to which existing strategies ensure that all identified ML risks, including more complex ones, are addressed by all relevant authorities. See further IO.1.

10. *Criterion 1.6* – Albania has not sought to dis-apply FATF Recommendations for lower risk categories. The exemptions which were identified in the 4<sup>th</sup> round MER as incompatible with the standards have been removed from the AML/CFT Law through amendments in 2012.

11. *Criterion 1.7* – Art. 7 of the AML/CFT Law requires REs to apply EDD measures to categories of business relationships, customers and transactions identified by them as higher risk in order to mitigate the risk of ML (there is no mention of TF). Art. 8 and 9 of the AML/CFT Law further stipulate distinct types of categories in relation to which REs must always undertake EDD (PEPs, NPOs, non-resident customers, countries with inadequate application of international standards, correspondent banks, trust-like customers, companies with nominee shareholders, complex transactions). These statutory requirements are not driven by the NRA findings but there is no conflict between them. Art. 6(14) of BoA Regulation No. 44 (see c.1.10 below) instructs REs supervised by BoA to take the findings of the NRA into account in their internal risk assessments.

12. *Criterion 1.8* – The AML/CFT Law does not allow simplified CDD.

13. *Criterion 1.9* – Supervisory authorities must supervise compliance by REs with AML/CFT requirements. This includes requirements to have internal policies in place for EDD, to implement EDD for certain high-risk categories identified by the law, and to identify additional relationships, customers and transactions which pose a higher risk (for ML but not for TF, see c.1.7) and to which EDD measures shall be applied (Chapter III AML/CFT Law).

14. *Criterion 1.10* – REs are required to draft and apply internal regulations and guidelines that take into account the ML/TF risks originating from customers or businesses (Art. 11(1) AML/CFT Law). There is no explicit obligation under the AML/CFT Law to *identify, assess and understand* the ML/TF risks, but this is implied in the aforementioned requirement.

(a) While not stated explicitly, it could be implied that REs must document their risk assessments to meet the requirements on internal regulations of Art. 11(1) AML/CFT Law.

(b) Guidelines issued by the BoA (Regulation No. 44, Annex 1) provide advice on the range of relevant risk factors that need to be taken into consideration in internal risk assessments (as well as in the assessment of the risk profile of a specific client). Guidelines issued by the FSA (Regulation No. 58, Annex 1 and 2) focus on risk assessment of specific clients and transactions, although the listed factors could also guide their supervised entities' assessment of overall exposure to risks. There is no relevant detailed guidance for DNFBPs.

(c) There is no specific requirement to keep up-to-date risk assessments. Authorities believe this to be implied in the various risk-sensitive obligations of the AML/CFT Law (e.g. Art. 4/1, 6, 8, 11).

(d) Supervisory authorities supervise the compliance of REs with the requirements of Art. 11 and may for that purpose demand the production of or access to information or documents (Art. 24(2) AML/CFT Law). REs supervised by BoA must send to BoA once a year an AML/CFT Questionnaire with a copy of its internal risk assessment (Regulation No. 44, Annex 3).

15. *Criterion 1.11* –

(a) Statutory provisions (Art. 11 AML/CFT Law) and Instructions of the Minister of Finance (No. 28 and 29 dated 31.12.2012), supplemented by Guidelines from the BoA and FSA, require REs to have adequate policies for AML/CFT risk mitigation and develop adequate compliance management procedures (including for customer's acceptance, EDD, record-keeping, reporting, compliance function, and training). Except for REs supervised by BoA (Annex 1, Regulation No. 44), it is not specified that these policies, controls and procedures must be approved by senior management. However, it is the view of authorities that corporate governance arrangements would require senior management approvals in practice for policies to be valid for the entity.

(b) REs must instruct the internal audit to check the entity's compliance with the obligations of the law and relevant by-laws (Art. 11 (1) point dh AML/CFT Law). It is not explicit that the entity shall monitor the implementation of internal procedures and enhance them if necessary.

(c) REs are required to take enhanced measures when higher ML risks are identified (see c.1.7). In order to implement EDD, they should require the physical presence of customers prior to establishing the business relationship or prior to executing transactions. It is not clear that this includes the cases when higher-risk factors are detected or come forth in the course of the transaction or business relationship. Moreover, there are no further clear indications in the law or guidelines of what enhanced measures should entail in case of identified risks outside of the high-risk categories stipulated by law (PEPs, etc.). The authorities believe that there is no need for further details as enhanced measures will be basically the same.

16. *Criterion 1.12* – The AML/CFT Law does not permit simplified CDD measures.

#### *Weighting and Conclusion*

19. Albanian authorities have conducted two ML/TF NRAs and several other contextual risk analyses. Various activities have been undertaken in recent years to mitigate risks in some of the vulnerable sectors. Resource allocation for supervision of REs is risk-based to some extent. In some areas however, risk assessments lack depth and have not led to risk-based allocation of resources and mitigating activities. The RBA extends to REs, although there are some gaps in obligations related to internal risk assessment and risk mitigation and management. The country has not sought to dis-apply FATF recommendations to any sector or activity and does not allow simplified measures in cases of perceived lower risk. **R.1 is rated LC.**

#### *Recommendation 2 - National Cooperation and Coordination*

20. Albania was previously rated LC in the 2011 MER for this recommendation (former R.31). Findings included the need to improve the effectiveness of the domestic co-ordination and cooperation mechanisms and to broaden the composition of the Coordination Committee.

21. *Criterion 2.1* – The Albanian authorities have established a number of tools to support the AML/CFT policy making processes within the jurisdiction. The CCFML is charged with the planning and general direction of policy in AML/CFT matters. The CCFML consists of participants of the highest level from a wide cross-section of stakeholder authorities and meets at least once a year. CCFML Regulation No. 1 dated 13.02.2017 governs its functioning, duties and responsibilities. The CCFML is assisted by an IITWG with senior operational representation, which meets approximately every 2 or 3 months.

22. As described under R.1 (c.1.5), no Action Plan or other strategic document was prepared following the NRAs on national AML/CFT policies to address the identified risks. The Albanian authorities have however prepared a number of strategies and action plans to deal with major predicate offences and related ML, which cover the identified risks to a large extent. The assessment team was not provided with sufficient evidence however to conclude that all of the key risks identified in the 2015 NRA are addressed in these strategies or through CCFML policies (see IO.1).

23. *Criterion 2.2* – Albania has passed a statutory provision (Art. 23 of the AML/CFT Law) under which the CCFML is given responsibility for planning the directions of the general state policy for

AML/CFT. In practice, the CCFML delegates most of the coordination of AML/CFT policies to the GDPML; and the GDPML also makes use of IITWG for policy coordination.

24. *Criterion 2.3* – A number of measures have been put into place by authorities to ensure cooperation and coordination for development and implementation of AML/CFT policies at policy-making and operational level.

25. The CCMLF is responsible for coordination of high-level policymaking. Art. 23 AML/CFT Law establishes its chair (the Prime Minister) and further composition (see Chapter 1). The General Director of the GDPML acts like a counsellor in the CCMLF meetings. The recommendation of the 4<sup>th</sup> round MER to broaden the composition to include the GDPML Director as a member and to add representatives from other supervisory bodies besides the BoA's Governor has not been implemented. Authorities advised that this is not deemed appropriate given the high-level representation in the Committee.

26. The IITWG chaired by the Director of the GDPML has been established to assist the CCFML in the performance of its functions and to study ML and TF typologies and techniques (Art. 23 AML/CFT Law). The IITWG has the obligation to draft and implement detailed programmes on actions and cooperation (Art. 6 CCFML Regulation No. 1/2017). Furthermore, an ad-hoc IITWG was established for the implementation of the NSD. Since the expiration of the NSD in 2015, the WG has continued its work albeit without former representatives from the GDT, GDC, AASCA, AFSA and CORIP.

27. Numerous other measures of cooperation are put in place to ensure implementation of AML measures. These include, but are not limited to:

- bilateral MoUs and bilateral and multilateral meetings of the GDPML with ASP, GPO, SIS, HIDAACI, GDC and GDT;
- LEA cooperation in the framework of Joint Investigation Units;
- legal basis for cooperation and information exchange on ML/TF between GDPML, GDC and GDT and between GDPML and supervisors (Art. 17, 18, 22(ç), 24(3) and (4) AML/CFT Law);
- formal agreements between ASP and GDT.

28. *Criterion 2.4* – The authorities advised that the same coordination mechanisms as discussed in c.2.3 above are used for dealing with PF. The provisions governing these mechanisms make no mention on PF issues. However, in practice the IITWG has been used to discuss the need for a national law implementing UN TFS on PF and to appoint the MFA as the competent authority. In the current absence of a national legal framework for PF TFS (see R.7), there is no legal basis for further coordination or cooperation on this issue.

29. The authorities further advised that the Albanian State Export Control Authority (AKSHE) is responsible for enforcing the state policy in the field of dual use goods, in cooperation with ministries and other state authorities. However, this authority does not have powers or mechanisms in the field of TFS against PF. The authorities advised that, if any suspicion of PF would occur during AKSHE's administrative investigations during the export licensing procedure, AKSHE can report them to the GDMLP. AKSHE always requests information from the GDMLP on potential suspicious activities related to a company, legal representative or their bank accounts, before granting a licence. This is done on the basis of CoM Decisions<sup>103</sup> which allow the AKSHE to cooperate with any other authority for the purposes of export control. GDPML and AKSHE signed a bilateral MoU on 12 October 2017 to further govern cooperation, including in the framework of respecting commitments stemming from international standards on non-proliferation.

### *Weighting and Conclusion*

30. A high-level Committee, composed of most of the relevant stakeholders, is charged with coordinating the state policy in the fight against ML and TF. National coordination and cooperation in

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<sup>103</sup> CoM Decisions No. 43, dated 16.01.2008 No. 106, dated 9.2.2011.

AML/CFT policy implementation is further provided by numerous mechanisms. No concrete AML/CFT strategy or action plan exists, but AML/CFT policies derive to some extent from broader strategies against financial and OC. There is no coordination mechanism in place to combat PF although some steps have already been taken to address that gap. **R.2 is rated LC.**

### *Recommendation 3 - Money laundering offence*

31. Albania was rated PC in the 2011 MER for the former R.1 and LC for former R.2. Technical deficiencies identified in R.1 concerned the incomplete coverage of the designated predicate offences (insider trading and market manipulation were not criminalised) and of ancillary conduct in all instances. Further deficiencies were identified in relation to one of the criminal offences that together provided for ML at that time (Art. 287 and 287/b CC) as the ML offence under Art. 287/b did not cover self-laundering and it was limited to stolen goods. It was also unclear whether the ML offences extended to indirect proceeds. Since the 4<sup>th</sup> round MER, the respective CC articles have significantly been amended, and as a result, most of the issues previously identified have been adequately addressed.

32. *Criterion 3.1* – The offence in Art. 287 CC in its present, amended form now sufficiently incorporates most required physical elements of ML as it criminalises, inter alia, acquisition, possession and use of both third-party and own proceeds and hence it is now considered the one and only ML offence in Albanian law (see also under Criterion 3.7 below). However, the purpose requirement for the conversion and transfer of property offence in Art. 287 (1) is limited to concealing or disguising the illicit origin of the property. It does not extend to the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action. While this is a relatively minor shortcoming, it is inconsistent with Art. 6(1)(a)(i) of the Palermo Convention and Art. 3(1)(b)(i) of the Vienna Convention.

33. *Criterion 3.2* – Albania follows an all-crime approach, thus all designated categories of offences are predicate crimes to ML, including insider trading and market manipulation. These are now criminalised under Art. 143/a paragraphs [1] to [7] of the CC and are considered as potential predicate offences to ML. Criminal offences and criminal activities are equally predicates for ML. Whereas the latter is not expressly defined by criminal legislation, it is considered to be a broader term than “criminal offence” as it encompasses any illegal behaviour including activities that cannot (yet) be subsumed under a concrete provision of the CC and/or the perpetrator of which has not yet been identified.

34. *Criterion 3.3* – Albania does not apply a threshold approach (all criminal offences may be predicate offences to ML).

35. *Criterion 3.4* – Despite a recommendation in the 4<sup>th</sup> round MER to clarify that ML extends to property derived indirectly from a crime, Art. 287 CC still does not specify that the ML offence can be committed in respect of property derived indirectly from a criminal offence or criminal activity. The authorities have explained that the ML offence should be read in conjunction with Art. 36 (1) (b) CC, which includes indirect proceeds in the list of assets to be confiscated upon conviction. This approach, however, is not convincing and cannot be accepted in the absence of relevant practice and/or case law to corroborate this interpretation.

36. *Criterion 3.5* – Art. 287 (3) paragraphs (a) (b) and (c) of CC as amended now expressly clarify that a previous conviction for the predicate offence is not necessary.

37. *Criterion 3.6* – This expressly provided for under Art. 287 (3) paragraph (d) of the CC as amended.

38. *Criterion 3.7* – Self-laundering is criminalised under paragraph (c) of Art. 287 (3) CC as amended. On the other hand, Art. 287/b CC, which was criticised in the 4<sup>th</sup> round MER for not encompassing self-laundering, is still deficient in this respect. Nonetheless, Art. 287 of the CC as amended can now be considered as the principal ML offence as it covers all the relevant aspects required by the standard (whereas at the time of the 4<sup>th</sup> round MER acquisition-type conducts were only covered by



Art. 287/b). In the present context, Art. 287/b is more of a classic receiving-type criminal offence than ML and so it is considered by practitioners. Despite the recent amendments, there might still be conducts that could be subsumed under both offences (e.g. Art. 287 para [1]c vs. Art. 287/b para [1]) but in case of such overlaps, the commonly accepted interpretation of the law<sup>104</sup> requires that prosecutors give precedence to the ML offence with a significantly more severe punishment in Art. 287 CC.

39. *Criterion 3.8* – Expressly provided for under the last paragraph of Art. 287 CC as amended.

40. *Criterion 3.9* – At the time of the 4<sup>th</sup> round MER, this criterion was already found to be met as the sanctioning regime was considered to be proportionate and dissuasive. Since the previous report, the range of criminal sanctions available for the ML offences under Art. 287 and Art. 287/b CC has been amended which doubtlessly increased the dissuasiveness of the sanctioning regime (by the introduction of more severe terms of imprisonment<sup>105</sup>) but it might also have restricted its proportionality by eliminating the applicability of pecuniary punishment (fine) in addition to imprisonment. This amendment took place in 2013 by a law<sup>106</sup> to implement a Constitutional Court decision of 2012<sup>107</sup> according to which provisions of the Special Part of the CC that provide for two principal punishments are unconstitutional. However, the fines, which appear to have been regularly imposed as additional punishment for ML offences, did contribute to a more proportionate sanctioning regime. Furthermore, this principle does not seem to apply to a number of criminal offences – e.g. the TF offence in Art. 230/b CC which is still punishable by imprisonment and fine.

41. *Criterion 3.10* – This criterion was met at the time of the 4<sup>th</sup> round MER and the legal framework has not changed since. Legal persons are subject to criminal liability and sanctions for all offences in CC, including ML and all the FATF designated categories of offences. The Legal Persons Liability Law defines rules on liability, criminal proceedings, and types of penalties for legal persons that commit criminal offences. A legal person is liable for criminal offences committed on behalf of or for its benefits or by its subsidiaries or representatives and by persons who represent, lead or administer the legal person. Under Art. 2 of the Legal Persons Liability Law civil and trade law also applies to legal persons, and administrative sanctions may be imposed. Accordingly, parallel proceedings against legal persons are possible.

42. *Criterion 3.11* – Art. 287(1)(dh)<sup>108</sup> CC as amended and the inclusion of “assistance” in this subparagraph, is commonly accepted to cover all required ancillary conducts including aiding, abetting and facilitating. Nonetheless, this assertion will depend on whether and to what extent this broad interpretation of “assistance” is generally acknowledged by practitioners or whether it is corroborated by case law, which has not been demonstrated.

#### *Weighting and Conclusion*

43. Overall, the amendments to Art. 287 CC (and also to Art. 287/b) have brought the offence(s) in line with the international standards. There are still some deficiencies in the coverage of one of the purposive elements. There is also some uncertainty concerning the coverage of indirect proceeds and the actual scope of “assistance” as an ancillary offence. Abandonment of fine as additional punishment seems to limit the proportionality of the sanctioning regime. **R.3 is rated LC.**

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<sup>104</sup> This differentiation has been subject of annual trainings at the School of Magistrates and also supported by case law.

<sup>105</sup> The sanction under Art. 287 for standard ML is 5 to 10 years of imprisonment. Where the offence has been committed in the exercise of a professional activity, in complicity, or more than once, it is punished by imprisonment of 7 to 15 years. Where the offence has caused grave consequences, it is punished by imprisonment of no less than 15 years. Under Art. 287/b of the CC, ML is punished with a prison sentence ranging between 6 months and 3 years.

<sup>106</sup> Law No. 144 of 02.05.2013

<sup>107</sup> Decision No. 47 of 26.07.2012

<sup>108</sup> Advising, assisting, inciting or making a public call for the commission of any of the offences defined above (the ML offence).

#### *Recommendation 4 - Confiscation and provisional measures*

44. Albania was rated LC on the former R. 3 due to the cascading effects of the deficiencies in the criminalisation of ML of TF and to issues related to effectiveness. The legal framework has not been amended in the meantime.

#### 45. *Criterion 4.1 –*

*(a)(b) and (d)* Criminal confiscation (Art. 36 CC) is mandatory and applies to all criminal offences. The confiscation regime explicitly covers the instrumentalities and intended instrumentalities as well as the direct and indirect proceeds of crime; however, Art. 36 does not refer to laundered property (i.e. the object or *corpus delicti* of the ML offence, particularly in cases of third-party ML). Whereas Albanian authorities confirmed that Art. 36 can generally be interpreted to cover laundered property this argument has yet to be corroborated by case law. Confiscation of property of corresponding value only applies to proceeds of crime but not to instrumentalities. Third party confiscation is covered implicitly; this interpretation had already been supported by case law at the time of the 4<sup>th</sup> round MER and no different judicial interpretation has since been reported.

*(c)* In lack of a proper statutory basis and case law, it remains doubtful whether all aspects of property used in or intended or allocated for use in the FT and terrorist-related offences are covered by Art. 36 CC (particularly as legitimate assets allocated for TF are concerned). As noted in the previous MER, under the Anti-Mafia Law it is possible to recover criminal property through civil sequestration and confiscation in respect of a range of serious offences (including ML offence under Art. 287 CC). Although confiscation under this law is applied according to civil standards, it is the CPC that provides for the underlying procedural rules (as a result of a recent amendment being in force since 2017 before which the civil procedural rules were to be applied). The scope of the said Law has recently been enlarged by the same amendment and now it covers not only ML and TF but also a significant range of proceeds-generating crimes.<sup>109</sup> The application of the Anti-Mafia Law is “independent from the condition, level or conclusion of criminal proceedings being conducted against the persons who are subject to this law” and therefore proceedings under this law serve, in practice, as a parallel financial investigation conducted with regard to, but entirely autonomously from, the criminal proceedings. In cases where the assets seized or confiscated under the Anti-Mafia Law are also subject to a similar measure under the criminal confiscation regime (CC & CPC) the measures ordered pursuant to the Anti-Mafia Law will prevail.

#### 46. *Criterion 4.2 –*

*(a)* As was already indicated in the analysis of the 4<sup>th</sup> round MER on Albania, law enforcement authorities have broad powers to trace and identify property which is subject to confiscation, including powers to obtain information from state and private institutions (Law on State Police Art. 129) but this provision does not extend to banking/financial information (see below). The CPC provides for the gathering of evidence for criminal prosecutions, including the identification and tracing of proceeds and instrumentalities subject to seizure and to confiscation (see more under R.31). Bank records connected to a criminal offence can be obtained based upon a court order (or in urgent matters, by that of the prosecutor) pursuant to Art. 210 CPC in which case banking secrecy is lifted. There is however no centralised register of bank account holders, nor a provision to allow for the monitoring of activity in bank accounts. For matters arising under the Anti-Mafia Law, any office of the state administration, public legal person or entity, and other natural and legal person so requested must provide data and documents deemed essential for the investigation (Art.9) in which respect the CPC rules are to be applied accordingly.

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<sup>109</sup> The scope of the law now covers the participation and the committing of crimes (a) by armed gangs, criminal organisations and structured criminal group (b) the same committed by terrorist organisations and crimes for terrorist purposes (c) crimes including kidnapping, blackmail, trafficking offences (in human beings, minors, arms, explosive and similar substances) and drug crimes (production and trafficking) (ç) ML in general (d) a broad range of corruption offences (various forms of active and passive corruption in the private and public sector, the latter involving domestic and foreign public officials as well as the judiciary) “in the cases when there are indicia regarding the illegal asset profit”.

(b) The regime and scope of provisional measures have not changed since the 4<sup>th</sup> round MER. Seizure/sequestration<sup>110</sup> of property subject to confiscation pursuant to Art. 36 CC is provided in Art. 274(2) CPC and, as far as immediate law enforcement actions are concerned, by Art. 300 CPC. It was confirmed that the scope of the latter does actually cover the immediate seizure of property that is not material evidence or instrumentality of a crime but potential proceeds thereof (e.g. cash, vehicles or documents that are related not to the criminal offence itself but to the property or property rights of the suspected perpetrator.). For proceedings under the Anti-Mafia Law, the criteria for sequestration are provided under Art. 11 while the procedure itself can be found under Art. 12. In both laws, the provisional measures are issued on an ex parte basis and without prior notice. In addition to the above, the AML/CFT law (Art. 22) empowers the GDPML to order the temporary blocking of a transaction for a period of up to 72 hours.

(c) Already met at the time of the 4<sup>th</sup> round MER. The legal framework has not since changed (see Art. 677 of Albania's Civil Code on contracts deemed to be illegal).

(d) Appropriate investigative measures are available under the Anti-Mafia Law.

47. *Criterion 4.3* – This criterion was met at the time of the 4<sup>th</sup> round MER<sup>111</sup> and the legal framework has not changed (Art. 276 and Art. 58 to 68 CPC). Protection for the rights of bona fide third parties in the confiscation proceedings is also provided under the Anti-Mafia Law (Art. 22, para 3 to 5) although there are no similar provisions applicable specifically in the sequestration procedure.

48. *Criterion 4.4* – Management of seized and confiscated assets is carried out by the AASCA responsible for assets seized and confiscated by a court order pursuant to the Anti-Mafia Law or the Terrorist Financing Law as well as for any other criminal assets the administration of which is assigned to this agency by legislation or a court order. In this context, “other” criminal assets primarily refer to assets seized/sequestered or confiscated by the court pursuant to the CPC and CC, respectively, if the court decides, in its discretion, to assign such assets to the AASCA for further management.

49. Rules regulating the administration, management and disposal of seized and confiscated assets can be found in DCM No. 687(2011) whereas further criteria, methods and procedures for the use and alienation of confiscated assets are provided in DCM No.632(2010).

#### *Weighting and Conclusion*

50. The legal framework of the confiscation and provisional measures regime is comprehensive and covers almost all relevant items or assets, although the ability to confiscate the money laundered in a stand-alone ML situation and property used in, or intended or allocated for use in the TF, remains doubtful. The non-conviction based (civil) confiscation regime under the Anti-Mafia Law has been amended to better complement the criminal confiscation regime. Management of criminal assets (to the extent they belong to AASCA competence) is provided for and so is the regime for parallel financial investigations for crimes covered by the Anti-Mafia Law. **R.4 is rated LC.**

#### *Recommendation 5 - Terrorist financing offence*

51. Albania was rated partially compliant on former SR II in the 2011 MER, inter alia, (a) because it was unclear whether the TF offence covered cases in which funds were not used to commit or attempt to commit a terrorist act; (b) there were doubts that the funds referred to in the TF offence were in line with the standard; (c) the financing of an individual terrorist was criminalised only if the funds were provided or collected to support terrorist activities; (d) the terrorism offence did not cover all the actions which must be criminalised under the treaties that are annexed to the TF Convention; and actions “intended to cause” death or serious bodily harm; (e) the specific purpose or intent requirement set forth in Art. 2 para. 1 (b) of the TF Convention was required for the conducts specified in the annexed treaties (Art. 2, para. 1(a)) (f) Not all ancillary conduct of TF was covered. Following the adoption of its 4<sup>th</sup> round MER in April 2011, Albania was placed under Regular follow-

<sup>110</sup> “Seizure” and “sequestration” are two alternative translations for the very same term in the original.

<sup>111</sup> 4<sup>th</sup> round MER para 265 page 90

up, which it exited in September 2015. The 6th Regular follow-up report found Albania to be Largely Compliant on SRII as the TF incrimination had been brought to a large extent in line with the TF Convention further to amendments made to the CC in 2012. The MONEYVAL has also analysed the progress in respect of the TF offence under the CEPs procedures, which were lifted in July 2012. Since the adoption of the 2015 FU report no significant changes have been brought to the relevant legislation.

52. *Criterion 5.1* – The applicable legal framework has not changed since the 2015 MONEYVAL Follow up report (see MONEYVAL(2015)21). The key TF offence is provided under Art. 230/a CC while the main terrorism offences (offences with a terrorist purpose) are provided under Art. 230 CC. The TF offence closely mirrors the language in the TF Convention and is largely in line with Art. 2 of the TF Convention with the exception of a few deficiencies. The prohibited financing extends to the full extent of funds as is defined in the TF Convention, however acquired.

53. Art. 230 CC fully covers the terrorist acts indicated in the treaties listed in the Annex of the TF Convention and “any other acts intended to cause death or serious injury to civilians or any other person who is not taking an active part in hostilities in a situation of armed conflict, committed with the intent to spread panic among the population, or compel the state bodies, Albanian or foreign, to perform or not perform a certain act, or seriously destroy or destabilise substantial political, constitutional, economic or social structures of the Albanian state, another state, international institution or organisation”, in line with Art. 2(1)(a) and (b) of the TF Convention.

54. *Criterion 5.2* – The TF provision prohibits the provision or collection of funds, by any means, directly or indirectly, with the intent to use them or knowing that they will be used, in whole or in part: a) to commit offences for terrorist purposes; b) by a terrorist organisation; c) by a single terrorist. This is largely in line with Criterion 5.2. Nonetheless, the Methodology now requires that TF offences should extend to any person who wilfully provides or collects funds or *other assets*<sup>112</sup>. Thus the provision is deficient in this respect.

55. *Criterion 5.2 bis* - Art. 230/a does not criminalise explicitly the financing of the travel of FTFs. The TF provision has never been tested before national courts thus it is not clear to what extent the current formulation of the TF offence would be interpreted to encompass the financing of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. The authorities have referred to Art. 232<sup>113</sup> CC which criminalises training to commit acts of terrorist intentions, Art. 265/a CC prohibiting the involvement in military operations in a foreign State and Art. 265/b on organising the involvement in military operations in a foreign state. It is not clear to what extent the TF provision would apply to Art. 232 CC. Even if it did, Art. 232 does not address all the elements of Criterion 5.3bis (including receiving training) and it is not clear that travel would be sufficiently covered. Art. 265/a does not cover a terrorism offence and does not contain all the elements required by criterion 5.2 bis. It does not seem likely that the TF offence would thus be applicable, nor that it would cover travel. Although Art. 265/b includes a component of funding of the prohibited actions under Art. 265/a, it does not explicitly cover travel and the characteristics of the offence under 265/a do not entirely satisfy the criteria under 5.2 bis.

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<sup>112</sup> This refers to the concept of « economic resources » as defined in UNSCR 2199, notably oil, oil products, modular refineries and related material, other natural resources including precious metals such as gold, silver, and copper, diamonds, and any other assets oil and other natural resources.

<sup>113</sup> Preparation, training and giving any form of instruction even in anonymous manner or in electronic form, for producing or using explosive substances, military weapons and ammunition, other weapons and chemical, bacteriologic, nuclear or any other substance, dangerous and hazardous to people and property, as well as techniques and methodologies for committing acts with terrorist purposes and participation in such activities, even when these acts aim at another country, international organisations or institutions, if they don't constitute another criminal act, are punishable with no less than 7 years of imprisonment.

56. *Criterion 5.3* – Art. 230/a mirrors the definition of funds under the TF Convention, and includes funds irrespective of the manner of their acquisition. Thus the TF offence extends to funds whether from a legitimate or illegitimate source. See also Criterion 5.2 regarding the deficiency of provision.

57. *Criterion 5.4* – The TF offence applies regardless of whether the funds were actually used to carry out or attempt a terrorist act. TF offence applies also where a link with a specific terrorist act can be established.

58. *Criterion 5.5* – Under Art. 230/a knowledge and intent can be inferred from objective factual circumstances.

59. *Criterion 5.6* – The violation of Art. 230/a FT is punished with no less than fifteen years of imprisonment or with life imprisonment. Violation of Art. 230/b which criminalises the concealment of funds that finance terrorism, is punished with 4 to 12 years of imprisonment; or if it is committed in the exercise of a professional activity, in cooperation or more than one time, it is punished with a term of imprisonment of 7 to 15 years and with a fine ranging from one to 8 million ALL; if it causes serious consequences it is punished with no less than a 15 years terms of prison. These sanctions are substantial and have potential to be dissuasive.

60. *Criterion 5.7* – Under Art. 45 of the CC, criminal liability applies to legal persons with respect to all offences including TF. The criminal liability of LEs is without prejudice to the criminal liability of natural persons for the same facts. The criminal offences and the sanctions against LEs, as well as the procedures for imposing and enforcing these measures are regulated under the 2007 Legal Persons Liability Law which clarifies under its Art. 2 that parallel legal civil, or administrative proceedings are possible. In the third paragraph of Art. 2 of the Law No. 9754/2007 provides that is possible to take charge of civil - commercial liability and not only criminal liability if is the case. The criminal liability does not exclude the two other liabilities.

61. *Criterion 5.8* – Attempt to commit TF is criminalised under the combined application of Art. 230/a and Art. 22 and 23 CC (on attempt). Also the other elements of criterion 5.8 are covered. The interpretation of the provisions governing criminalisation of ancillary activities was unified by a judgment of the High Court from 15 April 2011, in particular with regard to the practical characteristics of the required “agreement” between the persons involved.

62. *Criterion 5.9* – Albania applies an all-crime approach, TF thus is a predicate offence to ML.

63. *Criterion 5.10* – Under Art. 230/a the TF offence applies regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

#### *Weighting and Conclusion*

64. Although the TF offence is broadly in line with the standards, some deficiencies nonetheless need to be addressed. Notably, the TF offence does not extend to the wilful provision or collection of “other assets” in line with C.5.2 and the financing of the travel of FTFs does not appear to be sufficiently covered. **R.5 is rated LC.**

#### *Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing*

65. Albania was rated PC in the previous evaluation round on SR III. Several deficiencies were identified, including the lack of legal basis to designate persons under the UNSCR 1373, to address requests for access to frozen assets, to supervise implementation of the TFS, to challenge their listing by the designated persons, and the lack of publicly available information to seek de-listing and unfreezing of funds. In order to address the abovementioned deficiencies, Albania adopted a new Law on MTF constituting a comprehensive legal framework for implementation of the UNSCRs imposing TFS related to terrorism and TF. The new FATF Recommendations compared with the previous ones largely remained unchanged.

66. *Criterion 6.1* – In relation to designations pursuant to UNSCR 1267/1989 and 1988:

(a) MFA is the competent authority of Albania for proposing persons or entities to the relevant UNSC for designation. The proposal is made on the basis of the Minister of Finance notification about the CoMs decision on including persons or entities in the domestic list (Art. 18 of the Law on MTF).

(b) Albania has a formal mechanism for identifying targets for designation. However, criteria used by the Albanian authorities for identification seem not to cover undertakings having links to designated persons or entities as stipulated by the relevant UNSCRs (Art. 15 of the Law on MTF).

(c) Domestic designation is triggered on the basis of “indicia” of involvement of persons or entities in any form in terrorism or TF (Art. 15 of the Law on MTF). The existence of a criminal proceeding is not a precondition. However, there is no reflection in the legislation on the evidentiary standard to be applied by the Minister of Finance and the CoMs when making a decision on processing a designation.

(d) There is no formal requirement in place to follow the procedures and standard forms for listing as adopted by the relevant UNSC. Although Albania has not put forward a listing proposal to date authorities indicated that if they were to propose a designation, as a member of the UN the procedures and standard forms for listing, as adopted by the relevant UNSC, would be followed.

(e) Although Albania has not put forward a listing proposal to date, and there is no formal requirement in place on the scope of information to be provided, authorities indicated that as a member of the UN they would provide as much relevant information to support a proposal for designation as possible, and would specify whether their status as a designating state may be made known.

67. *Criterion 6.2* - In relation to designations pursuant to UNSCR 1373:

(a) The CoMs is the competent authority of Albania for designating persons or entities pursuant to the UNSCR 1373 on its own motion, and on the basis of a foreign country request (Para. 2, Art. 5 of the Law on MTF).

(b) Albania has a formal mechanism for identifying targets for designation (Art. 5 and 15 of the Law on MTF). The deficiency identified in relation to criteria of designation as indicated in the Criterion 6.1 (b) applies also in this case.

(c) The CoMs, upon the proposal of the Minister of Finance, based on the decision of another state may decide to include the persons or entities in the domestic list (Para. 2, Art. 5 of the Law on MTF). Although there are no further mechanisms provided, authorities confirmed that foreign requests for designations would be processed the same way as domestic designations in line with Art. 15 of the Law on MTF.

(d) Domestic designation is triggered on the basis of “indicia” of involvement of persons or entities in any form in terrorism or TF (Art. 15 of the Law on MTF). The existence of a criminal proceeding is not a precondition. However, there is no reflection in the legislation on the evidentiary standard to be applied by the Minister of Finance and the CoMs when making a decision on processing a designation. As authorities stated the same approach is applied irrespectively of whether the designation proposal is made on the motion of the foreign country or the relevant domestic competent authorities.

(e) In Albania there are no specific legal provisions determining the procedures for requesting foreign country to give effect to the actions initiated under the freezing mechanisms, and provision of identifying information. Albania has never requested another country to give effect to the actions initiated under its freezing mechanism.

68. *Criterion 6.3* –

(a) The competent authorities have powers and procedures to collect and solicit information to identify persons or entities with respect to whom there are grounded suspicions of involvement in any form in terrorism or TF (Law on the MTF, AML/CFT Law, CPC).

(b) The authorities indicated that designations are made ex parte. There is no legal or judicial requirement to hear or inform the person or entity against whom a designation is being considered.

69. *Criterion 6.4* – CoMs shall approve the designations made by the relevant UN Security Committees within 15 days, upon the proposal of the MFA. The latter proposes to the Council of the Ministers the list of the designated persons and entities within 5 days from the decision of the UN Security Council (The MFA has issued a special Guideline, in order to shorten the timeframe of notifications about the relevant UN Security Committees' decisions on the TFS from 5 to 2 days.). In parallel MFA notifies about the designation made by the relevant UN Security Committees the responsible authorities<sup>114</sup>, LEAs, SIS and the Minister of Finance (Para. 1, Art. 5 and Art. 14 of the Law on MTF).

70. Decisions of the CoMs on designation of persons (based on UNSCRs 1267/1989, 1988 and 1373) enter into force immediately upon adoption. These are communicated to the responsible authorities and published in the Official Gazette (Para. 2, Art. 18 of the Law on MTF).

71. In addition, before the decision of the CoMs on designation of a person the Minister of Finance "may", i.e. has a discretion to order a temporary freezing of assets and other property for a period of no more than 30 working days, when this is the only way to prevent circumvention of implementation of the measures stipulated in the MTF Law. The order of the Minister of the Finance enters into force immediately (Para 1, Art. 16 of the Law on MTF). However the implementation of the UNSCRs cannot be a subject to discretion.

72. Hence, although there are steps taken by Albania to speedup implementation of the TFS, this is however still not consistent with the requirement to implement sanctions "without delay".

73. *Criterion 6.5* – Domestic authorities with supervisory powers over the REs are identified by Albania, as being responsible for implementation of the measures against TF, and application of administrative sanctions if required (Para 1, Art. 7 of the Law on MTF; Art. 22 and 24 of the AML/CFT Law). There are respective authorities also granted with powers for application of the criminal sanctions in case offences stipulated under the CC are committed.

(a) Pursuant to the explanation provided by Albania, before the CoMs approve the designations made by the relevant UNSCs the REs shall apply provisions of the AML/CFT Law. However the AML/CFT Law does not contain any explicit formal obligation to implement the UN TFS directly, hence REs may only consider such information as indication of TF and file a STR to the GDPML without execution of transaction (within max 72 hours) (Para. 1-2, Art. 12 of the AML/CFT Law). The GDPML shall decide within 48 hours from the notification either to permit the transaction or to issue a freezing order of a temporary nature (for up to 72 hours). Since the AML/CFT Law does not define the term "freezing" it is unclear what shall be an action to be taken by the REs.

In addition, the GDPML immediately proposes the Minister of Finance to order a temporary freezing of funds and other property (Art. 10 of the Law on MTF). The Law on MTF provides a definition of a "temporary freezing" (Para 3, Art. 3). Minister of Finance order is communicated for execution to the responsible authorities (Art. 16 of the Law on MTF). However, there is no further obligation set forth for the REs to take respective actions.

After the CoMs approve the designations made by the relevant UNSCs, or on the own initiative, the decision is communicated to the REs via the responsible authorities. In case of match the REs are only required to notify the GDPML via the responsible authorities about the identified funds and other property. There is no requirement for freezing without delay set out for the REs. Based on the notification the GDPML proposed to the Minister of Finance to issue a seizure order, which is a permanent measure. This mechanism ensures freezing of funds within 5 - 24 days from the day of designation of persons by the Council of the Ministers (Art. 21-22 of the MTF Law).

With regard to any person besides the REs, the Law on MTF contains no specific requirements to freeze funds or other assets of designated persons and entities. Only a general requirement to inform either the LEA or GDPML about financial actions, transactions, funds or other acts is set out. While

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<sup>114</sup> The BoA, the FSA, the MoJ, other ministries and authorities that licence and/or supervise, maintain or manage the registries of the funds and other properties.

further action to be taken by the GDPML is described above, there are no freezing mechanisms foreseen in case of LEAs (Para 2, Art. 10 of the Law on MTF).

REs are prohibited from informing the customer or any other person about the submission or the preparation for submission of the report to the GDPML (Art. 15 of the AML/CFT Law). Prior notice to the designated person in terms of their assets and funds is established as a criminal offence defined by Art. 230c of the CC. However, as described under c.6.4, there are delays in transposition which can further result in *de facto* prior notice to the persons or entities concerned.

(b) As it is indicated in Criterion 6.5(a) actions to be taken on the basis of the “freezing order” by the REs are not defined in the AML/CFT Law.

Funds and other property subject to temporary freezing before the designation of persons and entities by the CoMs, and the seizure – after the designation are set forth and defined in the Law on MTF (Para 3, Art. 3 of the Law on MTF). However, definition of funds and other property does not cover the tangible or intangible property, seem not to explicitly cover economic resources making reference only to monetary deposits (Para 4, Art. 6 of the Law on MTF). In addition, the law doesn’t foresee whether the freezing mechanism would extend to funds that are not owned but controlled by the designated person as well as to funds specifically referred to under Criteria 6.5(b)ii to 6.5(b)iv.

(c) There is a prohibition for the REs to perform transaction in case of suspicion that it may be related to TF (Para 2, Art. 12 of the AML/CFT Law). As for the temporary freezing of funds and other property requirements before the designation of persons and entities by the CoMs, no actions or transactions are allowed with funds and other property, which are frozen temporarily, except in cases provided explicitly in the law and stipulations thereto set down in the relevant act of temporary freezing (Para 4 and 6, Art. 6 of the Law on MTF). In addition Art. 230/ç of the CC criminalises performance of financial services as well as of other transactions with identified persons. These measures are applicable to both: natural and legal persons.

(d) Once the CoMs made a decision on the approval, modification or revocation of the list of the designated persons, it enters into force immediately, and is communicated to Responsible authorities<sup>115</sup> and published in the Official Gazette (Para 1-2, Art. 18 of the Law on MTF). Responsible authorities within 3 days inform the subordinated institutions, licenced and/or supervised entities about the CoMs decision (Para 2, Art. 21 on the Law on MTF). As indicated by the country the list is also published on the GDPML website. Apart from the FATF Best Practice on Recommendation 6 translated and posted on the GDPML website, and, as clarified by the country, discussion of implementation of UNSCRs in the meetings with and inspections of the REs, no other clear guidance is provided.

(e) REs submit a report to the GDPML, when they know or suspect that terrorism financing is being committed, was committed or is attempted to be committed (Para 1, Art. 12 of the AML/CFT Law; Para 1, Art. 10 of the Law on MTF). Hence, a reference in legislation made to an attempted offences rather than to attempted transactions. Institutions subordinated, and entities licenced and/or supervised by the Responsible authorities<sup>116</sup> also shall report back with regard to the funds and other property held directly or indirectly, as well as other interests and rights of persons designated by the CoMs (Para. 3, Art. 21 of the Law on MTF).

(f) The rights of the bona fide third parties are protected (Art. 13, 17 and 24 of the Law on MTF, and Art. 14 of the AML/CFT Law).

74. *Criterion 6.6* - Albania applies the following publicly known procedures for de-listing and unfreezing the funds or assets of persons and entities no longer meeting the designation criteria:

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<sup>115</sup>The BoA, the FSA, the MoJ, other ministries and authorities that licence and/or supervise, maintain or manage the registries of the funds and other properties.

<sup>116</sup>The BoA, the FSA, the MoJ, other ministries and authorities that licence and/or supervise, maintain or manage the registries of the funds and other properties.



(a) According to authorities the procedures established by the UNSCRs will be followed directly. There are no procedures to submit de-listing requests to the UN sanctions Committees 1267/1989 and 1988 in the case of persons and entities designated pursuant to the UN Sanctions Regimes, in the view of the country, do not or no longer meet the criteria for designation.

(b) Pursuant to UNSCR 1373 CoMs may decide upon revocation of the designated person or entity from the list within 15 days upon the proposal of the Minister of Finance in presence of ascertainable circumstances and facts. The revocation of the seizure is carried out within 3 months from the entry in force of the CoMs decision on delisting. Rules and procedures on return of the seized funds and other property shall be determined by the CoMs decision (Para. 4 of Art. 22, Para. 1, 3-5 of Art. 25 of the Law on MTF). However, it seems that there are no rules and procedures set forth yet.

(c) In case of designation conducted pursuant to UNSCR 1373, the designated person may challenge the decision for listing before the competent court within 15 days from notification (Para 3, Art. 19 of the Law on MTF), which will examine the case based on the provisions that are foreseen for administrative trials. The CoMs may decide on delisting based on the request of the designated person (Para 1, Art. 25 of the Law on MTF).

(d) - (e) Albania informs the designated persons of the availability of Focal Point and the United Nations Office of Ombudsperson displaying contact information on the GDPML website<sup>117</sup>.

(f) The Ministry of Interior verifies identity of the designated persons (Art. 21 of the Law on MTF). However, there are no procedures set out on unfreezing of funds of inadvertently affected persons and entities.

(g) De-listings and other changes to lists of designated persons/entities are published as described in Criterion 6.5 (d). The revocation of seizure is conducted by the decision of the CoMs. Once the decision is made to unfreeze the seized property, the Agency for the Administration of Seized and Confiscated Assets will, within 15 days from the receipt of the decision, notify the legal owner for the date of return and compile the record of the handover of the property. The Agency also notifies all relevant institutions for the revocation of property (DCM no. 687/2011, Chap VI, Point 1, Letter F). However, there are no mechanisms in place to communicate unfreezing to the FIs and DNFBPs immediately, upon taking such actions.

75. *Criterion 6.7* – Albania has mechanisms for authorising access to frozen funds or other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses. There are provisions envisaged for application of the measures for both - persons designated under the UNSCRs 1267/1989, 1988, and UNSCR 1373 (Art. 23 of the Law on MTF and the MFA Instruction on the Rules and Procedures for Allowable Expenses No 1).

#### *Weighting and Conclusion*

76. Despite the considerable legislative developments, there remain some gaps in the legislative framework governing TFS related to terrorism and TF. The designation and freezing mechanisms fall short of ensuring that the necessary measures can be applied without delay. Criteria used by the Albanian authorities for identification of targets for designation seem not to cover undertakings having links to designated persons or entities as stipulated by the relevant UNSCRs. There is no reflection in the legislation on the evidentiary standard to be applied by the Minister of Finance and the CoMs when making a decision on processing a designation. In addition, the law doesn't foresee whether the freezing mechanism would extend to funds that are not owned but controlled by the designated person. There are no procedures to unfreeze funds of inadvertently affected persons and entities. **R.6. is rated PC.**

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<sup>117</sup> <http://www1.fint.gov.al/al/tregues-te-pp-ft/listimi-delistimi-sipas-uns-cr>

### *Recommendation 7 – Targeted financial sanctions related to proliferation*

77. TFS related to the PF is a new requirement that was not addressed in the previous assessment.

78. *Criterion 7.1* – There is no law regulating TFS related to PF and the obligations stemming from UNSCR 1718 (concerning the DPRK) and UNSCR 1737 (concerning the Islamic Republic of Iran). Although it was indicated by the Albanian authorities that some provisions of the AML/CFT Law and the Law on MTF, deal with the TFS. However, the legal application of these laws in terms of Recommendation 7 is not possible due to their scopes. The purpose of the AML/CFT Law is to prevent ML and proceeds derived from criminal offences, and the TF and the Law on MTF sets out the measures against TF, competencies and relations among the bodies responsible for their proposal, adoption, control, and implementation.

79. *Criterion 7.2* – There are no provisions or measures implementing these criteria.

80. *Criterion 7.3* – BoA is empowered to supervise implementation of the provisions of the Regulation on Prevention of ML and TF (Art. 3 and 6), according to which the REs licenced by the BoA are required to have internal procedures for the prevention of the movement and use of funds of persons and entities involved in the production of WMD, in accordance with the published lists of persons and the relevant sanctions stipulated in the UNSCR. In case of evidenced violations which may be classified as administrative infringement the BoA shall inform the GDPML for application of the further administrative sanctions. However, the GDPML does not have powers for application of the sanctions for violation of PF related TFSs.

81. There are no other monitoring measures set due to the absence of the requirements for implementation of the PF sanctions regime, as also indicated in the Criterion 7.1.

82. *Criteria 7.4 – 7.5* – There are no provisions or measures implementing these criteria.

### *Weighting and Conclusion*

83. Albania has not adopted legislation or satisfactory measures and procedures to implement TFS to comply with UNSCR regarding the prevention, suppression and disruption of proliferation of WMD and its financing. **R.7. is rated NC.**

### *Recommendation 8 – Non-profit organisations*

84. Albania was rated NC in the previous evaluation round on SR VIII. Several systemic deficiencies were identified, including the lack of any review of the legislation regulating the NPO sector, the absence of demonstrated outreach to the sector as well as any form of supervision or monitoring of NPOs, the weakness of registration requirements and that NPOs were not obliged to maintain records of transactions. Some of these deficiencies had already been noted in the 3rd round MONEYVAL evaluation and appear to be present also in the 5th round of evaluation.

85. The new FATF Recommendations compared with the previous ones largely remained unchanged, however, these are now more focused on identification and application of the measures upon the subset of NPOs that are likely to be at risk of TF abuse.

86. *Criterion 8.1* –

(a) Albania has undertaken assessment of risks related to NPOs operating in the country (GDPML's 2012 NPO risk-assessment, NRA of Albania 2015), however, conclusions reflected in both documents provide no reflection on either the subset of organisations that fall within the FATF definition of NPO or features and types of the NPOs which by virtue of their activities or characteristics are likely to be at risk of TF abuse.

In 2016 as a result of tripartite meetings held from April 2015 to March 2016 between the authorities involved, a targeted CFT assessment of NPOs took place upon initiation by the GDPML. Data from all regional tax authorities on NPOs active in the respective region (the structure, donors, conclusions), a list of NPOs considered as being exposed to TF risks as per SIS criteria and data (not to be discussed

in this report) was analysed by the GDPML, using also banking information. The analysis and conclusions drawn have been shared with the SIS.

(b) As with c.8.1(a) above, the assessment team found no domestic measure or any ad hoc review in Albania aimed at identifying the nature of potential threats terrorist may pose to the NPOs.

Due to the sensitivity of the aforementioned tripartite analysis, it cannot be known what sorts of risks were taken into account when categorising the NPOs according to their vulnerability to TF abuse. The opinion expressed by Albanian authorities that no specific threats could have been identified because there has never been any NPO found to be involved in TF activities in Albania and therefore all potential threats must be taken into account, does not explain the lack of a proper risk analysis.

(c) Albania carried out the review of its NPO-related legislation in 2012 as a result of which, among others:

- Law on NPOs (Law No. 8788 of 07.05.2001) was amended (Law No. 92) to increase the transparency of NPOs, to further specify duties and competencies of the decision-making and the executive bodies of NPOs, to oblige NPOs to register tax data and to publish financial reviews, to grant GDT and GDPML access to NPOs' accountability reports and financial reviews etc.;
- Guideline No. 22 of 19.11.2014 on the AML/CFT supervision of the NPOs by the tax authorities was issued by the MoF;
- The legislative changes targeted the entire NPO sector without any specific attention to a (hypothetical) subset of NPOs potentially vulnerable for the TF misuse and the review was not aimed at addressing any specific risks of the sector (please see also Criterion 8.1.b).

(d) As noted above, there is no mechanism in place for the periodical reassessment of the NPO sector and/or the respective legal framework. Albanian authorities claimed such reassessment takes place on an ad hoc basis ("in particular cases" the next of which is expected to take place in 2018) which approach, however, cannot provide for a periodical reassessment i.e. an exercise that takes place on a regular basis.

#### 87. *Criterion 8.2 –*

(a) According to the information received, Albania has no clear, if any, policies to promote accountability, integrity, and public confidence in the administration and management of NPOs.

b) In September 2011, the GDPML issued a guideline aimed at preventing NPOs from the threat of TF. This document, which is available from open sources<sup>118</sup> serves as a guide to assisting Albanian NGOs to comply with national CFT legislation, raising their awareness of TF-related risks and providing them with the best international practices in this field (although no similar guidance has since been issued and neither has the original been updated). In addition, the GDPML together with the State Police, the GTD and the SIS, conducted training in November 2015 for NPOs from different parts of the country on risks of ML/TF abuse.

(c) Apart from the guidance mentioned under Criterion 8.2(b), which was developed with no collaboration with the NPO sector, no further best practices appear to have been developed and refined.

(d) All natural and legal persons, including NPOs, perform their sale and purchase transactions exceeding 150.000 ALL through the banking system (Law No. 9920 dated 19.05.2008, For tax procedure in Republic of Albania). There are no other rules or measures to oblige or encourage NPOs to perform their transactions via regulated financial channels.

88. *Criterion 8.3 –* Although not in the risk-sensitive basis, there is a range of obligations set for the NPOs, including the requirement for registration, basic information is provided to and maintained by the DCoT. Registration data on NPOs is publicly available, and can be provided by the DCoT upon

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<sup>118</sup> Available at the website of the Open Society Foundation for Albania at:

<http://www.osfa.al/publication/udhezues-per-parandalimin-e-financimit-te-terrorizmit-nga-organizatat-joftimprurese>

request. There is no explicit requirement for NPOs to maintain all the basic information on their own. The purpose and objectives of their stated activities, personal data of founders and members of organisation and data of the contributing founder fund (if there is such) should be provided to and kept by the DCoT (Art. 22 and 31 of the Law No. 8789 On the registration of NPOs). NPOs are obliged to maintain tax records in accordance with the rules provided by the legislation in force for tax procedures in the Albania. Accounting reports drawn up by NGOs on the use of donor funds as well as the financial statements are subject to audit by the tax authorities as well as the GDPML whenever necessary (Art. 25 and 41 of the Law on NPOs). However, these measures are not risk-based.

89. *Criterion 8.4 –*

(a) Monitoring of the NPO sector is carried out by the tax authorities in accordance with MoF Instruction No. 22 on performing AML/CFT supervision of NPOs. Whereas the Law on tax procedure (Art. 42) prescribes the registration of the NPOs by the tax authority (in addition to their court registration) the obligation to make periodical reports of NPOs with certain issues (including performance of non-registered activities) periodically and to keep documents as well as various forms of control (onsite inspection, operational control etc.) and the reporting of ML/TF suspicion to the GDPML are regulated by the Instruction mentioned above. However, this cannot extend to risk-based measures under Criterion 8.3 as there is none as such.

(b) Administrative sanctions for non-compliance with obligations prescribed by the Law on tax procedure are provided in Chapter XIV of the said law and these provisions equally apply to NPOs (e.g. a fine of 10.000 ALL for non-registration of NPOs pursuant to Art. 112 of the said law). There are no sanctions available to be applied in case the NPO has not been registered at the DCoT, or has not updated basic information maintained in the register.

90. *Criterion 8.5 –*

(a) Cooperation, coordination and information sharing between relevant authorities has significantly developed, even though on a less institutionalised or regular basis, over the last years. This inter-institutional cooperation is based on regulations such as Instruction No. 16 or MoUs such as the GDT/ASP agreement for information exchange. Information sharing took place in framework of the aforementioned tripartite meetings in 2015-2016 as well as in course of the ad hoc review of TF related risks in the sector in 2015-2016 (see under Criterion 8.1.a). In addition, the Action Plan 'On the Implementation of the Cross-sectional Strategy of the Fight Against Terrorism 2016 – 2020' was issued by Council of Ministers Decision No. 765 of 02.11.2016 including steps such as establishing a national electronic register for NPOs or the continuous improvement of the NPO monitoring process.

(b) DIEFC of the ASP (see more in details under R.30) as well as the Tax Investigation Directorate of the GDT and the GDPML have the due expertise and capability for the investigation of such cases.

(c) In the course of criminal investigations, full access to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained pursuant the CPC and the Law on State Police. According to the rules described and/or referred to in R.31 information/documents related to NPOs can be obtained from the tax authorities (as supervisory authorities) from the commercial bank (where the NPO keeps its account) as well as from the DCoT (as the registering authority) without contacting the NPO itself.

(d) Pursuant to the AML/CFT Law (Art. 18) and Instruction No. 22 (Art.9) once the tax authority, as the supervisory authority of NPOs, suspects an NPO being involved in TF abuse a report must be filed with the GDPML pursuant to MoF Instruction No.16. As to the promptness of this reporting duty, however, the assessment team has some doubts. According to Instruction No.22 the relevant Regional Tax Directorate reports such cases first to the Central Unit in the GTD which then evaluates the case before submitting it to the GDPML (and the GDPML to LEA in case of suspicion of crime). However, there is no timeframe set for the Regional Tax Directorate to submit the report to the Central Unit in the GTD. Only timeframe for reporting to the GDPML is set and must be done within 72 hours.

91. In case suspicion of TF emerges in any civil or administrative proceedings in this field, let it be conducted by the tax authority itself, the DCoT or any other state authority, there is a more direct mechanism stipulated by Art. 281 CPC (Criminal report by public officials) which prescribes the direct referral of the case to the prosecutor or to the State Police. In case of tax authorities, the aforementioned reporting regime thus does not prejudice the obligation in Art. 281 CPC.

92. *Criterion 8.6* – As at the time of the 4th round MER, the Directorate for International Relations at the GPO is the contact point to respond to international requests for information regarding particular NPOs suspected of TF or other form of terrorist support, provided that the foreign request is related to a criminal investigation. Procedures applicable in such cases are those available for MLA (see under R.37). In case the requesting authority is a foreign FIU and the information is requested for analyses conducted by that authority, the Albanian contact point is the GDPML which will then collect and provide any sort of information to the requesting FIU for intelligence purposes (see under Criterion 40.10.) As for information requests between LEAs, the ASP provides information to homologous police agencies through all possible channels of police cooperation (EUROPOL SIENA Network, INTERPOL, SELEC etc.)

#### *Weighting and Conclusion*

93. There is no RBA towards the NPO sector as required by Criterion 8.1(a) which has a direct impact to all other Criteria which are built upon the presumption that such an exercise and differentiation has taken place. CFT supervision of the sector lies with the GDT but it is practically limited to assessing compliance with, and sanctioning the breaches of regulations in the field of taxation. **R.8 is rated PC.**

#### *Recommendation 9 – Financial institution secrecy laws*

94. Albania was rated Compliant with former Recommendation 4 during the 2011 4th round MER. The FATF criteria relating to this recommendation have not changed.

95. *Criterion 9.1* – FIs are subject to secrecy and data protection laws. Their supervisors must also as a principle observe the confidentiality of data that they collect on supervised entities (Art. 24 Law on FSA; Art. 91 (1) Law on Banks). There are specific provisions within the laws and regulations which ensure that these obligations do not inhibit the implementation of the FATF Recommendations.

96. Art. 14 of the AML/CFT Law provides exemptions from legal liability for disclosure of professional or banking secrecy for entities, supervisors and their staff when reporting information to the GDPML. Competent authorities have the ability to access information they require to perform their AML/CFT functions. Per Art. 25 of the AML/CFT Law, entities shall not use professional secrecy or benefits deriving from it as a rationale for failing to comply with the legal provisions of the AML/CFT Law when information is requested. Sectoral laws also make explicit that FIs can share confidential information to competent authorities (Art. 91 (2) of the Law on Banks; Art. 64, 74 Law on Securities; Art. 72 Law on Insurance).

97. Information can be shared among competent authorities both domestically and internationally. The BoA is permitted to share information with foreign banking supervisory authorities per Art. 23 of the Law on the BoA. Art. 91 (2) of the Law on Banks also permits the BoA and judicial authorities to share information obtained on banking activities among each other. Under Art. 18/1 of the Law on the FSA, the FSA has the power to share information with other authorities (domestic and international) pursuant to agreements. The FSA is permitted an exception to the confidential treatment of information when requested by various authorities and other cases as defined in Art. 25 of the Law on FSA. The GDPML can exchange information with LEAs on cases of ML/TF (Art. 22(e) AML/CFT Law) and with foreign counterparts, subjected to similar obligations of confidentiality, to prevent ML/TF (Art. 22 (d) (dh) AML/CFT Law).

98. Regarding sharing information between FIs, para. 16 of BoA Guideline No. 31 “On Banking Confidentiality”, allows banks to share client information through bilateral, multilateral, or systemic

agreements. However, this seems to only apply to banks and not to other FIs supervised by BoA. It further appears that there are no similar provisions for entities under FSA supervision.

99. There are no specific exemptions from secrecy in relation to information sharing through cross-border correspondent relationships and for wire transfers. Art. 9 (2) and (5) of the AML/CFT Law stipulates that banks which offer cross-border correspondent banking services must *collect* information on their foreign respondent banks. However, there does not appear to be a provision in the law to regulate the *sharing* of information by Albanian banks to foreign correspondent banks. Authorities advised that banks could use the general provision of Guideline No. 31. Non-banking correspondent relations are thus not covered, although authorities advised that no Albanian FI has such relations, and no evidence was found on-site to prove otherwise. For wire transfers, it is further noted that FIs are obliged to include certain information with money and value transfers (Art. 10 of the AML/CFT Law; Art. 9(3) of BoA Regulation No. 44; see R.16). Art. 6 (3) of the AML/CFT law prohibits the use of third parties for due diligence.

#### *Weighting and Conclusion*

100. In general, the FI secrecy laws do not inhibit implementation of the FATF Recommendations. Information exchange from FIs to authorities and between authorities is regulated by law. There are some minor gaps in relation to provisions to regulate the sharing of information in the case of non-banking correspondent relations and wire transfers. There are no provisions regulating the exchange of confidential information for non-banks. **R.9 is rated LC.**

#### *Recommendation 10 – Customer due diligence*

101. Albania was rated Partially Compliant with former R.5 during the 4th round MER. The factors contributing to the rating included availability of financial instruments in bearer form; CDD provisions only applying to identification and verification; inconsistent legislative provisions for ongoing monitoring; limited and inconsistent legislative provisions for BO; no requirement to establish whether a person is acting on behalf of another; limited requirement to establish nature and intended purpose of business relationship; incomplete requirements for legal arrangements; and no requirement for CDD on existing clients. Some amendments were introduced to the AML/CFT Law since the previous mutual evaluation.

102. As a general note, there appear to be some slight definitional gaps in the AML/CFT Law in relation to CDD requirements. Given however that other provisions of the law often indicate the contrary than what a strict application of its definitions would mean, evaluators are convinced that these are definitional inconsistencies rather than deliberate narrowing down of obligations<sup>119</sup>.

103. *Criterion 10.1* – REs shall not open or keep anonymous accounts or accounts with fictitious names (Art. 4/1 (3) AML/CFT Law). If such accounts exist and the identity of customers holding these accounts cannot be established and verified in accordance with the law, the accounts should be closed and a SAR should be sent to GDPML. Amendments to the relevant provision which were introduced since the 4<sup>th</sup> round MER ensure that the same prohibition now exists in relation to passbooks and other bearer instruments.

104. *Criterion 10.2* – Following amendments to the AML/CFT Law, CDD provisions now apply to CDD in the broader sense, and not only to identification and verification, as was the case at the time of the 4<sup>th</sup> round MER. Art. 4 requires CDD to be undertaken in line with c.10.2 a) to e).

105. *Criterion 10.3* – Art. 4/1 (a) of the AML/CFT Law requires REs to identify the customer and verify the identity of the customer through reliable and independent sources regardless if 'permanent

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<sup>119</sup> For instance, if the definitions of 'customers' and 'business relationship' of Art. 2 point 7 of the Law are strictly followed, multiple obligations analysed below would be limited to the context of establishment of continuous relations. However, various CDD provisions of the law explicitly mention also occasional customers. In this respect it can be noted that the MONEYVAL Secretariat analysis to Albania's 6th follow-up report under the 4th round of evaluations (September 2015, [Link](#)) already pointed at several issues in relation to the definitions in the AML/CFT Law. These have not been remedied in the meantime.

or occasional, natural person, legal entity or trust'. Art. 5 stipulates the required data for identification and the obligation to accept only authentic documents or notarised copies.

106. *Criterion 10.4* – If the customer is a legal person or legal arrangement, Art. 4/1 (b) requires REs to verify if any person acting on behalf of the customer is authorised to do so and also identify and verify the identity of that person. There is no equal requirement in the case of customers that are natural persons. This is not in line with the standard, which covers 'all customers'.

107. *Criterion 10.5* – Art. 4/1 (c) of the AML/CFT Law requires REs to identify the BO and take reasonable measures to verify the identity from reliable sources.

108. *Criterion 10.6* – Art. 4/1 (e) of the AML/CFT Law requires REs to obtain information about the purpose and nature of the business relationship but not explicitly to *understand* it. However, this is implied as the paragraph also requires the subject to establish the risk profile of the customer for ongoing monitoring.

109. *Criterion 10.7* – REs must conduct 'continuous monitoring' of the business relationship with the customer (Art. 4/1 (ë) AML/CFT Law). This includes the analysis of transactions executed throughout the course of the relationship to ensure they are consistent with the subjects' understanding of the customer, the nature of their business, the risk profile and source of funds. REs must ensure, through examination of customers' files, that data obtained during the process of due diligence is updated, relevant and appropriate, especially for customers classified as high risk (Art. 4/1 (f) AML/CFT Law).

110. *Criterion 10.8* – For customers who are legal persons or legal arrangements, REs are required to understand the ownership and control structure of the customer and determine the individual(s) who exercise the ultimate effective control over the legal persons or legal arrangement (Art. 4/1 (d) and (dh) of the AML/CFT Law). While paragraph (e) of this Article requires REs to obtain information about the purpose and nature of the *business relationship*, this does not seem to require an understanding of the nature of the customer's *business* as required by the standard. However, this could be implied as such latter understanding would be necessary to establish the risk profile and conduct continuous monitoring which requires knowledge of the customer's business, as included in other obligations under Art. 4/1 (e) and (ë) of AML/CFT Law. Art. 6 (12) of BoA Regulation No. 44 furthermore includes the requirement for subjects supervised by the BoA to continuously monitor the business relationship with the customers to ensure that transactions are consistent with the knowledge that the subject has about the customer, *the nature of its business performed*, the risk profile and the source of the funds.

111. *Criterion 10.9* – Art. 4/1 (b) AML/CFT Law specifies due diligence measures to be taken on legal persons and legal arrangements. REs must obtain information on the name and legal form of the customer and must verify their legal status through documents of foundation, registration or similar evidence of existence. Furthermore, they must obtain the address, provisions regulating legal relationships and information on the managers and/or legal representatives. There is no requirement to distinguish between the address of the registered office or principal place of business.

112. *Criterion 10.10* – Art. 4/1 (c) AML/CFT Law contains a general requirement for REs to identify the BO and take reasonable measures to verify the identity from reliable sources. For customers who are legal persons or legal arrangements, Art. 4/1 (d) and (dh) specify that REs must understand the ownership and control structure of the customer and determine the individual(s) who exercise the ultimate effective control over the legal persons or legal arrangement. 'BO' and 'ultimate effective control' are further defined in Art. 2 (12) of the Law and include the elements of controlling ownership interest (c.10.10 sub criterion a) defined as owning at least 25%), or *de facto* decision-making and control 'by all means' (explained by authorities as *de jure* and *de facto*) over selection, appointment or dismissal of the majority of administrators of the legal person (resembling c.10.10 sub criterion b).

113. The Law does not indicate that, where no owning or controlling natural persons can be identified under sub criteria a and b above, the REs must identify the relevant natural person who holds the position of senior managing official (c.10.10 sub criterion c).

114. *Criterion 10.11* — For customers who are legal persons or legal arrangements, REs must understand the ownership and control structure of the customer and identify the individual(s) who exercise the ultimate effective control over the legal person or legal arrangement (Art. 4/1 (d) and (dh) AML/CFT Law). Art. 2 point 24 AML/CFT Law contains a definition of legal arrangement which includes trusts and ‘other similar arrangements’. Entities are explicitly required to obtain information on the name of the trustee (Art. 4/1(b)(ii) AML/CFT Law). MoF Instructions No. 28 indicates that FIs shall identify the settlor and beneficiary in addition to the trustee, or the person with an effective control over them. There is no guidance on the identification of a protector or a class of beneficiaries.

115. *Criterion 10.12* — Companies involved in life insurance or re-insurance, pension funds, agents and intermediaries are REs under the AML/CFT Law (Art. 3(ë)). The requirements for identification and verification of identity of the AML/CFT Law for customers and BOs do not explicitly cover beneficiaries, but Art. 6 of FSA Regulation No. 58 specifies that subjects must ‘fully and accurately identify their customers *and beneficiaries*’ (italics added). It is not explicit that verification of the identity of the beneficiary is required or that this should occur as soon as the beneficiary is identified or designated.

116. *Criterion 10.13* — There is no specific provision requiring REs to consider the beneficiary of a life-insurance policy as a relevant risk factor. In general, Art. 7 (1) of the AML/CFT Law requires REs to identify additional categories of business relationships, customers and transactions (other than those stipulated in law and bylaws) which pose a higher risk and to which EDD measure shall be applied.

117. *Criterion 10.14* — Art. 4/1 (g) of the AML/CFT Law closely mirrors the standard set out by FATF with two exceptions. For one, the provision in the Law states that the verification may be conducted after establishing the business relationship provided that it does not interrupt the normal conduct of the business activity. This meaning is not the same as the standard which provides for exception only if verifying the identity before establishing the relationship would interrupt the normal conduct of business. This is a slight nuance in language which changes the meaning and causes the provision not to be in line with the standard. Second, the provision in the law states that as a condition for postponing verification, ML risks must be effectively managed but does not refer to TF risks.

118. *Criterion 10.15* — REs must define the risk management procedures to be applied in cases where a customer may be permitted to enter into a business relationship prior to or during the completion of the verification process (Art. 4/1 (g) AML/CFT Law).

119. *Criterion 10.16* — REs must comply with CDD provisions for existing customers based on evidence, facts and risk of exposure to ML and TF (Art. 4/1 (h) AML/CFT Law) ML/FT. Art. 4/1 (f) requires REs to ensure, through the examination of customers’ files, that documents, data and information obtained during the process of due diligence are updated, relevant and appropriate.

120. *Criterion 10.17* — Art. 7 of the AML/CFT Law requires REs to apply EDD measures to categories of business relationships, customers and transactions which they identified as higher risk, in order to mitigate the risk of ML. The provision does not mention TF risks. In addition, Art. 8 and 9 of the AML/CFT Law define categories of customers and transactions which must always be subject to EDD. Annex 1 of BoA Regulation No. 44 provides guidance to FIs supervised by BoA on factors (geographical, customer, product, service and transaction) to be taken into consideration when measuring risk arising from ML and TF; and on what kind of enhanced measures could be taken. Annexes 1-3 of the FSA Regulation No. 58 include categories of clients and transactions deemed to require EDD and typologies and risk indicators for the insurance and securities sector.



121. *Criterion 10.18* — Albania's AML/CFT Law does not permit simplified CDD measures, therefore this criterion is not applicable.

122. *Criterion 10.19* — Art. 4/1 paragraph 2 sets out the requirements of the RE when they are unable to comply with the CDD obligations in the AML/CFT Law. The RE shall not open accounts, perform transactions or commence a business relationship, and shall terminate the relationship if it has already commenced. The provision in the Law is stricter than the standard in that it further requires the subject to send a suspicious activity report to the GDPML (and not to 'consider' sending). While this may seem to be a positive difference, in practice it may result in situations, where upon consideration, a report may not have been required.

123. *Criterion 10.20* — There is no requirement in the Albanian legislation that allows REs not to pursue CDD requirements where they suspect ML or TF and reasonably believe that performing the CDD process will tip off the customer.

#### *Weighting and Conclusion*

124. There are several deficiencies noted, most of them of minor relevance. Some are more substantive in nature such as the incomplete requirements for authorised persons and the beneficiaries of life insurance. The requirements to ensure that risks are effectively managed when the RE postpones the verification of the customer and BO (c.10.14), and to conduct enhanced CDD when the RE identifies higher risks (c.10.17), only mention ML risks and not TF risks. There are no provisions implementing c.10.13 and c.10.20. The life insurance market is not well developed in Albania and transactions are only made through the banking system which decreases the significance of criterion 10.13 being not met. **R.10 is rated LC.**

#### *Recommendation 11 – Record-keeping*

125. Albania was rated LC with former Recommendation 10 during the 2011 4th round MER. The evaluators found that the mandatory record-keeping period requirement for account files and business correspondence was not in line with the FATF standards. The FATF criteria relating to this recommendation have not changed substantially.

126. *Criterion 11.1* – Art. 16(2) of the AML/CFT Law defines the requirements for REs to maintain all necessary records on financial transactions, both national and international, for at least 5 years following the completion of the financial transaction. It is noted that c.11.1 applies to all transactions whereas the scope of the AML/CFT Law may be narrower in referring only to 'financial transactions'.

127. *Criterion 11.2* – Art. 16(1) of the AML/CFT Law requires REs to maintain 'documentation concerning identification, accounts and correspondence with the customer' for 5 years from the date of closing the account or terminating the business relationship. It is not unequivocally clear that 'documentation concerning identification (...) [of] the customer' includes all CDD information in a broader sense than only customer identification<sup>120</sup>.

128. There is no explicit requirement in the Law to keep records of any analysis undertaken; except in the context of the analyses of complex transactions as part of enhanced CDD, in which case written records of their findings must be kept for 5 years (Art. 8(5) AML/CFT Law). MoF Instructions No. 28 instructs FIs to keep records on analysis of the risk classification of business relationships and on-going monitoring (Art. 14).

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<sup>120</sup> Namely, looking at the structure of the law: Art. 4 of the AML/CFT Law regulates the necessary CDD measures and stipulates in paragraph 1 the obligation to 'identify the customer' and in its subsequent paragraphs the other CDD measures such as identification and verification of authorised persons, BOs, obtaining information on nature and purpose of the business relationship et cetera. Art. 16(1), by making reference to customer identification only, could therefore be interpreted to require record-keeping in a narrower scope than the standard requires. Furthermore, the Law does not explicitly include a requirement to keep records obtained through CDD for occasional transactions. This could however be partially covered through the obligation to keep records on all financial transactions (see c.11.1).

129. *Criterion 11.3* – Art. 16 (3) of the AML/CFT Law requires transaction records to contain all the necessary details to allow the reestablishment of the entire cycle of transactions.

130. *Criterion 11.4* – Art. 16 (4) of the AML/CFT Law requires REs to ensure all customer and transaction data, shall immediately be made available upon the request of the GDPML.

#### *Weighting and Conclusion*

131. The provisions in force largely cover the record-keeping obligations of the FATF Standards. There are some minor gaps relating to the records of analyses undertaken and to the potential narrow interpretation of the AML/CFT Law in what constitutes financial transactions and documents concerning customers' identification. **R.11 is rated LC.**

#### *Recommendation 12 – Politically exposed persons*

132. The 2011 MER of Albania found former Recommendation 6 as NC. This finding was mainly due to the definition of PEPs not covering foreign PEPs. Since that time, Albania has made amendments to the law to include foreign PEPs in the definition.

133. *Criterion 12.1* – According to Art. 2 point 10 of the AML/CFT Law, PEPs include 'individuals who have had or have important functions in a foreign government and/or in a foreign country'. The following examples are given in the Article: heads of state and/or government, senior politicians, senior officials of government, judiciary or the armed forces, senior executives of state owned companies and key officials of political parties.

134. Art 8 of the AML/CFT requires REs to put into place risk management systems to identify if new or existing customers are PEPs. If so, the Article requires them to obtain senior management approval to establish or continue with the business relationship. REs must take "reasonable measures" to understand the source of wealth and funds of customers and/or BOs who are PEPs. They must monitor their business relationships with PEPs with 'enhanced diligence'. MoF Instructions No. 28 specifies that this means 'increased and on-going' monitoring.

135. *Criterion 12.2* – Regarding domestic PEPs, these are defined in Art. 2 point 10 AML/CFT Law as those persons who are subject to Law No. 9049 on Asset Declaration. This includes the president, members of parliament, the (deputy) prime minister and (deputy) ministers, heads of certain state bodies, high ranking civil servants (such as secretary general), high local government officials, high military officials, all prosecutors and judges. Directors of state-owned companies are covered if the company has more than 50 employees<sup>121</sup>. Senior politicians/political party officials, as long as they are not (deputy) ministers or members of parliament, are not covered.

136. Persons who are entrusted with a prominent function by an international organisation are not included in the definition of PEP.

137. Once a person leaves office, one more declaration must be made to declare assets from the period of the last declaration to the date of leaving office. After that, the person is no longer subject to Law No. 9094. Therefore, the domestic PEP definition is not in line with the open-ended and RBA of the FATF standard.

138. Regarding the requirements for REs to have risk management systems in place to identify PEPs and apply follow-up measures once a PEP is identified, the law draws no distinction between the requirements for domestic or foreign PEPs. Thus, the analysis of Criterion 12.1 second paragraph is also valid for Criterion 12.2.

139. *Criterion 12.3* – The definition of PEP includes family members and close associates for domestic as well a foreign PEPs (Art 2(10) of the AML/CFT Law). Given the minor deficiencies noted under c.12.2, this criterion is also affected.

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<sup>121</sup> Authorities advised that there are 20 state-owned companies with less than 50 employees, reminiscent of the communist period, which they do not deem materially relevant in the current context.

140. *Criterion 12.4* – FSA Regulation No. 58, which applies to entities involved in life insurance, instructs subjects to ‘fully and accurately’ identify their customers and beneficiaries. There is no specific requirement to identify whether beneficiaries or their BOs are PEPs. Annex 1 part A of the Regulation lists however customer categories whose activities may be an indicator of the highest risk, including PEPs.

#### *Weighting and Conclusion*

141. Significant improvements were made in the PEP requirements since the 4<sup>th</sup> round. Remaining minor gaps (not all domestic senior politicians/political party officials covered; international organisation PEPs not covered; limitation to the term of office for domestic PEPs) mean however that Albania is not fully compliant with the FATF standard. The lack of a specific requirement on beneficiaries of life insurance carries limited weight considering the low level of development of this product in Albania. **R.12 is rated LC.**

#### *Recommendation 13 – Correspondent banking*

142. In its 4<sup>th</sup> round MER, Albania was rated largely compliant with former R.7. The only technical deficiency underlying the rating was the lack of a legal requirement to establish if a respondent bank has been subject to a ML/TF investigation or regulatory action. It was also noted that the measures in Albania only extend to “correspondent cross border banking services provided by banks subject to this law” whereas the standard technically applies to “banking and other similar relationships”. This was however not considered to be a material deficiency, given the lack of development in other financial sectors. It was further noted that, although provisions on payable-through accounts fell short of meeting the standard, the operation of such accounts appeared not to be carried out in Albania. Since then, relatively minor changes were made to the standard, with c.13.3 being the only substantial addition.

143. *Criterion 13.1* – Banks are required to apply the measures set out under c.13.1 a) to d) in respect of cross-border correspondent relationships with respondent institutions (Art. 9 AML/CFT Law). The requirement to establish whether a respondent bank has been subject to a ML/TF investigation or regulatory action has been added to Art. 9 through amendments to the AML/CFT Law passed since the 4<sup>th</sup> round MER.

144. Non-banking correspondent relationships are still not covered by the Albanian legal framework. The major MVTS providers met on-site confirmed that they did not provide correspondent services to other FIs, and BoA reported also that NBFIs have no such relations.

145. *Criterion 13.2* – Art. 9 (5) of the AML/CFT Law as amended states that, when the correspondent relationship includes the maintenance of payable-through accounts, the subjects should ensure that the correspondent bank – understood to mean ‘respondent’ bank – has undertaken appropriate due diligence measures for customers that have direct access to these accounts and is able, if required, to provide customers’ identification documents. The term ‘customer identification documents’ appears narrower than the required ‘relevant CDD information’ of the standard, although authorities maintain that it shall be interpreted to mean CDD documents in general. BoA has advised that in practice, Albanian banks acting as correspondents do not offer payable-through accounts to respondents.

146. *Criterion 13.3* – Pursuant to Art. 9 (3) of the AML/CFT Law, REs are prohibited from establishing or continuing correspondent bank relationships with shell banks. Furthermore, they should undertake the necessary measures to satisfy themselves that the corresponding foreign banks do not allow the use of their accounts by shell banks (Art. 9(4)). Subjects should interrupt the business relations and report to the GDPML when they consider that the correspondent bank accounts are used by shell banks. It appears that the limitation of Art. 9(4) to foreign correspondent banks is not fully in line with the standard. The assessment team did not come across any information however that would indicate the existence of domestic shell banks.

#### *Weighting and Conclusion*

147. Cross-border correspondent banking relationships are subject to requirements which are broadly in line with the standard. The few minor technical gaps are not deemed to carry weight in the Albanian context. **R.13 is rated LC.**

*Recommendation 14 – Money or value transfer services*

148. In the 4<sup>th</sup> round MER, Albania was rated PC on former SR.VI as there was no direct requirement for MVTS to maintain a list of agents. The FATF standards have changed since the adoption of the previous MER, and a new BoA Regulation on licensing of NBFIs has entered into force.

149. *Criterion 14.1* – Banks in Albania can carry out both banking activities and other financial activities as prescribed by the law, including ‘all payments and money transferring services’ (Art. 4 and 54 Law on Banks).

150. Banks are required to be licenced by the BoA and cannot carry out any other financial activities than those stipulated in the annex to their licence (Art. 5 and 6 (3) Law on Banks).

151. Furthermore, NBFIs, defined in the Law on Banks as any legal person licenced by the BoA to carry out financial activities as prescribed in the law, can also obtain a licence from the BoA to perform payment and money transferring services (Art. 4(31) Law on Banks). Again, no subject is allowed to carry out financial activities outside those to be stipulated in the annex to the licence (Art. 6 (3)). The Law on Banks further instructs the BoA to decide on the specific rules of licensing, supervision and functioning of NBFIs through its bylaws (Art. 126(2)). In 2013, the BoA adopted a new Regulation on licensing and activity of NBFIs (Regulation No. 1 dated 17.01.2013). The payment service of the Albania Post is also licenced on the basis of this Regulation. SLAs and FEOs can also obtain a licence from BoA for conducting remittances as an additional activity (BoA Regulation No. 104 “On licensing and activity of SLAs and their unions” and Regulation No. 31 “On the licensing, organisation, activity and supervision of foreign exchange bureaus”).

152. The BoA is required to maintain a public register of all subjects licenced by it (Art. 128 Law on Banks).

153. *Criterion 14.2* – Under Art. 14(3) Law on Banks and Art. 69(7) Law on SLAs, BoA can require a person to provide information if, based on circumstances of fact (e.g. upon notice by LEAs), it finds that the person is carrying out financial activities without a licence. According to these Articles, BoA shall then also notify ‘the competent authorities’ and request them to ‘close down these activities’ and ‘take the necessary measures pursuant to the legislation in force’. It is not defined which competent authorities would have such authority and under which legislation. In any case, criminal prosecution is possible, as providing financial services without a licence is an offence (Art. 170 ç CC). It is punishable with a fine or imprisonment of up to 3 years. If the offence has caused serious consequences to state interests or those of citizens, the imprisonment is raised to up to 5 years. The available fine (i.e. the general fine available for all criminal offences) ranges from 100 000 up to 10 miln ALL (approx. 750 EUR – 75,000 EUR) and is determined within that range in each individual conviction, after determining the solvency of the person.

154. *Criterion 14.3* – All entities licenced by the BoA, thus including banking and NBFIs, SLAs and exchange offices which provide MVTS, are subject to the requirements of the AML/CFT Law (Art. 3(a) & (b) AML/CFT Law). According to Art. 22 and Art. 24 AML/CFT Law respectively, the GDPML and the BoA are responsible to supervise the compliance of the activity of the entities with the Law through inspections.

155. *Criterion 14.4* – BoA Regulation No. 1 indicates that NBFIs may carry out the activity of payments and money transfer through one or more agents (Art. 5 (4)). Recent amendments to the Regulation have repealed the need to obtain BoA approval of the agent (Supervisory Council Decision No. 47, dated 30.03.2016). Entities are required to submit to BoA a list of agents and their data (Form 10, Regulation No. 1). This information and any relevant changes must be communicated within 30 days (Art. 21(1) point i Regulation No. 1). BoA shall register this data within the register of entities that it maintains and that is publically available on BoA’s website.

156. In addition, the AML/CFT Law requires MVTs to maintain a list of their agents, which must be made available as may be required to the GDMLP, supervisory authorities and auditors (Art. 10(4)). Sanctions are available for failure to comply with these obligations (Art. 27(3) AML/CFT Law).

157. The register maintained by BoA is publically available thus accessible to competent authorities from other countries where the MVTs or agents operate. Authorities have advised that they could provide further information on agents to foreign competent authorities if a MoU is in place.

158. *Criterion 14.5* – MVTs providers are required to include their agents in their ML/TF prevention programmes and ensure that they apply the same internal procedures for CDD, record-keeping and reporting (Art. 10(4) AML/CFT Law).

#### *Weighting and Conclusion*

159. Banks, NBFIs (including postal services), SLAs and exchange offices must be licenced to perform MVTs. The legal framework covers all requirements of C.14.1-14.5. **R.14 is rated C.**

#### *Recommendation 15 – New technologies*

160. The 2001 MER rated former R8 as PC as there was no formal requirement to manage risks from non-face to face transactions/business relationships except for the opening of bank accounts. It had also recommended Albania to provide guidance to FIs on the types of policies and procedures they should put in place to prevent the misuse of new technologies; and to raise awareness of the ML/TF risks in new technologies amongst REs which are likely to encounter them (especially the banking sector). FATF standards were revised since then by incorporating requirements on a non-face to face business in R.10, and putting more emphasis on the identification and mitigation of risks arising from new products and technologies in R.15.

161. *Criterion 15.1* – The Albanian authorities have recognised the risks of new-technologies throughout the NRA process even if this has not been specifically singled out as a contributing threat indicator. Further to amendments to the AML/CFT Law, all REs are now required to implement policies or undertake proper measures to identify and assess the ML and FT risks arising from: the development of new products, business practices and delivery channels; and the use of new or developing technologies (Art. 6 AML/CFT Law). In this last respect, the amendment does not specify that this obligation applies to both new and existing products. However authorities confirm that in their understanding this obligation applies for both new and existing products and supervisors check both. Art. 6 of AML/CFT Law also provides that REs should implement such measures prior to the introduction of the new products or business practices or the use of new technologies in order to manage and mitigate the identified risks. Additionally, guidance on these matters have been issued by the BoA (para 14 of Art 6 of Regulation No. 44, dated 10.06.2009 “on prevention of money laundering and terrorist financing”) and the Financial Services Authority.

162. *Criterion 15.2* – Art. 6 of the AML/CFT law now satisfies the requirements of this criterion.

#### *Weighting and Conclusion*

163. Albania requires all REs to consider and mitigate risks associated with new technologies via a risk management process. Further to amendments to the AML/CFT Law, all REs are now required to implement policies or undertake proper measures to identify and assess the ML and FT risks arising from: the development of new products, business practices and delivery channels; and the use of new or developing technologies (Art. 6 AML/CFT Law). However, the amendment does not specify that this obligation applies to both new and existing products. **R.15 is rated LC.**

#### *Recommendation 16 – Wire transfers*

164. In the 4<sup>th</sup> round MER, Albania was rated partially complaint with wire transfer requirements (former SR.VII). One technical deficiency was identified: receiving FIs had the option to request missing wire transfer information from the beneficiary of the transaction. Since then, significant changes have been made to requirements in this area during the revision of the FATF standards.

165. Art. 10 (1) of the Albanian AML/CFT Law stipulates the EDD requirements for REs which perform money or value transfers. The requirements apply regardless of any threshold and for both domestic and cross-border transfers. Art. 10 applies to 'money and value transfers, including direct electronic transfers' which must be accompanied by the required information. These terms are defined under Art. 3(15) and 3(18) respectively<sup>122</sup> and appear broad enough to cover all wire transfers under R.16.

All REs performing wire transfers are subject to licensing and supervision by the BoA. The BoA Regulation No. 44 "On prevention of money laundering and terrorist financing" contains further obligations for REs on information that must accompany money or value transfers (Art. 9).

166. *Criterion 16.1* –

a) Under Art. 10 (1) AML/CFT Law, REs which perform transfers must obtain and identify the first and last name, address, and document identification number or account number of the originator. This information must be included in the message or payment form attached to the transfer. If there is no account number, the transfer shall be accompanied by a unique reference number. Authorities further clarified that the document identification number is used in cases where the originator does not have an account number and the payment is done in cash. It is not explicit from Art. 10(1) that ordering FIs must also attach the information to transfers, but this is implicit from Art. 10(3) which makes clear that transfers without the required information must be refused by receiving institutions. Furthermore, BoA Regulation No. 44 specifies that 'the complete identifying of information shall accompany the transfer throughout the transfer steps from the first sender to the last beneficiary' (Art. 9 (3)).

167. It appears that there is no specific requirement to verify the accuracy of the information.

168. Authorities have pointed at the general CDD obligation under the AML/CFT Law (Art. 4/1 and 5) to identify the customer and verify the customer's identity through documents, data or information received from reliable and independent sources. The identification and verification would include data on names; date and place of birth, place of permanent residence and place of temporary residence (for natural persons); and permanent location (for legal persons). This obligation applies in case of a customer that carries out or intends to carry out occasional transfers above the threshold of 100,000 ALL (approx. 750 EUR). Nonetheless, this does not appear to fully amount to an obligation to ensure that originator information verified for accuracy is included in the wire transfer.

169. b) There are no requirements for the inclusion of beneficiary information under the AML/CFT Law. The BoA Regulation No. 44 stipulates that subjects shall require information related to both the sender and the beneficiary, which at a minimum shall include name, surname, address, ID number, IBAN where applicable or the account number). The complete identification information must accompany the transfer throughout (Art. 9 (3)). There is no indication in the Regulation that, in the absence of a beneficiary account number, a unique transaction reference number must be added which permits traceability of the transaction.

170. *Criterion 16.2* – It was noted in the 4<sup>th</sup> round MER that for cross-border transfers, the Albanian Law does not provide the possibility of bundling several transfers from a single originator in a batch

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<sup>122</sup> Art. 3(15): "Money or value transfer service" means the performance of a business activity to accept cash and other means or instruments of the money and/or payment market (cheques, bank drafts, certificates of deposit, debit or credit cards, electronic payment cards etc.), securities, as well as any other document that substantiates the existence of a monetary obligation or any other deposited value and to pay to the beneficiary a corresponding amount in cash, or in any other form, by means of communication, message, transfer or by means of the clearing or settlement service, to which the service of the transfer of money or value belongs.'

Art. 3 (18): "Direct electronic transfer" means every transaction performed on behalf of a primary mandating person (natural or legal) through a financial institution, by means of electronic or wire transfer, with the purpose of making available a certain amount of money or other means or instruments of the money and/or payment market at the disposal of a beneficiary in another financial institution. The mandator and the beneficiary can be the same person.'

file. Authorities have again confirmed that bundled cross-border wire transfers in batch files are not allowed.

171. *Criterion 16.3* – As noted above, the requirements under Art. 10 (1) of the AML/CFT Law apply regardless of any threshold. The information that must be included for originators according to the law (see c.16.1) is in line with this criterion. Regulation No. 44 also requires inclusion of beneficiary information. As mentioned under c.16.1 there is no indication in the Regulation that, in the absence of a beneficiary account, a unique transaction reference number must be added which permits traceability of the transaction.

172. *Criterion 16.4* – Under Art. 4(ç) of the AML/CFT Law, REs are required to undertake CDD measures when ML or TF suspicions arise. As outlined under criterion 16.1 (a), this includes the verification of customer information.

173. *Criterion 16.5 & 16.6* – As mentioned in the analysis for c.16.1, wire transfer rules apply equally to domestic and cross-border wire transfers and include the required originator information.

174. *Criterion 16.7* – Art. 16 of the AML/CFT Law contains obligations on record-keeping of data on transactions, including those transfers specified in Art. 10. The data must be maintained for 5 years following completion of the last transaction. The GDMPL can also request to store this information longer than 5 years. As noted under c.16.1, the information that must accompany transfers according to the AML/CFT Law only concerns originator and not beneficiary information. However, the law specifies that the data of the transactions must be maintained ‘with all necessary details to allow the tracing of the entire cycle of transactions’, which implicitly covers also beneficiary information. As described, Regulation No. 44 explicitly covers beneficiary information, although it does not on the other hand cover record-keeping requirements. Authorities maintain that, given the clear link between the AML/CFT Law and Regulation No. 44, record-keeping requirements of the former will be applicable also to information collected under the latter.

175. *Criterion 16.8* – There are no prohibitions in the AML/CFT law for the ordering FI not to execute the transfer in case of missing information. Art. 9 of Regulation No. 44 does contain such a prohibition.

176. *Criterion 16.9* – Art. 10 (3) of the AML/CFT law obliges FIs to transmit originator information together with the payment, including in case they act as intermediaries in a chain of payments. Art. 9 of Regulation No. 44 states that the complete identifying information (originator and beneficiary information) shall accompany the transfer throughout the transfer steps from the first sender to the last beneficiary.

177. *Criterion 16.10* – It appears that situations where technical limitations prevent the intermediary FI from transmitting the information accompanying a cross border wire transfer with a related domestic wire transfer, are not explicitly regulated under Albanian law.

178. The general record-keeping obligations of Art. 16(3) AML/CFT Law, described under criterion 16.7, would however apply, which oblige FIs, including intermediaries, to maintain data of transactions “with all the necessary details to allow the re-establishing of the entire cycle of transactions”.

179. *Criterion 16.11 & 16.12* – There are no specific provisions requiring intermediaries to take reasonable measures to identify transfers that lack information or to implement a RBA to define the steps to be taken if the required information is not sent with the transfer. There is a requirement for FIs that ‘receive’ transfers to obtain missing data pursuant to Art. 10 (3) and, if the wire transfer lacks required data, to refuse it. However, this does not include beneficiary information. Also, the phrase could both mean any institution which at some point receives the transfer, which would include intermediaries, or only the intended final receiving institution (the beneficiary FI). Authorities maintain that the former interpretation prevails, and that all FIs, including those acting as intermediaries, must refuse any wire transfer that does not contain the required originator information.

180. *Criterion 16.13* – There are no specific provisions requiring beneficiary FIs to take reasonable measures to identify transfers that lack information. However, Art. 10(3) makes clear that beneficiary FIs must refuse transfers without the required originator information. Art. 9 of Regulation No. 44 indicates that MVTS in case of incoming transfers must refuse to perform the transfer in case of missing originator or beneficiary information.

181. *Criterion 16.14* – There are no specific requirements for the beneficiary institution to verify the identity of the beneficiary if this has not been verified before. The authorities maintain that general CDD obligations to verify customers apply. However, such measures apply to the customer that ‘carries out’ or ‘intends to carry out’ a transfer and therefore it is not unequivocally clear in the view of the assessment team that this covers beneficiaries (as opposed to originators).

182. *Criterion 16.15* – There are no provisions requiring beneficiary FIs to implement a RBA to define the steps to be taken if the required information is not sent with the transfer. However, there is a general instruction on FIs receiving transfers with incomplete information to request the missing information from the sending institution and the obligation to refuse the transfer and report it to the GDMLP if it fails to obtain the missing information (Art. 10 (3) of the AML/CFT law; Art. 9(3) Regulation No. 44).

183. *Criterion 16.16* – Art. 10 of the AML/CFT Law explicitly applies to MVTS. Art. 10(4) states that the agents of MVTS are also considered as subjects to the Law. MVTS providers must ensure that their agents, of whom they must keep a list, apply the same internal measures for CDD.

184. *Criterion 16.17* - There are no specific provisions governing the case of a MVTS provider that controls both the ordering and the beneficiary side of the transfer. Nonetheless, MVTS providers as REs are required under the AML/CFT Law to report suspicious transactions (see R.20).

185. *Criterion 16.18* – There is no explicit legal requirement for FIs to freeze assets and funds which are subject to UN TFS without delay. However, Art. 230/ç of the CC criminalises the performing of transactions, services, actions for designated persons and entities. See further under R.6.

#### *Weighting and Conclusion*

186. The AML/CFT Law in combination with BoA Regulation No. 44 covers most of the requirements of R.16. There are some gaps in obligations relating to verification of information and obligations for intermediary institutions. There is no explicit legal requirement for REs (including MVTS) to freeze assets and funds which are subject to UN TFS without delay. **R.16 is rated LC.**

#### *Recommendation 17 – Reliance on third parties*

187. Albania was rated NC in the previous evaluation round on R.9. Deficiencies identified were that the third party reliance is practiced although there are no measures in place. In order to address the identified deficiency Albania amended the AML/CFT Law. The New FATF Methodology applies a flexible approach to intra-group reliance and places the emphasis on the third party’s country risk level.

188. *Criterion 17.1* – Albania prohibits the reliance of FIs on third parties to perform CDD (Para 3 Art. 6 of the AML/CFT Law).

189. *Criterion 17.2* – Due to the prohibition of reliance on the third parties, provisions on consideration of the country’s risk level are not introduced in the Albanian legislation.

190. *Criterion 17.3* – An institution that is a part of the same financial group is considered as a third party, according to the Albanian legislation.

#### *Weighting and Conclusion*

191. There is an outright prohibition on reliance of FIs on third parties in Albania. **R.17. is rated N/A.**



### *Recommendation 18 – Internal controls and foreign branches and subsidiaries*

192. Albania was rated PC in the previous evaluation round on R.15 (internal controls) and LC on R.22 (foreign branches and subsidiaries). Several deficiencies were identified, including the unclear procedure to appoint the compliance officer and the limited scope of his/her powers and competence. There is no specific provision requiring an independent audit function, application of the domestic legislation and higher standards by the branches/subsidiaries operating in a high-risk country. In order to address the abovementioned deficiencies, Albania amended the AML/CFT Law. The New FATF Methodology includes an additional requirement regarding the implementation of AML/CFT group wide programmes.

193. *Criterion 18.1* – There is no requirement in the Albanian legislation for the FIs to implement programmes against ML/TF having regard to ML/TF risk and the size of the business.

194. The requirement to have regulations and guidelines addresses understanding of the risks posed by customers or businesses, development of new products business practices and delivery channels, and use of new or developing technologies (Para 1, Art. 6 and Para 1(a) Art. 11 of the AML/CFT Law). In addition, FIs are required to have internal regulations and instructions for record keeping and procedures for reporting suspicious activity and transactions over the threshold (Para 1, Art. 4, Instruction of the MoF N28). There are additional legislative requirements set concerning the following elements of the criterion:

(a) Compliance management arrangements – FIs shall develop compliance management procedures for prevention of ML/TF and shall nominate a responsible person at an administrative/management level<sup>123</sup>. There shall be a responsible person nominated in the central office and each branch, representative office, subsidiary or agency to whom all suspicious facts shall be reported by the employees. Responsible persons have access to all the data relevant for fulfilment of their responsibilities (Para 1 (b), Art. 11 of the AML/CFT Law).

(b) Screening procedures – There are no measures regarding screening procedures to ensure high standards, other than fitness and probity requirements when hiring new employees, to ensure their integrity (Para ç, Art. 11 of the AML/CFT Law). Although there is no definition provided in the AML/CFT Law for fit and proper measures to be applied, there are a number of other legal acts<sup>124</sup> regulating measures on application of the identical requirements for managerial staff, however, these requirements seem not to cover the compliance officers in case they are not appointed at the administrative, rather than managerial level.

(c) On-going employee training - FIs shall train their employees on the prevention of ML/TF through regular organisation of training programmes (Para d, Art. 11 of the AML/CFT Law). This requirement additionally elaborated in bylaws for clarifying that, the responsible person shall compile and implement an annual training programme for the staff, covering internal regulations and procedures adopted for the purpose of preventing ML/TF. The responsible person shall also periodically inform the staff on amendments of applicable legal provisions on the prevention and punishment of criminal offences related to ML/TF, as well as their obligation regarding to the implementation of these changes (Para 10-11, Art. 8 of the BoA Regulation No. 44, Para 9-10, Art. 8 of the AFSA Board Decision no. 58). However, there is no explicit requirement for the FIs to have an on-going training programme for the responsible persons. In addition, the scope of the training programme for the staff seems to be limited.

(d) An independent audit function– FIs shall instruct internal audit to check the compliance with the obligations of the AML/CFT Law and relevant sublegal acts (Para 1(dh), Art. 11 of the AML/CFT Law).

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<sup>123</sup>Subjects shall assign a responsible person, at head office management level – Art. 8 of the BoA Regulation No. 44, Art. 8 of the AFSA Board Decision no. 58

<sup>124</sup>Art. 25 Law No. 10 197 of 10.12.2009 “On VPFs”, Art. 17, Law No. 52, date 22.05.2014 “On The Activity Of Insurance And Reinsurance”, Art. 12, and 14 of Regulation No. 165, date 23.12.2008 “On the licensing of the brokerage/ intermediary companies, the broker and the investment advisor” Art. 6 No.120 date 02.10.2008 “On the licensing and supervision of the securities exchange”, Para 9 Art. 8 of the BoA Regulation No. 44, para. 2.2.1.2.2 of the BoA supervision manual of 29.02.2014.

In addition to this requirement banks are required to establish an internal audit unit with independent powers, to check the compliance (Para 1, Art. 12 of the BoA Supervisory Council decision No. 67, Para 4, Art. 45 of the Law on Banks in the Republic of Albania). Insurance companies are required to establish an internal audit unit operating independently, tasked with evaluation and enhancement of their governance, risk management and control processes (Para 1-2, Art. 122 of the Law on the Activity of Insurance and Reinsurance). Management Companies are required to have in place Internal Audit functions (Art. 19, Law No. 10198 "On CIUs" and Art. 31, Law No. 10197 "On VPFs"), SLAs shall create an internal audit unit, if at least one of the criteria set in the BoA Regulation 105 is met (Art. 31 of Law 52/2016 "On SLAs and their Unions" and Art. 7 of BoA regulation no.105). No similar explicit requirement is provided for other types of FIs, the notion of requirement to have an internal audit can only be inferred from the BoA Regulations No. 1 and 2.

195. *Criterion 18.2* – There is no legislative requirement imposed upon FIs to implement group-wide programmes against ML/TF on a domestic basis.

196. There is no group-wide approach applied with regard to Criterion 18.1. In case of banking and financial groups a "superordinate institution" shall be able to monitor the risks to which the banking or financial group is exposed and implement the measures for managing those risks (Para 2, Art. 84 of the Law on Banks in the Albania, Para 3, Art. 5 of the Regulation No4 on consolidated supervision). As for the insurance groups, there is an implicit requirement rather than an explicit one.

197. *Criterion 18.3* – FIs have a statutory obligation to apply preventive measures in line with the AML/CFT Law when operating outside of the Republic of Albania. In case the preventive measures of the foreign country differ, then REs shall ensure that the highest obligations prevail.

198. In case the host country does not permit implementation of the preventive measures in line with the AML/CFT Law FIs shall report about those impediments to the GDPML and, depending on the case, to its supervising authority. However, there is no requirement for the FIs to apply additional measures to manage the ML/TF risks in such a situation. There is one bank that has one branch outside of Albania.

#### *Weighting and Conclusion*

199. Albania has not addressed AML/CFT internal controls in a coherent and comprehensive manner, failing to adequately address the group-wide implementation of the AML/CFT measures. Not all of the elements of the requirements over the application of the preventative measures while operating in a foreign state are covered. **R.18. is rated PC.**

#### *Recommendation 19 – Higher-risk countries*

200. Albania was rated PC in the previous evaluation round on R. 21. The technical deficiencies identified included the absence of a requirement to record examination findings of transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations. Amendments to the AML/CFT Law have been made to enhance compliance of the country with the requirements on measures to be applied concerning high-risk countries. The revised FATF Recommendations strengthen the requirements to be met in respect of higher-risk countries.

201. *Criterion 19.1* – The FIs shall apply EDD to business relationships and transactions with all types of customers residing in or carrying out their activity in the countries which do not apply or partially apply the relevant international standards, for the prevention and fight against ML and TF (Para 5, Art. 8 of the AML/CFT Law). However, as also noted in c.10.17 application of the EDD measures is not extended to mitigation of the TF risks (Para 1, Art. 7 of the AML/CFT Law). There is no explicit requirement to apply the EDD measures, proportionate to the risks, to business relationships and transactions with customers from countries for which it is called for by the FATF.

202. *Criterion 19.2* – There are no explicit legislative provisions to apply countermeasures proportionate to the risks when called upon to do so by the FATF beyond the application of the EDD measures.

203. Independently of any call by the FATF to do so, GDPML may issue a list of countries which do not apply or partially apply the relevant international standards, for the prevention and fight against ML and TF, in order to apply such countermeasures as limitation and/or control of the transactions or business relations of the entities with these countries (Letter “F”, Art. 22 of the AML/CFT Law). There are no requirements to apply these countermeasures proportionate to the posed risks.

204. *Criterion 19.3* – The GDPML’s issues a notice on FATF Public Statements on the website<sup>125</sup> to advise FIs of weaknesses in the AML/CFT system of other countries.

#### *Weighting and Conclusion*

205. There is no explicit legislative requirement to apply the EDD measures, and countermeasures proportionate to the risks, to business relationships and transactions with customers from countries for which it is called for by the FATF. Although the GDPML is vested with powers to issue a list of higher risk countries, and set countermeasures, there is no risk proportionality requirement envisaged. Application of the EDD measures does not extend to mitigation of the TF risk. **R.19 is rated PC.**

#### *Recommendation 20 – Reporting of suspicious transaction*

206. Albania was rated PC in the previous evaluation round on R. 13 and SR IV. Several deficiencies were identified due to the deficiencies in the criminalisation of ML (insider trading and market manipulation not covered) and TF, the extension of provisions only to “intended” TF, and deficiencies related to SAR reporting requirements. Some of the abovementioned deficiencies have been addressed by the adoption of amendments to the CC and the AML/CFT Law.

207. *Criterion 20.1*. – The FIs submit report to the GDPML immediately and no later than 72 hours when they know or suspect that funds involved derive from criminal activity (Para 1 of Art. 12 of the AML/CFT Law). In addition, when they are asked by a customer to carry out a transaction and they suspect that funds involved derived from criminal activity they should immediately report to the GDPML (Para 2, Art. 12 of the AML/CFT Law). FIs are obliged to report immediately if they have information or suspicions about financial actions, transactions, funds or other acts, committed or attempted to be committed, with the aim to carry out or finance terrorist acts, regardless of their value (Para 1, Art. 10 of the Law on MTF).

208. Para 1 and 2, Art. 12 of the AML/CFT Law refers to funds deriving from criminal activity, which is not further defined in the legislation. Meanwhile, Para 11 Art. 2 of the same law defines “Proceeds of criminal offence” which is however narrow (see R. 4). Hence, the law is not clear on the scope of application of reporting obligations.

209. Currently the definitions of ML and TF are largely in line with the Vienna and the Palermo Conventions and the TF Convention and all designated predicate offences including tax crimes are covered by the CC. However, there are still some minor shortcomings (see the analysis of R. 3 and R. 5) which might limit the scope of reporting under Recommendation 20.

210. The requirement to file promptly the report is fulfilled through the obligation to report to the GDPML immediately and not later than 72 hours (Para 1 Art. 12 of the AML/CFT Law). The STR shall be submitted before the transactions performed. In urgent cases, some of the REs,<sup>126</sup> are provided with the additional option to preliminarily transmit the information on the suspicious activity by phone to the GDPML before filing the STR (Para 4, Art. 11 of the Instruction No 28).

211. *Criterion 20.2* – The AML/CFT Law covers attempted ML and TF (Art.12, para 1 of the AML/CFT Law), but the reference of ML and TF is to criminal offences as defined in the CC. Some cases of attempted transactions are also covered by Art. 12, para 2, but other cases of attempted transactions do not fall within the scope of the AML/CFT Law.

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<sup>125</sup> [http://www1.fint.gov.al/images/FATF\\_Public\\_Statement\\_June\\_2017.pdf](http://www1.fint.gov.al/images/FATF_Public_Statement_June_2017.pdf)

<sup>126</sup> REs defined in Art. 3, paragraphs ‘a’, ‘b’, ‘c’, ‘ç’, ‘d’, ‘e’, ‘ë’ and ‘k’ of the AML/CFT Law.

212. There is no threshold set for reporting suspicious transactions by the AML/CFT Law.

213. The term “Transaction” is defined as “a business relation or an exchange that involves two or more parties” (Para 16, Art. 2 of the AML/CFT Law), which seems not to cover the case when a customer makes a transaction to his/her own other account, and hence does not cover a requirement to report all transactions.

#### *Weighting and Conclusion*

214. The reporting requirement covers most, but not all elements of the standard. Legislation does not clearly define the scope of the proceeds of the criminal activity. Minor shortcomings in criminalisation of ML and TF, deficiencies in the definition of the term “transaction” and the obligation to report attempted transactions might limit the scope of the reporting obligation. **R.20. is rated LC.**

#### *Recommendation 21 – Tipping-off and confidentiality*

215. Albania was rated LC in the previous evaluation round on R. 14. Deficiencies were identified by the assessment team with regard to the prohibition against tipping off which did not explicitly extend to directors and officers. The AML/CFT Law was amended to address this deficiency.

216. *Criterion 21.1* – Art. 14 of the Albanian AML/CFT Law provides an explicit exemption from legal liability for the information disclosures to the GDPML, which is applicable to entities or supervising authorities, their managers, officials or employees. This provision covers both the reporting activity and the submission of other information to the GDPML in good faith in compliance with the requirements of the AML/CFT law. The exemption concerns penal, civil or administrative liability arising from the disclosure of professional or banking secrecy. However, it is unclear if the term “professional secrecy” covers the disclosure of information protected by contract or law, regulatory or administrative provision (e.g. tax secrecy, commercial or business secrecy, etc.).

217. The law provides a general exemption and it is not conditioned on the actual occurrence of the underlying criminal activity.

218. *Criterion 21.2* – Based on the provision of Art. 15 of the Albanian AML/CFT Law, the prohibition is applicable for the REs, their directors, officials and employees (permanent or temporary). The prohibition is not only related to informing the customer but also any third party and covers sending or preparing for the provision of information to GDPML, for reporting suspicious activity, as well as for any information requested by the latter or for investigations being carried out.

#### *Weighting and Conclusion*

219. The scope of professional secrecy is unclear. **R.21 is rated LC.**

#### *Recommendation 22 – DNFBPs: Customer due diligence*

220. In its 4<sup>th</sup> round MER, Albania was rated partially compliant with R.12, based on all deficiencies in the legal framework for CDD that applied equally to FIs and DNFBPs. In addition, as a specific deficiency for DNFBPs was identified that the legal framework covering company and service providers (CSPs) was not comprehensive.

221. Preventative measures for DNFBPs are outlined in the AML/CFT Law and are substantially the same as the requirements outlined for FIs.

#### *222. Criterion 22.1 –*

(a) Casinos, gambling institutions and hippodromes are required to conduct CDD when clients carry out a transfer inside or outside the country or a transaction equal to or over 100,000 ALL (approx. 750 EUR) (Art. 3(g) & 4(b) AML/CFT Law). This threshold has been lowered as compared to the time of the 4<sup>th</sup> round MER, when it was 200,000 ALL.

(b) Real estate agents are subject to the AML/CFT Law when they are involved in transactions for their customers related to buying or selling of real estate (Art. 3(h) AML/CFT Law).

(c) Dealers of precious stones and metals are subject to the AML/CFT Law (Art. 3(j) point iv AML/CFT Law).

(d) Attorneys, public notaries, other legal representatives, and accountants<sup>127</sup> are subject to the AML/CFT Law when they prepare or carry out transactions for their customers for the following activities:

- Transfer of immovable properties, administer money, securities and other assets
- Administration of bank accounts<sup>128</sup>
- Administration of capital shares to be used for the foundation, functioning or administration of commercial companies
- Formation, functioning or administration of LEs and legal arrangements
- Legal agreements, sale of securities or capital shares transactions and the transfer of commercial activities.

(e) The 4<sup>th</sup> round MER pointed out that the AML/CFT Law applies to persons who undertake the administration of third parties' assets or managing their activities and who are not otherwise covered by the AML/CFT Law. However, this was found not to cover all company services as required by the FATF standard. Since that time, a provision has been added to the Law to cover any natural or legal person not covered by other provisions of the Law which engage in the 'foundation, registration, administration or functioning of legal arrangements or legal persons' (Art. 3 (i) point i/1) AML/CFT Law). This wording does not explicitly mention those TCSP activities set out by the standard but is broad enough to cover them.

223. CDD obligations for categories (b) – (e) are triggered when a business relationship is established (Art. 4(a) AML/CFT Law). If no business relationship is established, REs are required to identify their customers when they are involved in occasional transactions of 1 million ALL (approx. 7,500 EUR) or more, including in several linked transactions (Art. 4(b) point ii)). This threshold has been lowered as compared to the threshold in force at the time of the 4<sup>th</sup> round MER (when it was 1,5 million ALL). Moreover, all REs are required to undertake CDD measures when there are doubts about the veracity of previously obtained data or when there are doubts of ML/TF.

224. The obligation for DNFBPs to conduct CDD is subject to the same deficiencies identified for FIs as described under R.10, except for those relating to life insurance beneficiaries (c. 10.12-10.13), which are not applicable. These deficiencies are mostly minor with a few more substantive gaps related to requirements for specific CDD measures for authorised persons (c.10.4) and TF risk identification and management (c.10.14, c.10.17). The relevant guidance mentioned under c.10.10 and c.10.11 for FIs, is formed by MoF Instructions No. 29 'On the reporting methods and procedures of non-financial free professions' in the case of DNFBPs.

225. *Criterion 22.2* – DNFBPs are subject to the same record-keeping requirements as FIs which are largely in line with the standard (Art. 16 AML/CFT Law, see R.11). The additional requirements contained in the guidance (relevant for c.11.2) are in MoF Instructions No. 29.

226. *Criterion 22.3* – DNFBPs are subject to the same requirements regarding PEPs as FIs (Art. 8 AML/CFT Law), and consequently suffer the same minor deficiencies (see R.12), except for the deficiencies regarding life insurance beneficiaries which do not apply to DNFBPs.

227. *Criterion 22.4* – DNFBPs are subject to the same requirements on new technologies as FIs under the AML/CFT Law (Art. 6(1) AML/CFT Law; see R.15). These are largely in line with the standard.

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<sup>127</sup> The authorities advised that, in Albania, there are two categories of entities licenced to perform services in the field of accountancy: authorised independent chartered accountants and approved independent accountants. Both are subject to the AML/CFT Law. At the time of the 4<sup>th</sup> round on-site visit, accountants were covered for all their activities – this has been narrowed down to the activities listed in the FATF standard pursuant to amendments to the AML/CFT Law.

<sup>128</sup> The authorities advised that the concept of 'bank account' covers any kind of account, including savings or securities accounts, for whose administration all actions are taken through the banking system.

228. Criterion 22.5 – DNFBPs, as FIs, are not allowed to rely on third parties (Art. 6 (3) AML/CFT Law; see R.17).

*Weighting and Conclusion*

229. All categories of DNFBPs as required by the standard are covered in the Albanian legal framework. All criteria are met or mostly met with the exception of c.22.3 (PEPs) which is partly met. Third party reliance is not allowed. **R.22 is rated LC.**

*Recommendation 23 – DNFBPs: Other measures*

230. In its 4<sup>th</sup> round MER, Albania was rated partially compliant with R.16, based on all deficiencies in the legal framework for CDD that applied equally to FIs and DNFBPs.

231. *Criterion 23.1* – The reporting obligations of Art. 12 AML/CFT Law apply to all REs, including DNFBPs, and are subject to some shortcomings (see R.20).

(a) Lawyers, notaries, other independent legal professionals and accountants are obliged to report suspicious transactions. Art. 25 AML/CFT Law contains an exemption related to legal privilege which is in line with the standard and which explicitly states that this privilege shall not be used as a rationale for failure to comply with the Law.

(b) DPMS are subject to the reporting requirements.

(c) TCSPs are subject to the reporting requirements.

232. *Criterion 23.2* – In general, DNFBPs are subject to the same requirements for internal controls as FIs (Art. 11 AML/CFT Law) (see R.18), and therefore the same deficiencies are relevant. However, the assessment team considers that these carry less weight for DNFBPs than for FIs. Many DNFBPs exercise their activities as a single person or in small offices. Art. 11 (3) clarifies that if the number of the employees of the entities is less than 3 persons, the AML/CFT obligations shall be fulfilled by the administrator or by an authorised employee of the entity.

233. *Criterion 23.3* – DNFBPs are subject to the same requirements as FIs regarding higher risk countries (Art. 8, 11 AML/CFT Law), and consequently suffer the same deficiencies (see R.19).

234. *Criterion 23.4* – DNFBPs are subject to the same requirements as FIs regarding tipping-off and confidentiality (Art. 13-15 AML/CFT Law) and therefore the same minor deficiency applies (see R.21, c.21.1).

*Weighting and Conclusion*

235. The key reporting requirements for DNFBPs are present but they are subject to moderate deficiencies. The deficiencies noted under R.18-21 are valid for DNFBPs. **R.23 is rated LC.**

*Recommendation 24 – Transparency and beneficial ownership of legal persons*

236. In the 3<sup>rd</sup> round Albania was rated as PC with R. 33. The technical deficiencies were identified with regard to accuracy/adequacy of data concerning BO and control information of legal persons, and lack of measures to ensure that bearer shares are not misused for ML/TF. The new FATF Recommendations set more detailed requirements, in particular, concerning the collection and the availability of information on BOs.

237. *Criterion 24.1* – The types of legal persons that can be established in Albania are provided under Chapter II of the Civil Code, which states that there can be created public and private legal persons. There are various forms of LEs can be established in Albania, regulated under the different legal acts providing for their basic features. These are for the Public legal persons - state institutions and enterprises, registered if follow economic purposes (Art. 25 of the Civil Code), and the Private legal persons - companies, associations and foundations, simple companies (partnerships) (Art. 26 and Art. 1074-1112 of the Civil Code), centres (Art. 11, Law No 8788 On NPOs), SLAs and their unions (Law No. 52/2016 On SLA and their Unions), mutual cooperation companies (partnerships) (Law No.

8088, dated 21 March 1996 On Mutual Partnerships), agricultural cooperative companies (Law No.38/2012 Law on Agricultural Cooperative Companies) and other entities of private character.

238. The legal persons and other entities of private sector are obliged to be registered either with the NBC or the DCoT. The processes of the creation, obtaining and recording of basic information are provided respectively in the Law No. 9723 On the NBC and the Law No. 8789 On the registration of NPOs.

239. Above provided information is publicly available, since it is set out in the law. In addition, NBC provides with information and a step-by-step guidance on creation of the legal persons, submission and availability of basic information. Information is publicly available in Albanian language (<http://qkb.gov.al/>).

240. There are no mechanisms in place that identify and describe the processes for obtaining and recording BO information other than as part of the CDD processes of REs.

241. *Criterion 24.2* – Albania conducted analysis of risks posed by NPOs for the TF at the national level (See the details under Criterion 8.1). Separately, Albania has conducted the NRA where ML/TF risks inherent in various financial and non-financial sectors were analysed. However, there has been conducted no comprehensive assessment of the ML/TF risks associated with all types of legal persons created in the country.

242. *Criterion 24.3* – LEs stipulated by Art. 22 of the Law No.9923 are obliged to register with the NBC<sup>129</sup>. There are different sets of documents envisaged to be provided to the NBC depending on the type of legal person. As stipulated under Section III of the Law No. 9723 in all cases basic information of legal entity contains the name<sup>130</sup>, establishment date, Act and Statute/Contract of incorporation, legal form/status, address of activity/headquarter, the identification data of the persons responsible for the administration and representation of the company in relation to the third parties, powers of administrator, and the terms of their appointment. Other types of LEs, such as Associations, Foundations, Centres and their branches should be registered with the DCoT. Relevant information as per c. 24.3 to be provided to and maintained by the DCoT is set out in Art. 22 and 31 of the Law No. 8789 on the registration of NPOs.

243. Concerning the NBC, all the documents are collected and published on the NBC web page, and are also available at each service desk in line with the DCM No. 391/2017 (Para 55-60).

244. As concerns data collected by the DCoT, the Register is publicly available, and information can be provided upon request, for a charge<sup>131</sup>. No charge is applied to state authorities' requests.

245. *Criterion 24.4* – There is no explicit requirement for LEs to maintain information set out under Criterion 24.3 and 24.4 by their own. However, Law No.9723 establishes the information to be provided to NBC for each type of legal entity, including data on members, founders, shareholders, or partners. Accordingly, Simple Companies are required to register identification data of the members, value and type of contributions by the members (Art. 31); for Commercial Companies - identification data of the founders, which in case of the Unlimited Partnerships shall be supplemented by information on kind and value of the contributions of the partners and their participation in the capital, and in case of the Limited Partnerships - the amount or value of the contributions of all the partners, the participation in such kind or value of each "unlimited" or "limited" partner as well as the general participation of all "unlimited" partners and of each "limited" partner in the distribution of profit and in the remaining value of the company after liquidation (Art. 32-34); for the Limited

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<sup>129</sup> State institutions and Enterprise (if they follow commercial purposes), Special project implementation units and other similar persons, Commercial Companies (Unlimited partnerships, Limited partnerships, Limited-liability companies, Joint-stock companies) Simple Company, Representation offices of Albanian and foreign companies, SLAs and their unions, Mutual cooperation companies, Agricultural Cooperative Companies.

<sup>130</sup> There is no mandatory requirement for the Simple Company to have a company name.

<sup>131</sup> The joint instruction of the MoF and the MoJ no. 33, dated 29.12.2014 "On the Determination of the Service Tariff for Services and Services of Judicial Administration, Ministry of Justice, Prosecution and Notary", as amended by common instruction no. Nr. 11909/1, dated 18.10.2016.

Liability Companies - value of the initial share capital subscribed, number of shares, nominal value of each share, participation in the share capital as well as the kind and value of the contributions of each shareholder and also whether the initial subscribed share capital is paid (Art. 35); in case of Joint-Stock Companies - the value of the initial capital subscribed, and the portion paid thereof, the number and type of the subscribed shares, the nominal value of each share, number of subscribed shares by each shareholder, value and type of contribution of each shareholder, and portion paid by them, where there are several classes of shares, the information for each class and the rights attaching to the shares of each class (Art. 36); for SLAs and their unions - the kind and value of each member in the capital of the company (Art. 38); for Mutual Aid And Cooperation Companies - kind and value of each member in the capital of the company (Art. 39); Agricultural Cooperative Companies – capital of company, percentage of capital owned by each member; the subscribed capital value; the minimum amount of capital required for capital contribution as a contribution, as well as the form and deadlines for obtaining the status of the member; the number of parts in which the capital is divided, and the value of each part according to the contribution of the members.

246. Art. 31 of the Law No. 8789 On the registration of NPOs establishes the information to be provided to the DCoT by the Associations, Foundations and Centres. This constitutes of personal data of founders and members of organisation and data of the contributing founder fund (if there is such). With regard to the State – owned companies and Enterprises in the occasion they have commercial purposes Art. 22 stipulates that these are subject for registration.

247. *Criterion 24.5* – Law No 9723 provides that the NBC is not responsible for the accuracy of data received for registration (Art. 54). Accuracy of data is left with the person submitting registration documents or the person, drafting the act, in line with the legislative requirements. The authorised officer (registrar) assesses only the completeness of data, and not its accuracy (Para 35 of the DCM No. 391/2017). The legal person is responsible in accordance with the laws in force on the truthfulness and veracity of the facts and data notified and acts filed with the registers (Art. 74 of the Law No 9723).

248. The DCoT when making decision on registration of the legal entity reviews the application and provided documents for their completeness (Art. 22 of the Law No. 8789 On the registration of NPOs). No further requirement exists to ensure the accuracy of information is provided.

249. Any modification in the announced data shall be registered with the NBC. There is an exception set out for the Joint Stock Companies, i.e. they are not obliged to notify each transfer of shares. These companies, together with the annual balance sheet and the audit report, also provide an updated list of registered shareholders with regard to nominative shares, and the total number of shares (Art. 43 of the Law No.9723). This is due to the Art. 119 of the Law No 9901 requiring Joint Stock Companies to keep a share registry in which the ownership of all shares is recorded. Information shall be made available on the joint stock company website.

250. Concerning updating information on a timely basis, LEs shall provide information for registration with the NBC within 30 days from the date of the occurrence of the fact and/or the creation of the act compulsory for registration (Para 3, Art. 22 of the Law No 9723). No timeframe to provide data on amendments of information previously submitted by LEs to the DCoT set out under the Law No. 8789 On the registration of NPOs.

251. *Criterion 24.6(a)-(c)* – There is no requirement either for LEs or Registries or other competent authorities to obtain and hold, or take reasonable measures to obtain and hold up-to-date information on BO.

252. Only in case the directors and members/partners/shareholders/founders are actually the BOs the information in the Registers will be relevant. Albania may partly cover requirements for identification of the BO through the requirements under the AML/CFT for REs to conduct a CDD, part of which comprises also identification of the BO of the legal person. For the analysis of identification and verification of BOs of their clients by the REs, see R.10 and R.22. There are cash payment



limitation set out in Albania for the LEs, such as for transactions above 150.000 ALL (approximately 1100 EUR), and performance of tax payments, which triggers engagement of LEs with the REs.

253. See the analysis of c. 24.10 for the timeliness of access to the BO information by competent authorities.

254. *Criterion 24.7* – BO information is included in the records of the REs in accordance with the requirement to identify as well as fully and accurately verify the BO of the client (Para 19/1, Art. 2 of the AML/CFT Law). However, if the legal entity has not entered in the relationship with the RE, there are no other legislative provisions to require the accuracy and currency of BO information. Other than that there are no further requirements stipulated in the legislation concerning this criterion.

255. *Criterion 24.8(a)-(c)* – In line with Art. 31-37 of the Law No 9723 the LEs shall register their legal representatives with the NBC. This could be either the managing director of the company, or one of the partners of the partnership, or any other third person, act in on the basis of powers established by the Statute or decision of other competent organs of company. There seem not to be a specific requirement for the legal representative to be a resident of a country, thus enforcement of the LEAs powers for cooperation could be challenging. There are no similar provisions for authorisation of a person to act as a representative and ensure cooperation in the Law No. 8789 On the registration of NPOs. Only basic information can be provided by the LEs. In the cases described under criterion 24.6 BO information can be obtained from REs under the provisions of the AML/CFT Law.

256. *Criterion 24.9* – As regards basic information, data of the cancelled LEs are kept by the NBC permanently, accessible in electronic format, and public. (Para. 1, Art. 52 of the Law No 9723). Concerning the DCoT Registry, the Minister of Justice determines the rules of keeping information (Art. 9 of the Law No. 8789 On the registration of NPOs). As regards the REs, they are required to keep all the basic information and data on BO for 5 years from the date of closing the account or termination of the business relationship with the client (Art. 16 of the AML/CFT Law). There are no requirements for the company itself to maintain basic and BO information after the dissolution of the legal person.

257. *Criterion 24.10* – Basic information on LEs is kept by the NBC - published in the Bulletin of Official Registration Notices that NBC maintains in electronic format on its official website (Para 1, Art. 61 of the Law No. 9723). Data collected and maintained by the DCoT Register is publicly available, and information can be provided upon request (Art. 7 of the Law No. 8789 On the registration of NPOs). Hence any competent authority, including LEAs may access the basic information immediately.

258. Concerning the BO information, since there is no requirement to collect and maintain it by legal persons or the registers, this can be accessed only via REs, in case the legal entity concerned is their client. The GDPML, is empowered to request from REs, and the latter are obliged to immediately disclose information on their clients (Para 4, Art. 16, and Art. 22 of the AML/CFT Law). The supervisory authorities in the course of inspections may request and access information kept with the REs (see also R. 27). The LEAs may access BO data held by the REs either via the GDPML channels (Art. 22 of the AML/CFT Law) or directly, on its own (see also R. 31).

259. *Criterion 24.11(a)-(e)* – There is a prohibition to issue bearer passbooks and other bearer instruments by the REs (Para 3, Art. 4.1 of the AML/CFT Law). This provision however prohibits only the issuance, but does not regulate the acceptance of such instruments by the REs. Other than that there are no further requirements set forth for the REs.

260. Law No 9879 On Securities and Law No 9723 on NBC (Art. 36 and 43) refer to registration of “classes of shares” and what must be maintained as does the Law No 9901 on Entrepreneurs and Companies (Art. 119) for Joint Stock Companies (JSC) who must keep a register of shares which requires that for each share are the surnames, first names or legal denomination; the home addresses or head office of the shareholder, the share’s par value, and the date of registration. The effect of these provisions is that bearer shares can therefore no longer be issued.

261. *Criterion 24.12(a)-(c)* – Nominee shares and nominee directors are not explicitly allowed in Albania but neither do they appear to be specifically prohibited or controlled. Nothing prevents a person from acting as a nominee for another. According to the mechanisms in place REs shall exercise EDD to business relationships and transactions with nominee shareholders (Para 6 Art. 8 of the AML/CFT Law).

262. *Criterion 24.13* – Director of the NBC is empowered to apply the following administrative measures for breach of responsibilities on registration and provision of information by the LEs, which are lacking proportionality (Art. 74 of the Law No 9723):

- The declaration of false data with the register, in the case it does not constitute a criminal act, constitutes an administrative contravention and is punishable by fine of 15.000 ALL.

- The non-accomplishment of the duty for the initial registration and other compulsory registrations within the terms provided by the Law on NBC constitutes an administrative contravention and is punishable by fine of 15.000 ALL.

- An omission by a subject that causes its transfer to inactive status according to Art. 46 of the Law No 9723 constitutes an administrative contravention punishable by fine of 15.000 ALL.

263. There are also some criminal sanctions set out for example, for a false statement (fine), or irregular issue of shares (fine or up to 3 months of imprisonment), falsification of documents (imprisonment for up to 3 years), obstruction to justice (fine or up to 3 years of imprisonment) (Art. 163, 166, 186, 301 of the CC). The size of the fine for committing a criminal offense ranges from 100 thousand to 10 million ALL, and for committing criminal contraventions ranges from 50 thousand to 3 million ALL.

264. There are sanctions in the form of fines envisaged in the AML/CFT Law (Art. 27) for violation of their CDD, EDD and record keeping duties by the REs. Deficiencies identified in R. 35 apply.

265. There are no sanctions set out for associations, foundations and centres to be applied by the DCoT.

266. *Criterion 24.14(a)-(c)* – Basic information, including information on shareholders held by the NBC is publicly available and is thus available to foreign competent authorities. Information kept with the DCoT is public and any person can be provided with a copy of documents upon request (Art. 7 of the Law No 8789 On the registration of NPOs). LEAs may exchange information related to criminal offences within the scope of MLA based on provisions of the CPC, the Law No. 10193, date 03.12.2009 “For the jurisdictional relations with foreign authorities in criminal matters” and in the framework of MoUs. The GDPML has wide powers to access information held with the REs, and can exchange it with foreign counterparts in case of suspicion of ML and TF. However, limitations described under c. 24.10, R. 37 and R. 40 apply.

267. *Criterion 24.15* – The Police and GDPML monitor the quality of basic and BO information received from other countries on a case by case basis. However, there is no mechanism for any formal assessment of the quality of assistance the Albanian authorities as a whole receive from other countries.

#### *Weighting and Conclusion*

268. Albania mostly is in line with requirements for identification of the types of LEs, and registration of the basic information. However, there are weaknesses with regard to assessment of the risk associated with legal persons; the lack of an explicit mechanism for ensuring that the basic information maintained by the NBC and the DCoT is accurate and data kept with the DCoT is updated on a timely basis; lack of sanctions for the associations, foundations and centres to update the registered information; mechanism to ensure availability, accuracy and currency of BO information; weaknesses with regard to regulation of bearer shares and nominee directors; some shortcomings in the sanctioning system. **R.24 is rated PC.**

### *Recommendation 25 – Transparency and beneficial ownership of legal arrangements*

269. In the 3<sup>rd</sup> round Albania was rated as N/A with R. 34. The new FATF Recommendations and the assessment Methodology provides that the country must apply minimum transparency requirements even if it does not legally recognise trusts. R. 25 therefore now applies to Albania, although an express trust cannot be created in the country.

270. *Criterion 25.1 – (a)* Albania is not a signatory to the Hague Convention on Laws Applicable to Trusts and their Recognition. Although there is no law governing the formation and operation of trusts or other legal arrangements in the country there is no prohibition on foreign trusts operating in Albania too. Authorities explained that the trustees are recognised as REs under the AML/CFT legislation, referring to the following provisions - “any natural or legal person engaged in the administration of third parties’ assets/management of the activities related to them, foundation, registration, administration, functioning of the legal arrangement<sup>132</sup>” (Letters k(i) and k(ii), Art. 3 of the AML/CFT Law). Considering the Albanian legal framework, this, de facto would refer to foreign trusts. Hence, the sub-criterion (a) is not applicable to Albania. *(b)* The Albanian legislation does not extend CDD requirement for REs to holding basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors. *(c)* The REs, as subjects to record-keeping requirements under the AML/CFT Law are required to maintain CDD records for 5 years.

271. *Criterion 25.2 –* The CDD information collected by REs should be up-to-date relevant and appropriate (Letter (f) Art. 4/1 of the AML/CFT Law). This, however apply only to information that is required to be collected as part of CDD under the AML/CFT Law and the MoF Instruction 28, not including all information on trust-relevant parties.

272. *Criterion 25.3 –* There is no explicit requirement for trustees to disclose their status to REs when forming a business relationship or carrying out a transaction above the threshold. However, REs should determine whether the customer is acting on behalf and (or) for the benefit of another person before establishing business relationships. REs shall verify the identity of the customer and BO, before or in the course of establishing of a business relationship or conducting a transaction for the occasional customers (Art. 4/1 of the AML/CFT Law).

273. *Criterion 25.4 –* There appear to be no provisions in law or enforceable means which would prevent trustees from providing information to the competent authorities.

274. *Criterion 25.5 –* The GDPML has wide powers to access information held with the REs, in the databases and any information managed by the state institutions, as well as in any other public registry. The powers of LEAs to obtain information are set under Art. 151 of the CPC and Art. 129 of Law 108/2014, for ASP. Despite of some limitations, supervisory authorities also have powers to obtain information held by the REs. Deficiencies under R.24 apply.

275. *Criterion 25.6 –* The GDPML has wide powers to access information held with the REs, and can exchange it with foreign counterparts spontaneously or upon request. The competent authorities can provide a wide range of MLA in relation to ML, associated predicate offences and TF investigations, prosecutions and related proceedings. However, deficiencies identified under c.25.1 and 25.2 regarding availability of specific trust-related information, and certain limitations described under R. 37, 40 apply.

276. *Criterion 25.7 –* REs will be subject to sanctions for failing to comply with CDD and record-keeping requirements in the AML/CFT Law (See also R.35). Considering that there is no law governing the formation and no other law reflecting on operation of trusts or other legal arrangements in Albania, there are no further provisions in place on liability for failure to perform duties or proportionate or dissuasive sanctions.

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<sup>132</sup> Legal arrangements are defined as trusts or similar arrangements (Para 24, Art. 2 of the AML/CFT Law).

277. *Criterion 25.8* – Should the information on a trust be held by the RE, the latter is required to immediately make it available upon the request of the responsible authority (Para 4, Art. 16 of the AML/CFT Law). Failure to comply with these provisions would be punished by fine (Para 5, Art. 27 of the AML/CFT Law). Failure to provide access to information to LEAs, which can be treated an obstruction of justice and punished for by a fine or up to 3 years of imprisonment (Art. 301 of the CC). There is no provision covering other than the aforementioned situations.

#### *Weighting and Conclusion*

278. While there is no law governing the formation and operation of trusts or other legal arrangements in the country, these are generally subject to the AML/CFT provisions. However, a requirement to hold and update information does not include all type of information pursuant to the R. 25. This affects all the other criterions on information disclosure and exchange. There is no obligation for trustees to disclose their status to FIs or DNFBPs, which affects compliance of Albania with some of the criteria. There are no sanctions set out for trustees apart from ones under the AML/CFT Law. **R.25 is rated PC.**

#### *Recommendation 26 – Regulation and supervision of financial institutions*

279. Albania was rated PC with former R.23 during the 2011 4th round MER. The rating was due to: (i) the existence of a non-licenced and non-supervised informal financial sector relating to street level money exchange markets and cross border cash couriers; and (ii) the absence of fit and proper tests for senior managers and directors for certain FIs subject to Core Principles. A number of the FATF criteria relating to this Recommendation have not changed.

280. *Criterion 26.1* — Authorities responsible for supervision of compliance with AML/CFT requirements are listed in Art. 24 of the AML/CFT Law. All FIs covered by the FATF Glossary are subject to AML/CFT supervision by either the BoA or the FSA. Additionally, Art. 22 of the AML/CFT Law sets out that one of the duties and functions of the GDPML (the FIU) is supervising the activity of REs regarding compliance with the requirements of laws and bylaws on prevention of ML and FT.

281. *Criterion 26.2* — All Core Principle FIs are required to be licenced by either the BoA or the FSA as set out in various laws<sup>133</sup>. Other FIs are also licenced by the BoA or FSA<sup>134</sup>. Art. 170/ç of the CC (amended by Law No. 23/2012) punishes persons who exercise financial activity without a required licence.

282. There is no explicit prohibition on establishing a shell bank in Albania. However, it is considered that the provisions in the Law on Banks on the establishment, licensing and functioning of a bank reduce this possibility in practice, due to the requirement in Art. 5 and 10 for banks to have a legal seat in Albania and other requirements on capital and corporate governance as set out in Art. 17, 20, and Chapter III of the Law.

283. *Criterion 26.3* — Art. 24 (4) (b) of the AML/CFT Law provides that the supervisory authorities shall take the necessary measures to prevent an ineligible person from possessing, controlling, and directly or indirectly participating in the management, administration or operation of an entity. The AML/CFT Law does not provide a definition for the term “ineligible”.

284. Specific requirements for licensing are contained in the sectoral legislation.

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<sup>133</sup> See: Art. 14 of the Law on Banks which applies to banks carrying out banking and financial activity as defined by Art. 4; Art. 13 of the Law on the FSA which applies to non-banking core financial markets (securities and insurance institutions); Art. 5-12, 16-18 of Regulation No. 165, which applies to licensing the brokerage/ intermediary companies, the broker and the investment advisor; Art. 8 and 16 Law on CIFs; and Art. 29 and 30 of the Law on insurance.

<sup>134</sup> See: (i) Art. 126 of the Law on Banks which applies to non-bank financial entities (as defined in Art. 4); (ii) Art. 1(a) of BoA Regulation No. 1 on licensing and activity of NBFIs, microcredit FIs and EMIs; (iii) Art. 5 of BoA Regulation No. 104 on SLAs and their unions; (iv) Art. 10 of BoA Regulation No. 31 relating to FEOs; and (v) Chapter 3 of the Law on VPFs (10/197).

285. For banks, Art. 17 of the Law on Banks requires an applicant for a licence to provide information on inter alia: (i) the reputation (including criminal record) of at least 2 administrators<sup>135</sup>; (ii) reputation of each person holding a “qualifying holding”<sup>136</sup>. Under Art. 19(2) Law on Banks, the BoA shall give its approval for the licence only if it is satisfied on a number of matters, including reputation of administrators and shareholders.

286. According to Art. 19(3)(d) Law on Banks, the BoA shall refuse to licence a bank if at least one shareholder is under criminal investigation or has been convicted by a court for committing ‘a criminal offence with high social risk’<sup>137</sup> or criminal offence pertaining to ML or FT. An individual will not be deemed suitable for the position of administrator if he is under criminal investigation or has been found guilty by court of an offence punishable by imprisonment (Art. 41 Law on Banks).

287. The Law on Banks further includes requirements for the BoA to approve in advance: (i) the appointment of administrators (Art. 24 and 42); and (ii) transfer of qualifying holdings (Art. 24), supplemented by provisions from secondary legislation. Art. 17 Law on Banks requires ‘information on reputation’ for qualifying shareholders and administrators to be submitted with the licence application (par. 1(f) and 1(h)). BoA Regulations further specify that proposed administrators of banks and direct shareholders (legal or natural persons) must submit certificates from competent authorities attesting that they are not under a criminal proceeding and have not been convicted for a criminal offence (Art. 17(2)(k), BoA Regulation No. 63 for administrators; and Art. 17(2)(b) and Art. 7(1) letters c and d, BoA Regulation No. 14 for direct shareholders). However, there is no specification in the bylaws as to what information on reputation must be provided by indirect shareholders. Authorities advised that the BoA applies the same requirements for indirect shareholders as for direct shareholders.

288. Under Art. 43 of the Law on Banks, the BoA has the right to order the bank to dismiss an administrator where, inter alia, it finds they have no moral or professional integrity to serve. Similarly, Art. 25 provides that, if a person with a qualifying holding no longer meets requirements on moral reputation or is convicted of an offence, the BoA may order the transfer of shares to third parties who satisfy the criteria. If a person holds a qualifying holding in the bank without the prior approval of the BoA, the action resulting in such an occurrence must be deemed null and void. Furthermore, under Art. 28 of the Law on Banks, the bank’s licence can be revoked where it is found that there is reliable evidence to show that the shareholders or administrators of the bank are involved in illegal activities.

289. Thus, there is a range of legal measures in place to help prevent criminals from holding (or being the BO of) a significant or controlling interest, or holding a management function, in a FIs. It is noted however that the laws and procedures do not specify that assessment of (moral) reputation at initial licensing or at approval of changes should include consideration of indications of criminal activity beyond criminal convictions or on-going criminal proceedings. Furthermore, there are no clear measures to prevent *associates* of criminals from obtaining qualified shareholding or management positions in banks.

290. For NBFIs (including microcredit FIs and EMIs) applying for a licence, Art. 8 of BoA Regulation No. 01 “On licensing and activity of NBFIs” requires applicants to submit certificates issued by

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<sup>135</sup> In the practice of licensing, the information is required for all the proposed administrators (see IO.3). According to Art. 4(1) of the Law on Banks, ‘administrator’ means an individual who is: (i) a member of the Steering Council or Audit Committee; (ii) an executive director; or (iii) a director of the audit unit. “Executive director” is defined in the same article as ‘an individual employed full time in a bank or branch of foreign bank with directing, executive and administrative functions’. Regulation No. 63, Art. 16 provides further details on the functions that qualify as executive directors.

<sup>136</sup> A “qualifying holding” is defined in Art. 4 as a direct or indirect holding which represents 10% or more of the capital or the voting rights, or which makes it possible to exercise a significant influence over the management or policies of the legal person in which the holding exists.

<sup>137</sup> No definition is provided of a ‘criminal offence with high social risk’. The BoA has advised that this must be read in conjunction with Art. 25 (7) which states that no one can be a shareholder in a bank if that person has been ‘charged or convicted’, without a further qualification of the crime. The MoJ has confirmed that there is no legal definition of ‘crime with high social risk’ and that such qualification would depend on the circumstances, time, place, and subjectively of the offense.

competent authorities attesting the founder, administrator(s) and/or legal representative is not under a criminal proceeding and has not been convicted for a criminal offence. BoA shall only grant a licence if it is satisfied that the reputation of administrators and founding qualifying shareholders is suitable for the business plan (Art. 10(1)(b)). Beyond consideration of the history of criminal convictions or on-going criminal proceedings, there is no specification of what a suitable reputation would entail in terms of properness. Post approval, the BoA may suspend or revoke the licence for the NBFi when there is reliable evidence the founders or administrators are involved in ML or TF activities or when it finds that the institution does not comply with the conditions upon which it was licenced (h) (Art. 14(1)(b)). Entities must further seek approval from BoA for changing the administrator or transferring ownership, qualifying holding or control, and submit the same aforementioned documents on criminal convictions and on-going proceedings (Art. 16 in combination with Art. 8 of Regulation No. 1).

291. With regard to SLAs, the Law on SLAs and their unions states that all the members of the management board and the administrators should not be under criminal investigation or have been convicted for committing a criminal offence 'resulting in a severe risk for the society' (Art. 9)<sup>138</sup>. However, under Regulation No. 104 'On licensing and activity of SLAs and their Unions' (Art. 14) it is only stipulated for the administrator, the chair of the management board and the chair of the audit committee that, for prior approval, certificates of non-conviction and non-prosecution must be provided to BoA. The SLA is responsible for keeping the same documentation for the other members of the management board and audit board who do not have to be approved by BoA (Art. 15 Regulation No. 104) and authorities advised that this documentation may be subject to checks by BoA during on-site inspections. Furthermore there are no requirements on checks of moral reputation/properness beyond criminal offences or on-going criminal investigation. Although there are checks on the sources of the founding capital of SLA members (and capital increases above 750 EUR), there are no checks on the fitness and propriety of these members (a SLA does not have any owners, but it has founding members who must provide the initial capital).

292. For FEOs, Regulation No. 31 'On the licensing, organisation, activity and supervision of FEOs' requires certificates of non-conviction and non-prosecution for the shareholders or partners, the administrator or cambist to be provided to BoA at time of licensing. Additionally, Art. 24 of the Regulation obliges the entities to report any changes in cambists to the BoA immediately and to report within 2 weeks any changes to the entities' identification, which would include names of shareholders and administrators. The BoA may suspend or revoke the licence for the FEO when it finds that the entity is involved in ML or TF activities or does not comply with the conditions upon which it was licenced (h) (Art. 14(1)(b)).

293. No checks are in place to screen associates of owners/controllers or managers of NBFIs, SLAs and FEOs.

294. The 2011 MER highlighted the absence of market entry controls for senior managers and directors for certain NBFIs subject to Core Principles. This deficiency has been partly addressed through various laws and regulations administered by the FSA<sup>139</sup>. Under each of these laws, a person who holds, or is to hold, a significant or controlling interest or a management function must be "fit and proper". However, the Law on VPFs and the Law on CIFs contain some unclear provisions on thresholds to check shareholders due to different thresholds for "controlling interest" and "significant owner/qualifying shareholder"<sup>140</sup>. Furthermore, the extent to which the fit and proper tests will consistently take the full criminal record of a person into account (or connection to a criminal) is not clear. For example, in the case of insurance companies, for most criminal offences (other than ML/TF related offences), it appears only convictions within the previous 5 years are

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<sup>138</sup> As for banks, authorities maintain that this phrase should be read in conjunction with Art. 25 (7) (8) of banking law and should be interpreted as meaning any criminal offence (see previous footnote).

<sup>139</sup> Law No. 10198, "On CIFs" (Art. 18); Law No. 10197, "On VPFs" (Art. 24/2/c and 25); Regulation No. 165, "On the licensing of the brokerage/intermediary companies, the broker and the investment advisor" (Art. 12 and 14); and Law No. 52 "On the activity of insurance and reinsurance" (Art. 17 and 20).

<sup>140</sup> 30% for controlling interest and 5% for significant owner/qualifying shareholding (see IO.3).

considered<sup>141</sup>. The Laws on Insurance, VPFs and CIFs further require FSA to specifically consider (beyond convictions) whether there is evidence that a person is engaged in fraudulent or improper business activities, and have integrity, honesty and commitment in the fulfilment of their tasks. Criminal activity unrelated to business activity is not explicitly covered.

295. Changes to significant shareholding for insurance, VPF and CIF companies must be approved by the FSA and the same fit and proper requirements as for founding shareholders would apply (Art. 48 Law on Insurance; Art. 37 Law on VPFs; Art. 23 Law on CIFs).

296. In case of change of status of an existing significant shareholder of a VPF or CIF management company (e.g. criminal conviction taking place only after someone became a shareholder), there is no obligation on the entity to inform the FSA. However, where it appears to the FSA that the significant owner does not meet the fit and proper requirements, FSA can restrict that person's rights and revoke the licence of the company if the shares are not transferred to another person (Art. 38 and 39 Law on VPFs; Art. 24 and 25 Law on CIFs). There appear to be no provisions on administrators/managers (governing changes in management or changes in status of existing managers).

297. With regard to insurance companies, the entity is required to inform the FSA of any changes in members of the board of directors, supervisors or managers and seek approval (Art. 25(1) Law on Insurance). Furthermore, they must inform the FSA in writing of any changes to the information on the basis of which a member was assessed and approved (Art. 25(2)). The entity is required to provide information to the FSA, upon request, to prove significant shareholders and managers fulfill the legal requirements on fit and proper at all times (on an on-going basis) (Art. 17(5)). The licence of the insurance company can be revoked by the FSA if the insurance company fails to comply with the conditions under which it was licenced, which would include fit and proper requirements (Art. 155(d)).

298. Securities brokers and investment advisors, and managers of brokerage and advisory companies, cannot be convicted of any economic crime and must enjoy a good reputation (Art 11(a)(4), Art. 12, Art. 15 Regulation No. 165). The legal framework for checks on integrity of brokerage companies, investment advisory companies and entities conducting securities transactions covers only management bodies and individual broker and investment advisor licensees, and does not specifically mention integrity checks for shareholders. There are no provisions which include requirements for the entity to notify the FSA for changes in administrators or changes to shareholder/administrator fit and proper status after initial approval.

299. *Criterion 26.4 –*

(a) Albania was subject to a Financial System Assessment Programme ("FSAP") by the IMF in 2014 to review compliance with the Basel Core Principles (BCBS) and Insurance Core Principles (IAIS). The IMF assessed the BoA to have a relatively high level of compliance with the BCBS: the majority of Principles were rated Largely Compliant and IMF considered the BoA to be in the process of aligning its supervisory practices with EU standards. Consolidated group supervision was rated as LC by the IMF.

In contrast, the IMF concluded that Albania's legal and regulatory framework for the insurance industry is only Partially Compliant with most IAIS requirements. The assessment noted in ICP23 (Group Wide Supervision), that the relevant law did not address the issue of group-wide supervision and, with regards to ICP22 (AML/CFT), the insurance sector specific AML/CFT Laws and regulations had not been enacted.

Since then, Albania has taken some measures to address the IAIS requirements. The Law on Insurance applies to the establishment, activity and supervision of insurance, reinsurance companies and their intermediaries. It regulates, amongst other things, the exchange of information within groups and cooperation for AML/CFT purposes. Furthermore, the FSA has adopted Regulation No. 55,

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<sup>141</sup> See footnote 59 under IO.3.

dated 26.05.2017 "On the Supervision of the Insurance Group" which deals more specifically with disclosure requirements and the further supervision of insurance groups.

Albania is currently assessed as Partially Compliant with the IOSCO Core Principles relating to collective investment schemes and securities regulation.

(b) The regulation and supervision of non-core FIs includes systems for monitoring compliance with AML/CFT requirements by the GDPML (for all entities) and by BoA and FSA (based on entity type). The GDPML supervises REs using a risk-based supervision manual. The BoA's supervision of non-core FIs based on ML/TF risks has recently been enhanced through amendments to Regulation No. 44 that facilitate gathering of information in relation to risks at entity-level. This information gathering has taken place for NBFIs, SLAs and the two major MVTS, but not yet for FEOs. However, authorities have advised that the BoA receives daily reports from FEOs concerning transaction volume per currency. This is a component to be considered but does not constitute all relevant AML/CFT factors for a RBA.

300. *Criterion 26.5* – BoA's risk-based supervision of banks is set out in its Supervisory Policy Document<sup>142</sup>. The ML/TF risks are incorporated as part of the reputational risk category<sup>143</sup>, and, together with operational risk, only constitute 10% of the weighting for the overall risk assessment system. In practice, supervisory resources focus on banks that: (i) are of systemic importance; (ii) have a higher risk profile; (iii) have adverse signals or deteriorating trends; or (iv) are transforming or restructuring their business. For NBFIs, the Supervisory Policy Document states that BoA will apply 'certain parts' of the RBA to supervision as set out for banks, but it is not specified which ones. The recently adopted Examination Manual for NBFIs (July 2017) specifies that 'Prevention of ML/TF'<sup>144</sup> carries 7% weight in the overall risk assessment that serves to compare entities on common indicators and determine the supervisory cycle. Therefore, the frequency and intensity of BoA supervision has not necessarily correlated to ML/TF risk.

301. Recent amendments to Regulation No. 44 On prevention of ML and TF have however enhanced BoA's offsite approach to AML/CFT supervision. They require FIs to provide BoA with data through a standardised questionnaire that allows BoA to assess the ML/TF risks of the entity. The first results of this process were received in the summer of 2017 from banks, the two major MVTS, NBFIs and SLAs. For FEOs, the drafting of a special template is in process. BoA will take these risk assessments into account when preparing its onsite supervision plan.

302. Historically, the frequencies of FSA inspections have not been based on ML/TF risk. The FSA is in the process of transitioning into an ML/TF RBA that will determine the supervision schedule. Its AML Supervision Manual for insurance was amended in 2016 and provides a RBA to life insurance inspections. In 2016, the risk based manual for VPFs was approved which includes ML/TF risks as one of many factors in the assessment. A separate manual for investment funds is expected to complete this by year end 2018.

303. Art. 22 of the AML/CFT Law gives the GDPML responsibility to supervise the activity of the REs on compliance with the laws and bylaws on prevention of ML/TF. The GDPML Compliance Manual indicates that a risk assessment focused on ML/TF risks is an input into the annual work plan and that frequency of inspection is impacted by risk rating of entity. The GDPML considers the NRA results and specific entity factors, including effectiveness of internal processes and procedures, based on the examination manual and other desk-based reviews.

304. *Criterion 26.6* – The BoA, according to its Supervision Policy Document, reviews its operational risk assessment for banks at least once a year, by incorporating information obtained through on-site

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<sup>142</sup> Approved by BoA Decision No. 09 dated 26.02.2014.

<sup>143</sup> Section 7.2 of the Risk Assessment Manual defines one of three components of reputational risk to be the use of the banking system as a tool for ML and/or FT.

<sup>144</sup> The Manual indicates that the following factors shall be taken into account for AML/CFT in the risk assessment: Adequacy of the internal regulatory framework, Personnel and training, Processes (CDD, reporting, etc.). Analysis and response, Control (senior management approval, automated systems, etc.).



and off-site supervision. The new process of requiring entities supervised by BoA to fill out an offsite questionnaire with AML/CFT data to help determine the entity risk profile will occur on an annual basis (Art. 11, BoA Regulation No. 44).

305. As outlined in its AML Supervision Manual, the FSA assesses the AML risk profile of life insurance entities prior to onsite inspections by reviewing the adequacy of the company's AML risk assessment process. It does not review its risk assessment at other times. While the FSA receives quarterly reports from the entities it licences, the review seems to be limited to suspicious transactions and does not include the broader AML/CFT risks profile of the entity<sup>145</sup>.

306. For BoA and FSA there is no indication that assessment of the ML/TF risk profile should be reviewed when there are major events or developments in the FI's management or operations.

307. The GDPML Compliance Manual indicates that the GDPML, in its supervisory capacity, collects information on REs to compile a ML/TF risk assessment which is updated periodically and whenever new important relevant information is obtained.

#### *Weighting and Conclusion*

308. All FIs covered by the FATF Glossary are subject to supervision. The AML/CFT Law designates the BoA, FSA, and the GDPML as supervisors responsible for supervision of AML/CFT compliance of FIs. Measures are in place to prevent criminals from holding shares and controlling FIs, and in most cases, this includes management ('administrators'). However, there are gaps in these provisions and it is not clear whether they extend to associates of criminals. The risk evaluation of banks has historically been based on prudential risks and AML/CFT issues form only a small part of the risk assessment process according to the manual for banks and the manual for NBFIs. However, recent improvements in BoA's offsite supervision process allow for better ML/TF risk assessment of banks, NBFIs, SLAs and MVTS. For currency exchange, this process is yet to be implemented. The FSA has some gaps in meeting the core principles in relation to regulation and supervision and is in the process of transitioning to a RBA to determine the frequency of its on-site visits. **R.26 is rated PC.**

#### *Recommendation 27 – Powers of supervisors*

309. Albania was rated PC with former R. 29 during the 2011 4th round MER. The rating was impacted by the following effectiveness issues: unclear GDPML scope of onsite inspections; and possible overlap and duplication of supervision and inspection functions among AML/CFT authorities. The FATF criteria relating to this Recommendation have not changed, but effectiveness issues are now considered under IO.3, not R.27.

310. *Criterion 27.1 & 27.2* – Art. 24(1) of the AML/CFT Law lists all the supervisory authorities with oversight responsibility (in the case of FIs: BoA and FSA), and paragraph (2) defines that the supervisory authorities should supervise, through inspections, the compliance of the activity of the subjects with the obligations set forth in specific articles of the AML/CFT Law. Art. 27 also gives GDPML authority to supervise all REs (including FIs) for compliance with laws and by-laws for ML/TF prevention, including through inspections, alone or in cooperation with the other supervising authorities.

311. *Criterion 27.3* – Art. 22(c) of the AML/CFT Law states that GDPML can request from REs any information or document that is deemed necessary for the prevention of ML and TF (Art. 22 . Art. 24(2) states that the supervisory authorities of FIs (i.e. BoA, FSA) may demand from a subject the production of, or access to, information or documents related to that person's compliance with the AML/CFT Law.

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<sup>145</sup> After the on-site visit, mirroring the aforementioned new offsite process by BoA, FSA adopted some amendments to Regulation No. 58 (through Board Decision No. 24 dated 26.02.2018), to require its REs to report annually (starting in 2018) certain AML/CFT relevant data (Annex 4) and a self-evaluation of risks (Annex 5) to the FSA. This process will assist the FSA with implementing a RBA to supervision.

312. *Criterion 27.4* – Art. 27 of the AML/CFT Law defines the administrative sanctions (fines) that the GDPML can impose on natural and legal persons for failing to apply AML/CFT requirements. The GDPML can also request licensing authorities (BoA and FSA) to suspend or revoke a licence for repeated breaches (although this requires independent review and agreement by licensing authorities to action). BoA and FSA do not have specific powers under the AML/CFT Law or sectoral laws to sanction AML/CFT breaches for all entities under their supervision, although general sanctioning powers may to some extent be used. All in all, it does not appear that a sufficiently wide range of disciplinary and financial sanctions is available. See R.35 for details.

#### *Weighting and Conclusion*

313. Albania meets C.27.1, 27.2 and 27.3. Due to limits in sanctioning powers, C.27.4 is partly met. Although this is considered to be a significant shortcoming, the issue of sanctions is primary dealt with in R.35. **R.27 is rated LC.**

#### *Recommendation 28 – Regulation and supervision of DNFBPs*

314. Albania was rated PC in the previous evaluation round on R24. Several deficiencies were identified. With regard to the requirements concerning casinos, the evaluators found that the measures to prevent criminals from holding a significant interest were not comprehensive. The legal authority designating DNFBP supervisors was assessed as ineffective and required clarity. Sanctions were not applied in a proportionate manner and the results of GDPML inspections and the sanctions applied were susceptible to challenge given the limited supervisory authority of the GDPML. The FATF criteria relating to this recommendation have not changed. Albania has introduced some amendments to the AML/CFT law and a new Law on Gambling (Law No. 155/2015, entry into force 04.02.2016) which address some of these deficiencies.

315. *Criterion 28.1* – Casinos are subject to AML/CFT regulation and supervision (Art. 3 point g of the AML/CFT Law).

(a) The Law on Gambling prohibits entities not licenced by the GSA to run gambling activity (including casino and online gaming activities; Art. 8 (2) and 17(2)). There are administrative sanctions set for operating without a licence (Art. 53 paragraphs 5-7 of the Law on Gambling). Criminal sanctions are set in Section X of the CC (Art. 197 and 198) for organising gambling in breach of legal provisions.

(b) All AML/CFT supervisors (including the GSA) are obliged to take the necessary measures to prevent an ineligible person from owning, controlling and directly or indirectly participating in the management, administration or operation of an entity (Art. 24 (4) (/b) of the AML/CFT Law). The term “ineligible person” is not defined in the AML/CFT Law.

The Law on Gambling provides more specific requirements. A licence application for a casino must include certification demonstrating that the applicant, the partners/shareholders of the company, the board members and legal representatives are not under criminal prosecution, on criminal trial, and have not been convicted (Art. 36). Art. 17 (3)(c) of the Law instructs the GSA to deny the licence to an entity only when partners/shareholders, legal representatives or members of the governing bodies have been *sentenced* by a court final decision for criminal offenses, which appears inconsistent with the other article as cited. The provisions do not specifically mention criminal associates and shareholders are not specifically defined to clearly include indirect shareholders/ BOs. The Law does not contain detailed licensing requirements for online gaming. Authorities advised that these will be contained in the bylaws on online gambling that are to be adopted, and that no licences are to be issued before that time.

Art. 40 (e) of the Law obligates the licensee to ensure staff employed at the casino should not be previously convicted of criminal offenses that can be punished with imprisonment.

(c) There are legal grounds set for supervision of game of chance for the compliance with the obligations under the AML/CFT Law (Art. 24(2) AML/CFT Law). The licensing and supervision of

casinos is carried out by the GSA subordinate to the Minister of Finance (Art. 24(1) point c AML/CFT Law; Art. 4(1) Law on Gambling).

316. *Criterion 28.2* – The GDPML has supervisory authority for AML/CFT compliance over all REs, including DNFBPs (Art. 22 point ç AML/CFT Law).

317. Furthermore, other authorities responsible for AML/CFT supervision of DNFBPs are designated by the AML/CFT Law (Art. 24(1)) and CoM Decision No. 343. The respective supervisory authorities according to these sources are as follows:

- The NCA for lawyers
- The MoJ for notaries
- The Ministry of Public Works, Transportation and Telecommunication for real estate agents
- The POB for accountants
- The BoA for DPMS

318. The AML/CFT Law also includes as subjects any other natural or legal person that is not already covered (i.e. as lawyer, notary, or accountant) who engages in the administration of third parties' assets, managing the activities related to them, and foundation, registration, administration, functioning of legal persons and legal arrangements (i.e. TCSPs). For these entities, there is no other supervisory authority designated by law other than the GDPML's general authority.

319. *Criterion 28.3* – In practice, BoA does not exert supervision over DPMS. At the same time, it must be noted that, technically, DPMS in Albania do not fall under the FATF standards as they cannot engage in any cash transactions over the threshold of R.22. Furthermore, the Ministry of Public Works does not in practice exert AML/CFT supervision over real estate agents. While there is evidence that the MoJ covers AML/CFT requirements (or at least reporting obligations) in its inspections of notaries to some extent, the Chamber of Advocacy and the POB do not appear to have systems in place to monitor compliance with AML/CFT requirements.

320. This notwithstanding, the GDPML, having a general duty and function to supervise all REs for AML/CFT compliance, has a department responsible for supervision and has a manual in place setting out its supervisory approach, which also applies to DNFBPs.

321. *Criterion 28.4* –

(a) Art. 24 of the AML/CFT Law states that the supervisory authorities supervise, through inspections, the compliance of the activity of the subjects with the obligations set down in various Articles of this Law. The Law also authorises supervisory authorities the power to demand from a subject the production of or access to information or documents related to that subject's compliance with the AML/CFT Law. There are sectoral laws<sup>146</sup> in place relating to supervisors of accountants and notaries that further define their powers to perform their functions, including powers to monitor compliance. The GDPML has the power to conduct inspections, alone or in cooperation with the other supervising authorities, in order to supervise the AML/CFT compliance of all REs (Art. 22 AML/CFT Law).

(b) Art. 24 (4/b) of the AML/CFT stipulates that the supervising authorities shall take the necessary measures to prevent an ineligible person from possessing, controlling, and directly or indirectly participating in the management, administration or operation of an entity. However, ineligible person is not defined in the law and the measures to be taken are not further regulated. The Law on Notaries does not allow individuals convicted of criminal offense to obtain or maintain notary licence (Art. 2(1)(ç), Art. 6(dh)). There is no ground for *refusal* of a licence due to other indications of criminal activity or association. However, although not explicitly regulated by law, once a licence is granted, MoJ is informed by prosecuting authorities when criminal proceedings against a notary start, and can

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<sup>146</sup> The Law No. 10091 relating to auditors and accountants supervised by the POB; The Law on MoJ No. 8678 and Law on Notaries No. 7829 relating to supervision of notary activity.

decide whether the significance of the offense for which the proceeding has been initiated is such that it requires the non-exercise of the activity by the notary until the end of the proceedings and therefore suspension of the licence (based on Art. 7ç Law on Notaries that gives the MoJ the possibility to temporarily restrict a licence – although for up to 2 years). However, Art 8 of Law on Notaries seems to require the chamber of the notaries to propose and agree to the licence suspension or removal of the notary. There do not appear to be relevant legal provisions applying to other DNFBPs.

(c) Art. 27 of AML/CFT law defines the administrative fines that can be applied by the GDPML to all REs, including the DNFBPs. No other sanctions than fines can be directly imposed under the AML/CFT Law. Art. 26 of the AML/CFT Law does authorise the GDPML to request licensing authorities to restrain, suspend or revoke the licence of an entity for having failed to repeatedly comply with AML/CFT requirements. Art. 26(2) then instructs the supervisory authorities to review such request and decide on it in accordance with the AML/CFT Law and with the sectoral laws. However, it does not appear that the DNFBP licensing authorities have clear power under sectoral laws to revoke licences based on AML/CFT infringements. No examples were provided of licence revocation of DNFBPs based on AML/CFT breaches upon GDPML's request in practice, to remove the assessment team's doubts.

322. Overall, the sectoral laws relating to DNFBP sanctions do not seem to cover AML/CFT requirements in their sanctioning provisions. They seem to be limited to administrative penalties and focus on the individual licensee without applying to LEs or directors and senior management. Although fines are available, it does not appear that a proportionate rate of sanctions in line with R.35 is available to deal with failure by DNFBPs to comply with AML/CFT requirements. See further R.35.

### 323. Criterion 28.5 –

(a) With the exception of some limited supervision activity by the MoJ (focusing on implementation of reporting requirements), the DNFBP supervisors other than GDPML do not exercise AML/CFT supervision in practice.

The GDPML Compliance Manual includes reference to a RBA to supervision which is used to determine the level and frequency of supervisory activities for the DNFBP sectors or entities supervised. Notaries, gambling operators and accountants are believed to form the category of DNFBPs with the highest vulnerability for ML (per NRA) and indeed most of the GDPML's supervisory resources in recent years have been focused on those sectors. However, considering GDPML's limited resources, it cannot be concluded that the supervision exerted by the GDPML over DNFBPs overall is proportionate to the risks inherent to the sectors.

(b) Supervision of DNFBPs does not seem to take into account the ML/TF risk profile when assessing the adequacy of the AML/CFT internal controls, policies and procedures.

### *Weighting and Conclusion*

324. All DNFBPs as defined by FATF have a designated supervisor for AML/CFT compliance. Measures to prevent criminals from controlling a DNFBP are in place for casinos and notaries. However, these measures are subject to deficiencies and for other sectors no relevant provisions were provided. The range of sanctions for AML/CFT breaches available to the supervisors is limited. The GDPML has made efforts to apply a RBA to supervision of DNFBPs. **R.28 is rated PC.**

### *Recommendation 29 - Financial intelligence units*

325. Albania was rated LC in the previous evaluation round on R 26. Several deficiencies were identified, in relation to the GDPML's independence, governance and functioning, gaps in authority to perform dissemination and information request functions, insufficient performance of strategic analysis and trends analysis poor capacity, and the lack of prioritisation in the analysis of SARs/CTRs. These deficiencies have been largely addressed through the amendment of the AML/CFT Law.

326. *Criterion 29.1* – The GDPML is established pursuant to Art. 21 of the AML/CFT Law as an administrative body subordinate to the MoF. It acts as a national centre in charge of the collection, analysis and dissemination of data, reports and information regarding ML/FT to competent authorities.

327. Although the authorities stated that ML infers also to predicate offences, there is however no explicit reference in the legislation on competences of the GDPML in relation to associated predicate offences. Hence the core functions of the GDPML seem to be limited only to information related to ML and TF.

328. *Criterion 29.2* – The GDPML is empowered to receive the following disclosures:

(a) STRs from the REs - FIs and DNFBPs (Para 1-2, Art. 12 of the AML/CFT Law). In addition the GDPML is competent to receive information related to suspicions on ML and TF from the GDT (Art. 18), the GDC (Art. 17), the CORIP (Art. 19), every authority that registers or licences NPOs (Art. 20), and also information for suspicion of TF from any person (Para 2, Art. 10 of the Law on MTF).

(b) CTRs (Para 3, Art. 12 of the AML/CFT Law), information on declarations of cash amounts, negotiable instruments, precious metals or stones, valuables or antique objects, equal to or greater than 1,000,000 ALL, or the equivalent amount in foreign currency, from the GDC (Para 1, Art. 17 of the AML/CFT Law), and reports on the registration of contracts for the transfer of property rights for amounts equal to or more than 6,000,000 (six million) ALL or its equivalent in foreign currencies from the CORIP (Para 1, Art. 19 of the AML/CFT Law).

329. *Criterion 29.3* – The GDPML for the purpose of prevention of ML/TF:

(a) Is competent to request any kind of information (not only financial) from the REs (Letter c, Art. 22 of the AML/CFT Law) and the entities are explicitly obliged to submit information, data and additional documents to the GDPML in accordance with the provisions set forth in the AML/CFT Law (Para 1, letter ë, Art. 11 of the AML/CFT Law).

(b) Has access to databases and any information managed by the state institutions, as well as in any other public registry within the competencies of the AML/CFT Law (Art. 22, letter b). GDPML can access a number of databases directly through IT interface - tax information related to legal companies; import/export declarations from GDC; driving licence registry; vehicle registry; domestic PEPs list; cross-border Declarations; immovable property registry; notary registry; civil status registry; Total Information Management System (TIMS) – for the module related to the cross border of the citizens and vehicles; Register on persons convicted for crimes. The rest of the information is accessed through written requests.

330. *Criterion 29.4* – There is no explicit legislative requirement to conduct either operational or strategic analysis of information related to ML/TF, but the Internal regulation further details the analytic functions of the GDPML providing that it performs operational and strategic analysis. However, there is no legislative requirement to conduct analysis of information related to ML associated predicate offences.

(a) The GDPML conducts operational analysis in line with the GDPML Analysis Manual. Both, the available and obtainable information are used in the course of analysis.

(b) The GDPML conducts also strategic analysis in line with the GDPML Analysis Manual, using available and obtainable information<sup>147</sup>.

331. *Criterion 29.5* – The powers of the GDPML to disseminate information on ML/TF is defined in Art. 22. The GDPML can disseminate information on ML/TF spontaneously pursuant to Art. 22, letter “a”

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<sup>147</sup> The annual reports of GDPML contain information on trends and typologies of ML. The GDPML had its input in the NRA reports from 2012 and 2015. Over 2013-2016 the GDPML has conducted a sectoral analysis of money transfer companies, of cash declarations at the border, of the level of supervision of gambling organisations, of individual transfers carry out with China, of traders of metals and precious stones and others.

of the AML/CFT Law and upon request pursuant to Art. 22, letter “e” of the same law. Limitations on ML associated predicate offences apply.

332. Information disseminated to the LEAs is classified as a state secret (Art. 22/1 of the AML/CFT Law) and protected pursuant to the Law No.8457, date 11.02.1999 On Information Classified “State secret”. Further regulation is contained in CMD No. 922, date 19.12.2007 “On securing “State secret” classified information that produced, storage, processed or transmitted on (INFOSEC) communications systems”. The physical transportation of classified information is further regulated by CMD No. 502, date 23.06.2010 “On approval of regulation “On physical transportation of “State secret” classified information”.

*333. Criterion 29.6 –*

(a) There are rules in place governing security and confidentiality, including procedures for handling, storage, dissemination and protection of and access to with regard to classified information (Law No. 8457, date 11.02.1999 “On Classified Information “state secret”, CMD No. 922, date 19.12.2007 “On securing “State secret” classified information that produced, storage, processed or transmitted on (INFOSEC) communications systems”, CMD No. 502, date 23.06.2010 “On approval of regulation “On physical transportation of “State secret” classified information”, CMD No. 188, date 4.3.2015 “On approval of personnel securities rules”).

(b) Authorities advised that all employees are provided with the clearance certificate issued by the Directorate of Security of Classified Information after the performance of several checks as criminal records, property status, health condition, etc. Moreover, according to Art. 6 chapter VI of CMD no.189 GDPML has a yearly basis training of the staff in order for them to get acquainted with the legal framework for the classified information in the Republic of Albania.

(c) Authorities advised that information received from REs is stored in the GDPML’s database which together with its archives and premises is subject to video surveillance and controlled access.

*334. Criterion 29.7 –*

(a) Pursuant to Art. 21, paragraph 1 of the AML/CFT Law, it is empowered to determine the manner of pursuing and resolving cases related to potential ML/TF and terrorist activities. There are no legal provisions preventing the GDPML from carrying out its functions freely.

(b) GDPML can independently enter into agreements with foreign counterparts and with domestic LEAs (Letters e and dh, Art. 22 of the AML/CFT Law). There is no legal provision pursuant to which GDPML can enter into such agreements with other domestic competent authorities (Instructions No. 15 and 16 with regard to the exchange of information with tax and customs authorities are issued by the Minister of Finance). Nevertheless, there are MoUs signed with supervisory authorities.

(c) Although subordinate to the MoF, the GDPML has its own core functions stipulated in Art. 22 of the AML/CFT Law.

(d) GDPML has its own budget, database, archives and premises. The internal budget group within the GDPML details budgetary allocation for a 3-year period and submits it to the MoF for endorsement. The budgetary resources allocated to GDPML from 2014 - 2017 have been sufficient to meet the needs for a normal functioning of the institution.

*335. Criterion 29.8 –* GDPML has been a member of the Egmont Group since July of 2003.

*Weighting and Conclusion*

336. The GDPML is not explicitly vested with powers to receive, analyse and disseminate information on ML associated predicate offences. **R.29 is rated LC.**

### *Recommendation 30 – Responsibilities of law enforcement and investigative authorities*

337. Albania was rated PC on the former R.27 as there were no specific provisions for law enforcement authorities to postpone/waive arrest warrants as well as for issues related to effectiveness (neither of which is relevant for assessing technical compliance with the current R.31).

338. *Criterion 30.1* – Within the structure of the State Police, it is the Sector for Investigation of Money Laundering (hereinafter ML Sector) of the Directorate for Investigation of Economic and Financial Crime (DIEFC) within the Department for the Investigation of Organised and Serious Crime that is vested with exclusive competence to investigate ML and TF offences. The same unit is responsible for investigating predicate offences associated to the respective ML charges.

339. At central level, DIEFC is organised in 4 sectors for investigation of ML, corruption, other economic and financial crimes and another one for financial investigation of criminal assets. At local level, DIEFC is organised at 12 local sectors out of which 7 are dealing with economic crimes including ML. This system has replaced (or is in the process of replacing) the former structure where 8 regionally organised Joint Investigative Units covered corruption and economic and financial crime (the new sectors are located where the former JIUs were).

340. Prosecution and the conduct of investigation in cases investigated by the aforementioned Police unit fall under the responsibility of the territorially competent First Instance Prosecution Offices. Apart from the aforementioned Police unit, the prosecutor can assign the investigation of ML to other specific authorities, such as the Tax Investigation Directory of the GDT in case the predicate offence falls under the jurisdiction of the latter LEA (e.g. tax evasion or VAT-related fraud). Prosecution of ML committed by a structured criminal group or criminal organisation falls under the competence of the recently established Special Prosecution Office (which replaced the Serious Crimes Prosecutor's Office as result of the recent judicial reform).

341. *Criterion 30.2* – Because the aforementioned ML Sector has exclusive jurisdiction to investigate ML or TF offences, such additional charges cannot be included in criminal investigations conducted by ordinary Police units in relation to predicate offences. Instead of that, the competent prosecutor would then refer the entire case to the ML Sector to follow up with such investigations. (In these cases, the same prosecutor will continue the investigation as the delegation of the case only takes place between the specialised police units.)

342. *Criterion 30.3* – Sector for the Investigation of Criminal Assets within the Directorate for Investigation of Criminal and Financial Crime in the State Police<sup>148</sup> is responsible for identifying and tracing assets subject to sequestration and confiscation but only with regard to non-conviction based confiscation proceedings pursuant to the Anti-Mafia Law and with regard to criminal offences falling under the scope of this law<sup>149</sup>. This sector also operates at central and local levels (as discussed above in relation to DIEFC) in a way that at the local level all heads of 12 sectors are competent to conduct financial investigations investigate the property during the investigations of criminal offence, outside and despite the progress of criminal proceedings. The Criminal Assets Investigation Sector has a legal obligation to locate, identify, document and refer to the competent prosecutor assets related to the criminal activity of the field of this law. This includes initiating freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime<sup>150</sup>.

343. *Criterion 30.4* – The authorities authorised to conduct financial investigations of predicate offences are those referred to under c.30.1.

344. *Criterion 30.5* – In the anti-corruption sphere, the HIDAACI as an independent administrative body for the prevention of and fight against corruption and economic crime is the main stakeholder which, however, cannot be considered a LE authority that conducts criminal investigations and

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<sup>148</sup> See Art. A.2.3 in the Order no. 557 of the General Director of ASP (15.04.2014) "On the defining of criminal offences within the scope of work of State Police structures"

<sup>149</sup> The scope of Anti-Mafia Law was significantly enlarged as result of its latest amendments.

<sup>150</sup> See Art. 8 (1)-(2) of the Anti-Mafia Law.

therefore it does not fall under the scope of Criterion 30.5. As for Police bodies, corruption cases are investigated by the Sector for the Investigation of Corruption of the Directorate for Investigation of Economic and Financial Crime. However, since ML/TF offences fall under the exclusive competence of the ML Sector of the same Directorate (see under Criterion 30.1) all ML/TF offences arising from, or related to, corruption offences would be delegated to the latter Police unit (see under Criterion 30.2) so Criterion 30.5 would not apply here. The only anti-corruption enforcement authority relevant here is the Special Prosecution Office that has jurisdiction over a certain segment of corruption cases. In case such corruption charges are associated with ML, the Special Prosecution Office will remain competent for prosecuting the entire case<sup>151</sup> including the application of its powers to identify, trace, and initiate freezing and seizing of assets.

#### *Weighting and Conclusion*

345. Responsibilities of LE and investigative authorities are in line with the FATF requirements. **R.30 is rated C.**

#### *Recommendation 31 - Powers of law enforcement and investigative authorities*

346. Albania was rated PC on the previous R. 27 and C on R. 28. The only technical deficiency identified in relation to R.27 was the lack of a specific provision for law enforcement to postpone/waive arrest warrants (which is no longer a FATF requirement for R.31) while the other downgrading factors were related to effectiveness.

347. *Criterion 31.1* – Competent law enforcement and prosecution authorities have all powers required by C.31.1 to obtain access to all necessary documents and information, including the use of compulsory measures, as follows:

(a) in the investigation phase when the case has not yet been referred to the Prosecution Office, the Police can obtain records from databases held by the State or private institutions pursuant to Art. 129 of the Law on the State Police. This capacity is supported by numerous MoUs signed by the Police and other state bodies (GDC, GDT, HIDAACI etc.) As from the point the investigation is conducted by the prosecutor, the respective rules of the CPC apply accordingly (Art. 191 et al. on documentary evidence, Art. 203 on request for handing over, Art. 210 on sequestration in banks, Art. 211 on the obligation of handing over secrecy). As far as bank secrecy is involved, all these provisions are to be read together with Art. 91(2) of the Law on Banks which ensures that bank secrecy can be lifted.

(b) Authority to search persons and premises is provided in Title IV Chapter III Section II of the CPC (Art. 202 et al.)

(c) Procedural rules concerning witness testimony can be found in Title IV Chapter II Section I of the CPC (Art. 153 et al.)

(d) Authority to seizing (sequestering) evidence is provided by Title IV Chapter III Section III of the CPC (Art. 208 et al.) and also Art. 274.

348. *Criterion 31.2* – Whereas a wide range of special investigative techniques is available in the CPC, some of these only seem to be applicable for the investigation of the more serious forms of ML/TF and associated predicate offences.

These include:

(a) Carrying out of undercover operations, in the form of simulated actions (i.e. simulated purchases or other acts) or infiltration by an undercover police officer, as provided by Art. 294/a and 294/b CPC respectively. Out of these two measures, the infiltration in criminal groups (Art. 294/b) only applies to “serious crimes” which term is, however, not defined by legislation (and therefore it cannot be

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<sup>151</sup> See Art.9(1) of Organic Law No. 95/2016 "On the Organisation and Functioning of Institutions to Fight Corruption and Organised Crime" which provides that the Special Prosecution Office is competent to review, investigate and prosecute any other criminal offence which is “closely related” to the investigation or criminal case falling under the primary competence of the same.



considered identical to the list of offences that fall under the jurisdiction of the serious crimes court pursuant to Art. 75/a CPC). In lack of a proper definition for “serious crimes” the authorities consider nothing excludes this measure from being generally applicable to all forms of ML/TF or associated predicate offences (if committed by a criminal group) but the assessment team was not provided with jurisprudence to support this broad interpretation.

(b) Interception of communications, pursuant to Title IV Chapter III Section IV of the CPC (Art. 221 et al.) According to Art. 221(1) (a) interception of communications can only be authorised relating to crimes committed with intent and punishable by at least 7 years of maximum imprisonment (which encompasses ML and TF) while the recently added paragraph (c) extends its scope to serious crimes pursuant to Art. 75/a CPC (which expressly includes TF offence).

The measure in Art. 221 CPC can only be applied during criminal proceedings, against a suspect or other person related to the suspect<sup>152</sup>. Interception of communications before the initiation of a criminal investigation (“preventive interception”) is regulated by a separate law<sup>153</sup> which is Art. 131 (1)(b) of the Law on State Police. The latter measure has no limitation as to its applicability to ML, TF or predicate offences but its results cannot be used as evidence.

(c) Accessing computer systems, as a specific investigative technique is not provided for by Albanian law. As noted above, rules for interception are restricted to communications thus do not cover data stored in a computer system. Whereas Art. 191/a<sup>154</sup> CPC provides for the obligation to surrender cyber data stored in a cyber-system or in another type of [electronic] storage, there appears no measure to provide ex parte access to computer systems.

(d) Until recently, there was no domestic legislation to regulate controlled delivery and thus Albanian authorities had to rely on the direct application of the relevant international instruments in this field, first and foremost the 2<sup>nd</sup> additional protocol to the European MLA Convention (ETS 182). However, the latest amendment to the CPC which entered into force on 01.08.2017 inserted a new Art. 294/c which finally introduces the measure of controlled delivery in Albanian domestic law and provides for a detailed set of procedural rules in this respect. As such, controlled delivery can be applied, among others, to the illegal transport of money and other proceeds of criminal offenses as well as items used as means for the commission of criminal offenses, which is likely to cover proceeds having been (or to be) laundered and property collected or provided for TF purposes.

#### 349. Criterion 31.3 –

(a) Mechanisms to identify whether natural or legal persons hold or control bank accounts are in place but timeliness does not appear to be guaranteed. As there is no central register of bank accounts, direct requests need to be sent to some or all of the commercial banks but information of this kind can only be obtained based upon a court order (see above under C.31.1). In case of legal persons, bank account information can also be requested from the GDT as it makes part of financial statements that LEs have to report to tax authorities at the end of each fiscal year (although this information might not always be accurate as it is only updated annually). The same goes for natural persons with a gross annual income over 2.000.000 ALL (15.000 EUR) who are obliged to submit annual incomes declaration to the GDT including details on all their banking accounts. Finally, LEA can also obtain bank account information through the GDPML.

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<sup>152</sup> see Art. 221 (3) CPC

<sup>153</sup> see reference in Art. 221 (5) CPC

<sup>154</sup> Obligation to disclose cyber data 1. When trying IT related criminal cases, the court, upon request of the prosecutor or the accusing injured party, shall order the one keeping or supervising [the computer device] to surrender the cyber data stored in a cyber-system or in another type of [electronic] storage. 2. In such proceedings, the court shall also order the service provider to disclose any information on the subscribers and services provided by it [the service provider]. 3. When there are grounded reasons that a delay may seriously harm the investigations, the prosecutor, by a reasoned resolution, shall order the obligation to disclose the cyber data as defined in paragraph 1 and 2 of this Article and immediately notify the court. The court shall evaluate the prosecutor resolution within 48 hours from notification.

(b) Procedures available to identify assets (see above in subparagraph [a] as well as under Criterion 4.2) do not involve prior notification to the owner.

350. *Criterion 31.4* – It is one of the duties and functions of GDPML pursuant to Art. 22(e) of the AML/CFT Law to exchange information with the GPO, State Police and other competent LEA on cases of ML and TF. Whereas this provision does not appear to cover provision of information to authorities that only investigate predicate offences, Art. 129 of the Law on the State Police can be applied even in those circumstances.

#### *Weighting and Conclusion*

351. The generally robust investigative powers of LEAs are only affected by a number of systemic deficiencies. One of these is the range of special investigative techniques some of which either does not exist in Albanian legislation or does not seem to be available for the investigation of all forms of ML/TF and associated predicate offences. Another issue is that there is no reliable mechanism for the timely and accurate (and simple) identification of whether natural or legal persons hold or control bank accounts. **R.31 is rated LC.**

#### *Recommendation 32 – Cash Couriers*

352. Albania was rated PC in the 4<sup>th</sup> round MER due to the following deficiencies: the definition of BNIs was not in line with the FATF standard; there were no requirements to make a declaration in the case of the shipment of currency through containerised cargo or in the case of mailing of currency; there were no sanctions for false/inaccurate declarations; and the minimum statutory fine was too low. Some effectiveness issues were also raised.

353. *Criterion 32.1* – Albania has adopted a declaration system both for incoming and outgoing cross-border transportation of currency and BNIs (Art. 17, paragraph 1 of the AML/CFT Law). The definition for BNIs provided under Art. 2, point 5 of the AML/CFT law is in line with the definition for BNIs in the FATF Glossary. The transportation of currency or BNIs through mail and cargo does not fall within the coverage of this declaration system

354. According to authorities, the transportation of monetary values and the other BNIs via containerised cargo or mail are subject to the same customs procedure as the other imported/exported goods but the exact legal provisions were not provided to the assessment team.

355. *Criterion 32.2* – Albania has adopted a declaration system for all travellers carrying amounts above a threshold of 1,000,000 ALL (approximately 10 000 USD), or the equivalent amount in foreign currency. Under Art. 17, paragraph 1 of the AML/CFT Law, upon declaration, travellers should explain the purpose for carrying them and produce supporting documents.

356. *Criterion 32.3* – This criterion is non-applicable since Albania has adopted a declaration system.

357. *Criterion 32.4* – According to the authorities, in cases of false declarations or non-declarations the GDC cooperates with the police authorities where there is the suspicion of a crime. Pursuant to Art.3. p.1 of the Regulation for the cooperation between the GDC and the State Police, one of the forms of cooperation is the joint passenger checks. According to Art. 4, p. 1 of the Regulation the State Police structures and the GDC administer and check the documentation according to their needs, while in cases where the same document is needed to be checked by both structures, they cooperate with each other according to an order that is established by the structures themselves within the office without the need for any specific action of the person.

358. *Criterion 32.5* – The falsification or use of falsified forms, or the presentation of false circumstances in the latter that are directed to state organs, is a criminal offence under Art. 190 of the CC and is punishable with imprisonment from 6 months to 4 years. More serious punishments are envisaged, inter alia, in cases of collaboration, if it is a repeat crime, if there are serious consequences. Non-declaration is sanctioned with a fine or imprisonment up to 2 years under Art. 179a of the CC; however it does not extend to BNIs as defined in the AML/CFT Law.

359. *Criterion 32.6* – Pursuant to Art. 17 § 1 of the AML/CFT Law customs authorities send all the declaration forms and supporting documentation to the GDPML. Pursuant to Art. 4, paragraph 2 of Instruction No. 15, this is done twice a month, the authorities, however have indicated that it is done once a week electronically. In addition, under Art. 17 § 1 suspicious cross-border transportation incidents (SARs) related to ML or TF are filed by the GDC and reported immediately and no later than 72 hours to the FIU for the activities under their jurisdiction.

360. *Criterion 32.7* – Art. 7 and 8 of the Practical guide, No. 16, date 12 September 2012, on Check of the cash declaration by customs at the border crossing points, set up instructions for the GDC with regard to coordination with the GDPML and the ASP. Although there are not similar provisions for coordination for the ASP, it may be concluded by the wording of Art. 7 of the Guide “(including also cases recorded by the police)” that actions for coordination are also taken by the ASP. Authorities provided case examples to illustrate the coordination between the GDC, police and GDPML.

361. *Criterion 32.8* –

a) Under Art. 17 of the AML/CFT law the GDC reports immediately and no later than 72 hours to the GDPML suspicion, information or data related to ML or TF, which does not encompass reporting on predicate offences. No provisions regarding the powers of the customs authorities to stop or restrain currency or BNIs in case of non-declaration or false declaration were presented to the assessment team. BNIs, as defined in the AML/CFT Law, are not covered by the provision of Art. 179/a of the CC and the non-declaration will not in all cases be a criminal offence and thus there would be no ground to restrain them.

b) The authorities state that upon suspicion of a false declaration, the GDC requests cooperation to the Border Police which checks the individual and the baggage. If the Police confirm the false declaration, the Border Police refers the matter to Prosecutor for the criminal offense under Art. 190 of the CC.

362. *Criterion 32.9*. – The GDC has signed Memoranda of Understanding in the area of Customs legislation and it can be used also for cooperation and information exchange on cross border transportation of currency with Turkey, Italy, Greece, “the former Yugoslav Republic of Macedonia”, Slovenia, Bulgaria, Moldova, Romania, Poland, Slovakia, Cyprus, Austria, Spain, Montenegro, Croatia, Kosovo, Bosnia-Herzegovina, Russia, Iran, Ukraine and Hungary, as well as the Electronic Data Sharing Protocol between the Republic of Albanian Customs Administration and the Republic of Macedonian Customs Administration no. 8835, dated 05.06.2012. “Establishment of system for exchange of data on declared foreign currencies at border crossing points” no. 17881, date 22.10.2012.

363. The declaration system in place facilitates the international cooperation and assistance. The collection, analysis and record keeping of these data is performed by the Anti-Trafficking Directorate within the GDC and is conducted with the support of the Information Directorate. The international cooperation and assistance is also facilitated by the requirement for sending the following information by the customs authorities to the GDPML:

a) Declarations for cash amounts, negotiable instruments, precious metals or stones, valuables or antique objects, equal to or greater than 1,000,000 ALL, or the equivalent amount in foreign currency (Art. 17, Para 1 of the AML/CFT Law); (See also Criterion 32.6.)

b) According to Art. 7 the Practical Guide No 16, dated 12 September 2012, on the Check of the cash declaration by customs at the border crossing points, cases of non-declaration and false declaration are also sent to the GDPML.

c) Customs authorities are obliged to file a SAR when there is a suspicion of ML/TF and also have data keeping obligations in such cases (Art. 17 and 11 of the AML/CFT Law). The information received by the GDPML is stored for 10 years (Art. 22, letter gj) of the AML/CFT Law). The declaration form and the SAR instructions include information on the amount and the identification data of the bearer.

364. Customs keep all the declarations for a period of 10 years.

365. *Criterion 32.10* – There are safeguards in place to ensure proper use of information collected. Pursuant to Art. 20 of the Customs Code, the confidential information or information obtained confidentially received through the performance of the customs authorities' duties, is subject to professional secrecy and data protection requirements. However, the provision is general and it is not clear what confidential information and information obtained confidentially refers to, as well as what the difference between the two categories is. The confidentiality and data protection requirements do not impede the communication of the relevant information for the purpose of customs cooperation with foreign countries or territories, based in International Memoranda or national trade legislation. The declaration system is available in each cross border point and the declaration form is available also online.

366. *Criterion 32.11* – Persons who launder funds or finance terrorism through the transportation of cash are subject to the sanctions set out in Art. 179 / a of the CC; however it does not extend to BNIs as defined in the AML/CFT Law. Regardless of this criminal offense, as the case may be, this fact could serve as a basic criminal offense for the initiation of an investigation into the criminal offense of ML and TF according to the provisions of Art. 287 and 230 of the CC.

367. Sequestration in the first case is made as material evidence to establish non-declaration at the limit of money or valuables. However, the money or valuables can be seized and confiscated, in and during criminal proceedings, if they are related to the criminal proceeding of ML or TF or in the criminal proceeding of predicate offense.

368. Unless justified by legal sources and are related to the offenses specified in Art. 3 of Law 10192 (which cover also Art. 287 CC) they may be subject to the procedure of seizure and confiscation outside and despite the progress of criminal proceedings. However, this procedure is not applicable to offences under Art. 179/a of the CC.

#### *Weighting and Conclusion*

369. The declaration system for incoming and outgoing cross-border transportation of currency and BNIs adopted by Albania meets most of the requirements of the standard, but cross-border transportation of cash by mail or cargo does not fall within its scope. Some of the powers of authorities are applicable only in case a criminal offence is suspected and the criminal offence under Art. 179a CC "*Failure to declare at the border of money and valuables*", does not cover BNIs. **R.32 is rated LC.**

#### *Recommendation 33 – Statistics*

370. Albania was rated PC in the previous evaluation round on R.32. Several deficiencies were identified, including lack of coordination of statistics gathering which resulted in inconsistencies in the data on: STRs received; ML investigations, arrests, convictions, seizures and confiscations. Furthermore, a full range of statistics showing sequestrations and confiscations in the course of criminal proceedings of proceeds-generating crime, as well as statistics regarding MLA and extradition were not maintained.

#### *371. Criterion 33.1 –*

(a) The GDPML has general duty to maintain data (Art. 20 a) of AML/CFT Law). Data on received STRs is maintained with a break-down by sectors of REs. Statistics on STRs criminal offence involved is extracted manually. While data is collected on the number of STRs disseminated to Prosecution and to the Police, it does not provide a break-down by offence or specify the outcome of the dissemination (in terms of prosecutions/convictions).

(b) Statistics on ML/TF investigations, prosecutions and convictions are collected separately by the Police (based on Order of the General Director of State Police No.1531 "*On the compilation of crime statistics*"), Prosecutor's office (based on the Order nr. 284 of General Prosecutor "*For keeping, fulfilling, reporting of statistical data in the Prosecution Office*" and Guideline nr. 289 of General Prosecutor "*About the methodology for keeping, protecting and fulfilling of statistical data in Prosecution Office*) and the MoJ (based on the Law No. 8678 "*On the Organisation and Functioning of*

*the Ministry of Justice*”). This data is not coordinated and as a result there are inconsistencies and information which is lacking. According to the authorities Albania State Police in cooperation with the Office of the Prosecutor have launched the project "Case Police Management System", which will enable the recording of accurate data regarding the investigation, sequestration, prosecution, punishment and confiscation of assets the cleaning issues and terrorism financing. This practice will be followed for all criminal offenses.

(c) Data on property frozen, seized and confiscated is collected both by the GPO, the State Police and the GDPML (legal basis is the same as for point (b)), however there appears to be lack of coordination of the statistics. Authorities confirm that statistics on confiscation will be collected with full implementation of “Case Police Management System” project mentioned above.

(d) Statistics on MLA and extradition are collected by the GPO and by the MoJ (legal basis is the same as for point (b)). These statistics don’t always indicate the refusal ground for extradition. No statistics are collected or have been provided on requests sent/received on freezing, seizing and confiscation. Data is collected on the exchange of information between FIUs. Information on cooperation between LEAs is collected, however, statistics are not kept on how many requests have been executed or refused. As concerns cooperation between supervisors, only BoA provided statistics on international cooperation – notably, on the requests received or sent on AML/CFT matters. According to MoJ the average time of execution or the outcome requests is from 3 to 6 months and average time for execution of the out-going requests is from 6 to 2 years depending on duration of investigative and trial period.

#### *Weighting and Conclusion*

372. Albania collects statistics on matters relevant to the effectiveness and efficiency of the AML/CFT system, however there appears to be a lack of statistics in some of the reported areas (C.33.1(d)). **R.33 is rated LC.**

#### *Recommendation 34 – Guidance and feedback*

373. In the 3rd round MER Albania was rated PC on R. 25. The technical deficiencies identified included insufficient feedback provided to the entities, insufficient guidance provided to FIs and no guidance provided to the DNFBP sector, in particular, on CDD, record keeping and internal control. The revised FATF Methodology now extends the obligation to provide guidance and feedback to supervisors and self-regulatory bodies.

374. *Criterion 34.1* – The Albanian legislation contains requirements for the GDPML to provide feedback on the reports that REs have filed; and organises and participates, together with public and private institutions, in training activities related to ML and TF, as well as awareness-raising activities in this field (Art. 22 of the AML/CFT Law). There are Instructions No 28 and 29 issued by the MoF for the FIs and DNFBPs on conducting CDD, EDD, monitoring of business relations, reporting suspicious and cash transactions, record keeping and other requirements.

375. BoA has issued guidance on AML/CFT measures on the procedures and documents required to identify customers, carry out record-keeping, preserve data, measuring risks (providing also some risk indicators) and applying a RBA (Regulation no. 44) and organised 2 trainings jointly with GDPML. AFSA has also issued a Regulation<sup>155</sup> on conducting CDD/EDD and guidance on risk indicators for the classification of customers and transactions for the entities it supervises. However, for certain types of DNFBPs (those listed under Art. 3 letters “g”, “gj”, “h” and “k” of the AML/CFT law) guidance on risk indicators for the classification of customers and transactions has not been developed.

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<sup>155</sup> Regulation “On Due Diligence and on Enhanced Due Diligence From Subjects of Law on Prevention of Money Laundering and Terrorism Financing” no. 58, date 30.06.2015

376. The GDPML regularly organises trainings covering a number of representatives of the FIs, DNFBPs<sup>156</sup>, and supervisory bodies. However, some of the REs which pose a high ML/TF risk have not benefited from such training, notably real estate agents and to a very limited extent accountants and Games of Chance.

377. Feedback is also ensured through the publication on the official website of the GDPML of Typology reports<sup>157</sup> and Annual Reports (which include information on the number of received reports from REs, reports disseminated to LEAs, amount of frozen funds, examples of sanitised cases, information on prosecution of ML/TF cases, trainings provided to stakeholders, legislative amendments, outcomes of supervision and other information). The BoA Annual Report contains outcomes of the on-site inspections on implementation of the ML/TF requirements and areas of further improvement.

#### *Weighting and Conclusion*

378. Guidelines and feedback are provided to REs to help them implement AML/CFT legislation. Nonetheless, the training which has been provided on AML/CFT has not targeted all of the REs which the NRA identifies as posing a higher risk for ML/TF and for certain types of DNFBPs guidance on risk indicators for the classification of customers and transactions has not been developed. **R.34 is rated LC.**

#### *Recommendation 35 – Sanctions*

379. In the 4<sup>th</sup> round MER Albania was rated as Partially Compliant with Recommendation 17. The deficiencies were related to effectiveness issues. In particular, it had not been demonstrated that effective and proportionate sanctions were applied; with the exception of the GDPML, no sanctions had been applied by any supervisory body; and no sanctions had been applied to the senior management. The revised FATF Recommendations have now clarified which specific Recommendation should be considered while evaluating a country's sanctions regime.

380. *Criterion 35.1* – The following sanctions are envisaged for violation by the REs of their obligations with respect to Recommendations 6, 8-23.

381. Breaches of the regime of TFS (R.6), if they do not constitute criminal offenses, constitute an administrative contravention punishable with fines between EUR 375 – 75000 (Art. 27 of the Law on MTF). The fines are imposed by the Minister of Finance upon proposal by the GDPML. Furthermore, the performance of services and actions with designated persons is criminalised under the CC and can be sentenced with imprisonment from 4 to 10 years (Art. 230/ç).

382. Concerning sanctions for failure to comply with requirements of R.8, please see the analysis of c.8.5.

383. With regard to R.9, submission of information to the GDPML may be covered by the AML/CFT Law (see first bullet point below) although evaluators are not fully convinced that this provision covers information submission in general rather than only submissions related to transaction reporting. For banks, BoA can require the rectification of a breach of 'obligations on reporting and notifications', although again it is not unequivocally clear that this includes general submission of information, and fines for failure to remedy a breach can only be imposed on the administrators of the bank (not on the bank itself). The Law on SLAs provides that subjects to that Law can be sanctioned for failure to provide information to supervisors (Art. 76(1)(i)). BoA Regulation No. 2 on NBFIs contains supervisory measures (e.g. orders for rectification, and licence restrictions in case of failure to remedy breaches) that BoA can impose if an entity does not provide information, or does not provide real and correct information in correspondence with the BoA (Art. 35-37). There are

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<sup>156</sup> These are banks, NBFIs, exchange offices, insurance, including life insurance companies, pension fund, games of chance, lawyers, notaries, chartered accountants, real estate agents, Construction representatives, car dealers, travel agencies.

<sup>157</sup> <http://www1.fint.gov.al/al/tregues-te-pp-ft/tipologji>

sanctions available under the CC for failure to provide access to information to LEAs, which can be treated as an obstruction of justice and punished by a fine or up to 3 years of imprisonment (Art. 301).

384. Providing financial services without a licence (cf. R.14, c.14.2) is criminalised under Art. 170 ç of the CC, punishable with a fine or imprisonment of up to 3 years (5 years in case of serious consequences to citizen or state interests). The available fine (i.e. the general fine available for all criminal offences) ranges from 750 EUR – 75,000 EUR and is determined within that range in each individual conviction, after determining the solvency of the person.

385. Regarding R.10 – R.23, Art. 27 of the AML/CFT Law sets out administrative fines that can be applied to REs (FIs and DNFBPs) for violation of the AML/CFT requirements. The fines are determined and applied by the GDPML, who informs the other competent supervisors.

- The subjects are fined EUR 2250 – 22500 (for entities that are natural persons: EUR 750 – 7500) when they do not meet the obligations provided for in the articles that govern customer and BO identification and verification, KYC procedures, keeping records up to date, on-going monitoring, new technologies, internal controls, and submission of information to GDPML.
- The subjects are fined EUR 3000 – 30000 (for entities that are natural persons: EUR 1500 – 150000) when they do not meet the obligations provided for in the articles that govern EDD and wire transfers.
- The subjects are fined EUR 3750 – 37500 (for entities that are natural persons: EUR 2250 – 22500) when they do not meet the obligations provided for in the articles that govern reporting to the GDPML (STRs and mandatory reports of cash transactions over the threshold) and the requirements and time limits for reporting set in the bylaws.
- The subjects are fined EUR 7500 – 30000 (for entities that are natural persons: EUR 1500 – 11250) when they do not meet the obligations provided for in the articles that govern record-keeping and tipping-off prohibition.
- The subjects are fined EUR 15000 – 37500 (for entities that are natural persons: EUR 2250 – 15000) when they fail to comply with a temporary freezing/blocking order issued by GDPML.

386. Art. 27 specifies that the violations are classified as administrative contraventions whereupon subjects are fined, *when they do not constitute criminal offences*. It appears that there are no specific criminal sanctions for AML/CFT breaches, but this would refer rather to a situation where a person's actions could be qualified as ML, TF or another crime.

387. The range of pecuniary fines appears sufficiently broad to reflect the seriousness of most breaches and the situation of most entities. However, there is no possibility for GDPML to increase the maximum fines for gross breaches, large sized institutions, or repeat violations. Furthermore, the GDPML does not have powers to impose any other sanctions than the fines stipulated above, but would need to rely on the primary supervisors. However, based on the analysis below, it appears that the latter do not always have clear powers to impose sanctions for AML/CFT breaches.

388. Art. 26(1) of the AML/CFT Law authorises the GDPML to request supervisory or licensing authorities to restrain, suspend or revoke the licence of an entity for repeat non-compliance; or when it believes that an entity has been involved in ML or TF. Art. 26(2) then instructs the supervisors to decide on the request in accordance with the AML/CFT Law and with the sectoral laws. However, as analysed below, it is not clear that such authorities will always have the power under sectoral laws to revoke licences based on AML/CFT infringements. In addition and notwithstanding, the GDPML would only have the possibility to make such request in case of repeated breaches or involvement of the entity in ML/TF, but not in case of one breach, no matter how serious.

389. For banks, it appears that there is no clear authority under the Law on Banks for BoA to revoke a licence or impose fines or other sanctions for AML/CFT breaches. The BoA has the power to impose “supervisory measures” upon banks under Art. 74 of the Law on Banks, including revocation of a licence and other sanctions, where they fail to comply with the “legal and regulatory framework for

the purpose of a safe and sustainable banking activity”. Accordingly, it is not immediately apparent that failure to comply with AML/CFT requirements can be sanctioned. However, given that in Art. 9 of the Law on Banks there is a link made with the AML/CFT Law<sup>158</sup>, BoA maintains that the failure to comply with AML/CFT requirements is covered under Art. 74.

390. Nonetheless, Art. 89, paragraphs 1-5 of the Law on Banks defines the penalising measures which may be taken by BoA, but these do not all appear to extend to failing to comply with AML/CFT requirements. In any case, the assessment team notes that it appears from the Law on Banks that BoA can only impose fines for breaches (which can be doubled in case of repeated breaches) on administrators of banks, and not on the bank itself (Art. 89). In addition, according to Art. 10 of BoA Regulation No. 44 “On Prevention of Money Laundering and Terrorist Financing”, the BoA may take “supervisory measures” against the supervised entities if concluding that they do not implement the applicable legal and regulatory framework on the prevention of ML and TF but it is not specified which supervisory measures that would be. The authorities stated that the supervisory measures would be those set out in the Law on Banks, but then again, this Law does not set out specific sanctions for AML/CFT breaches.

391. According to BoA, the Law indeed does not indicate the specific sanctions to be imposed in case of a breach of AML/CFT obligations but rather those are left at its discretion. While this may very well be the case, the assessment team does not read such discretion unequivocally into the law<sup>159</sup>. In the absence of sanctions imposed in practice by BoA for the banking sector for AML/CFT breaches (see IO.3), this discretion has not been put to the test and the assessment team could not draw a certain conclusion regarding the range of AML/CFT sanctions powers in the banking sector.

392. For NBFIs and FEOs, a range of sanctions (including licence revocation) is available for AML/CFT breaches as stipulated in relevant Regulations<sup>160</sup>. For FEOs, these sanctions have also been applied in practice (see IO.3).

393. Art. 62(1) point e of the Law on SLAs and their Unions provides BoA authority to implement supervisory measures, sanctions and penalties. Art. 78 defines the sanctions and fines available to the BoA which include fines and licences suspension and revocation. Art. 79 sets out special requirements the BoA considers when applying sanctions (circumstances, consequences, repetition of the breach). The Law is linked to AML/CFT legislation in Art. 63 and 64.

394. For the insurance sector, FSA can impose fines of 2250 – 7500 EUR on insurance companies for breaches of the AML/CFT legislation (Art. 256 in combination with Art. 240<sup>161</sup>). Fines may be doubled in case of repeat violations (Art. 257). The FSA can also revoke licences for AML/CFT breaches but only in case of recurring breaches or in case of a final criminal conviction for ML or TF (Art. 155, 156, 209, 199, Law on Insurance).

395. Relating to the supervision of VPFs, the FSA can apply financial penalties as set out in Art. 103 of the Law on VPFs for violations of the provisions of the Law. In case of repeat violations, fines can be doubled. The FSA can also suspend or revoke the licence of the company in case of breaches of the provisions of the Law (Art. 80(1)(d) in combination with Art. 80(2)(dh) and (e)). With the link to the AML/CFT Law (Art. 92 Law on VPFs), it appears that these sanctions can be imposed for AML/CFT breaches.

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<sup>158</sup> “The subjects of this Law, and the BoA shall implement the requirements emanating from the Law “On the prevention of money laundering” and other by-laws in force.’

<sup>159</sup> Given that relevant paragraphs in the Law on Banks instruct BoA to apply sanctions ‘in accordance with the provisions/dispositions of this Law’ (Art. 74 (1) and (2)); and that there are other relevant articles in the Law outlining specifically which sanctions can be imposed for which breaches – not covering AML/CFT.

<sup>160</sup> Art. 20(2) point ‘f’ and Art. 21, BoA Regulation No. 31 “On the Licensing, Organisation, Activity and Supervision of Foreign Exchange Bureaus”, as amended by Decision No. 48, dated 30.03.2016; Art. 35(1) point ‘g’ and Art. 37 of BoA Regulation No. 2 “On risk management in the activity of NBFIs”, as amended by Decision No. 46 dated 06.09.2017.

<sup>161</sup> Art. 256 of the Law on Insurance gives the FSA power to impose this fine in case of ‘any other violation of this Law’, and Art. 240 states that subjects of the Law take all necessary measures to comply with the AML/CFT Law.



396. Art. 130 of the Law on CIFs includes sanctions which the FSA can impose, including fines, suspending or revoking the licence of the CIUs, the management company and/or the depositary. However, there is no reference made in the Law on CIFs to AML/CFT obligations and the cases upon which these sanctions can be imposed do not specifically include violations of AML/CFT requirements. FSA advised that, in case AML/CFT breaches for CIFs are identified, they would be referred to the GDPML for fines. Furthermore, there is no provision that allows for licence suspension, restriction or revocation for directors or managers, although Art. 134 provides the FSA with authority to prohibit responsible persons from doing business or performing transactions but only if they were engaged in unlicensed activity.

397. Art. 57 and 63 of the Law on Securities provide the FSA with authority to revoke the licence of a brokerage company to conduct securities transactions and stockbrokers or investment advisors for violating certain requirements; however, violation of AML/CFT requirements is not specified nor is suspension of licence an available sanction. The FSA can revoke the licence of a stock exchange per Art. 91 of the Law on Securities if irregularities or unlawfulness are found in the business during supervision and suspend or revoke the licence of a company acting as a registry for violating certain criteria; however again AML/CFT violations are not included as specific criteria (Art 136). No link is made between the Law on Securities and the AML/CFT Law.

398. For gambling, it appears that the GSA can impose administrative sanctions for AML/CFT breaches (Art. 53, 56 in combination with Art. 69). The available sanctions are fines of EUR 3750 and confiscation of equipment. In case of repeat violations, the GSA can suspend or revoke licences. For other DNFBPs, it does not appear from sectoral laws that primary supervisors have clear power to revoke licences or impose other sanctions based on AML/CFT infringements. See also c.28.4.

399. A further (minor) concern regarding sanction powers relates to the fact that some parts of AML/CFT requirements are set out in other types of documents than laws (Instructions, Regulations)<sup>162</sup>. In this respect, noting that these documents do not set out sanctions themselves, the assessment team has some doubts on the existence of clear links between these requirements and the sanctions<sup>163</sup>. The fines of Art. 27 of the AML/CFT Law are explicitly for “not meeting obligations provided for in” articles of the Law. It is only when it comes to reporting requirements (R.20) that a reference is made to bylaws as well (see third bullet point above). Moreover, the AML/CFT Law only gives a clear authority to the Minister of Finance to issue detailed rules on reporting requirements (and not on other obligations contained in the Law). With regard to the Regulations issued by BoA and FSA, the doubts described above about the gaps in sanctions for AML/CFT breaches in sectoral legislation complicate conclusions on sanctioning the additional requirements under the Regulations.

400. In the absence of evidence of sanctions imposed in practice specifically for breaches of bylaw requirements, the assessment team could not draw a certain conclusion. It must be kept in mind though that this potential issue only concerns a minority part of the requirements. The authorities maintain that the links are obvious and see no problems with sanctioning breaches of requirements contained in the Regulations.

401. *Criterion 35.2* – Regarding breaches of TFS (R.6), there are no sanctions envisaged explicitly for administrators or managers of the REs under Art. 27 of the Law on MTF. Reference is made to “responsible bodies” and “subjects”.

402. The relevant sanctions set out in the CC (Art. 170/ç, 230/ç and 301, see above) do not specify directors and managers of REs to be subject of the criminal sanctions, but also do not exclude them.

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<sup>162</sup> This concerns primarily parts of c.10.10, 10.11, 11.2, 12.1 & 18.1 (requirements set out in MoF Instructions No. 28 (for FIs) and No. 29 (for DNFBPs); parts of c.10.12, 12.4 & 18.1 (FSA Regulation No. 58); and parts of c.18.1 and R.16 (BoA Regulation No. 44).

<sup>163</sup> Whereas the FATF standards clarify that certain requirements can be set out in other documents than laws, this is conditioned on the conclusion that the documents are enforceable means. Enforceable means refers to documents etc. issued by a competent authority, setting out requirements in mandatory language with sanctions for non-compliance. These sanctions need not be in the same document provided that there are clear links with the requirements.

In addition, there are ancillary punishments, setting measures such as deprivation of the right to hold leading positions from 1 month to 5 years (Art. 30, 40 of the CC).

403. The AML/CFT Law sets out fines for violations committed by the administrator or manager of REs, ranging from EUR 375 to 3750 (Art. 27(7)). No other sanctions for administrators/managers are stipulated.

404. The Law on Banks sets out various sanctions that can be imposed on administrators of banks; however the assessment team could not make a clear connection whether this can be done in case of AML/CFT violations.

405. The Law on Insurance sets out fines of EUR 2250 – 3750 for members of the directive/supervisory boards acting in violation of their obligation to ensure compliance by the insurance company with AML/CFT legislation (Art. 247, in combination with Art. 22 and 240). Fines can be doubled in case of repeat violations (Art. 257). Under the Law on VPFs, no fines can be applied to administrators/managers, but in case of repeated breaches the ‘responsible person’ can be ordered to be removed from the management company. The Law on CIFs contains possibilities to sanction managers but not for AML/CFT breaches. The Law on Securities does not contain sanctions for managers (except for some penal provisions for actions unrelated to AML/CFT).

406. There do not appear to be powers under sectoral legislation to apply sanctions for violation of the AML/CFT legislation to be applied to directors and senior management of companies that conduct DNFBP activity (e.g. notary firms, law firms, auditing firms and gambling companies).

#### *Weighting and Conclusion*

407. Fines are available under the AML/CFT Law for REs and their directors/managers. For certain types of entities, some additional sanctioning powers exist under sectoral legislation. However, overall there is not a sufficiently broad range of proportionate sanctions available for all entities. **R.35 is rated PC.**

#### *Recommendation 36 – International instruments*

408. In the previous evaluation round, Albania was rated PC on R.35 and SR.I, inter alia, because the ML and FT offences were respectively not fully in line with the Vienna and Palermo Conventions and with the FT Convention. Since then, the standards include the new requirement to ratify and implement the Merida Convention.

409. *Criterion 36.1* – Albania has signed and ratified the Vienna Convention, the Palermo Convention, the Merida Convention and the TF Convention. Albania is also a party to the Council of Europe Convention on Cybercrime and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

410. *Criterion 36.2* – The level of implementation of the Vienna, Palermo and Merida Conventions is subject to the conclusions regarding the minor shortcomings in: R. 3 which have a cascading effect on the implementation of Art. 3 and 7 of the Vienna Convention, Art. 6 and 18 of the Palermo Convention and Art. 23 and 46 of the Merida Convention; R.4 which affect the implementation of Art. 5, 12, 31 and 8 of the Vienna, Palermo, Merida and TF Conventions respectively; and R.5 which have a bearing on Art. 2 of the TF Convention and Art. 27 of the Merida Convention (in relation to the criminalisation of ancillary conduct).

411. Furthermore, certain Articles of the Vienna (15, 17 and 19) and Merida Conventions (24, 28, 31, 38, 40, 43-44, 46, 48, 50-55, 57-58) do not appear to be implemented in national legislation based on the information received. However according to authorities the articles that are not imposed do not require the amendments on domestic legislation, legislative measures, but practical measures.

#### *Weighting and Conclusion*

412. Some Articles of the Vienna and Merida Conventions have not been implemented in the Albanian legal order. The other provisions have been implemented into domestic law though the shortcomings

identified with respect to R.3, R.4 and R.5 have a bearing on the full implementation of a number of Articles of the Vienna, Palermo, Merida and TF Conventions. **R.36 is rated LC.**

#### *Recommendation 37 - Mutual legal assistance*

413. In its 2011 report, Albania was rated LC on the former R.36 and PC on SRV, with a number of technical deficiencies having been identified, including: the cascading effects of the technical deficiencies identifies for the ML and TF offences which could limit the ability to provide MLA; and some other issues related to effectiveness, including the application of the principle of dual criminality in all circumstances, in practice. Since then the MLA law has been slightly amended and the requirements of new R.37 are more detailed.

414. *Criterion 37.1* – Albania can provide a wide range of MLA in relation to ML, associated predicate offences and TF investigations, prosecutions and related proceedings on the basis of a number of legal instruments. MLA is regulated under Art. 505-523 of the CPC and Law No. 10 193 of 3/12/2009 (the MLA law) which together provide for the procedural rules, in a complementary manner, in the field of jurisdictional relations with foreign authorities in criminal matters. As discussed below under Criterion 37.2 this mechanism operates with precise deadlines at every stage of the process, the complexity of the procedure and the number of stages however might be an impediment to the rapid provision of assistance as required by Criterion 37.1.

415. Albania is a party to the European MLA Convention and its Protocols; the Vienna, Palermo and TF Conventions; the 1990 Strasbourg Convention; and the 2005 Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism<sup>164</sup>. Albania is also a party to a number of bilateral MLA treaties including those with Romania, Greece, the Czech Republic, Slovakia, “the former Yugoslav Republic of Macedonia”, Turkey and Italy.

416. These treaties, when applicable, take precedence over domestic legislation so the CPC and the MLA Law are thus applied to the extent that they do not conflict with the respective international agreement. If an MLA request is from a country which is not party to one of the above mentioned conventions or with which Albania does not have a bilateral MLA treaty, the request can be granted on the basis of reciprocity (Art. 9 of the MLA Law).

417. *Criterion 37.2* – Under Art. 505 of the CPC and the MLA law, the MoJ is the central authority for the transmission of MLA and extradition requests. The MoJ transmits incoming requests to the district prosecutor through the General Prosecutor within 10 days (Art. 14 of the MLA law), or in urgent cases, directly to the district prosecutor (notifying the General Prosecutor at the same time). The district prosecutor then submits the foreign request, within 5 days from its reception, to the competent district court for a decision on its execution. The court examines the request and decides upon its execution within another 10 days (Art. 506 CPC). The court then executes the request or returns it to the prosecutor for execution (depending on what sort of assistance was sought for) (Art. 507 CPC).

418. Throughout this procedure, judicial authorities must execute the request without delay and keep the requesting authority informed of the progress (Art. 5 para. 6 of the MLA law) but, as noted above, the complexity of the regime results in accumulation of the respective timeframes which might be an impediment to the timely execution. As for the prioritisation of incoming letters rogatory, up to the time of the onsite visit, there has been no case management system installed in the MoJ to monitor progress on foreign requests, although there are plans to establish one. The GPO has recently installed a separate CAMS case management system (not specifically for, but also covering, cases of international cooperation) but it will not be connected with the one run by the MoJ.

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<sup>164</sup>Art. 122 of the Albanian Constitution provides for the direct implementation of International agreements except in those instances in which a law is needed to implement them. The Constitution also provides that international Conventions take precedence over incompatible domestic law.

419. Art. 15 of the MLA law generally provides for direct forwarding of letters rogatory between local and foreign judicial authorities in urgent cases (with the notification of the MoJ) and particularly in cases where direct communication is allowed by the European MLA Convention and/or bilateral agreements in this field.

420. *Criterion 37.3* – Bearing in mind the considerations made under 37.6, MLA is not prohibited or made subject to unreasonable or unduly restrictive conditions. MLA is refused if the requested actions impair the sovereignty, the security and important interests of the State or they are expressly prohibited by law or contravene the fundamental principles of judicial order; also when there are reasons to think that considerations regarding race, religion, sex, nationality, language, political beliefs or the social state may cause a negative influence to the performance of the process (i.e. when the provision of MLA would restrict the personal human rights of the defendant). Under Art. 8 of the MLA Law, the political offence exception cannot be raised to refuse an MLA request in cases of a crime against humanity or other value protected by international law. Under Art. 9 para. 1 of the MLA Law, MLA is provided if reciprocity is ensured. However, the Minister of Justice has the discretion to forward a request for execution even in the absence of a guarantee of reciprocity.

421. *Criterion 37.4* –

(a) Albania has ratified the 2<sup>nd</sup> Additional Protocol to the European Convention on MLA (ETS 099) which is in compliance with Criterion 37.4(a). As a result, MLA relating to offences exclusively of a fiscal nature must be granted to other contracting parties to the said European Convention and the Additional Protocol. Nonetheless, such requests would reportedly be refused in relation to any other countries, although the evaluators were not given any legislation to explicitly provide for such a prohibition.

(b) Otherwise, MLA is available for any offence subject to the principle of dual criminality and reciprocity (the latter of which, however, may be waived) and is only refused in the instances mentioned sub criterion 37.3. Consequently, MLA cannot be refused solely on grounds of secrecy or confidentiality requirements of FIs and DNFBPs.

422. *Criterion 37.5* – Under Art. 12 of the MLA law, at the request of a foreign judicial authority, the relevant Albanian authorities maintain the confidentiality of the information contained in the MLA request. If confidentiality cannot be ensured, the MoJ or the local judicial authority notifies the foreign judicial authority within 5 days. Furthermore, both the Additional Protocol to the European MLA Convention and other bilateral or UN conventions pertinent to MLA to which Albania is a party include specific clauses requiring the confidentiality of MLA requests to be maintained.

423. *Criterion 37.6* – Under the bilateral treaties Albania has entered into with other States, and further to the reservations made to the International Conventions it is party to on MLA issues, dual criminality is generally required regardless of whether the request involves coercive actions. Under Art. 506 of the CPC, an MLA request is not executed when the conduct which is the object of the MLA request is not a criminal offence under Albanian law.

424. *Criterion 37.7* – Albanian authorities claim that wherever dual criminality is required, it is not necessary that the offence is placed in the same category or is denominated by the same terminology in both jurisdictions. The assessment team was not provided with legislation or written jurisprudence to confirm this broad interpretation, but neither were any cases reported (including input from third parties) where dual criminality posed any problem to providing legal assistance.

425. *Criterion 37.8* – Under Art. 507 of the CPC, the powers and investigative techniques provided under the CPC may be used in response to requests for MLA. Specific procedures may be requested by the foreign judicial authority and executed by the Albanian authorities provided that they do not conflict with the principles of the Albanian legal system.

### *Weighting and Conclusion*

426. The MLA legal framework is broadly in line with the standards, with the exception of the dual criminality principle which is applicable at all times, even when the requests do not involve coercive

actions. MLA relating to offences exclusively of a fiscal nature are not executed unless on the basis of the European Convention. The lack of a case management system in the MoJ is also an issue considering the complex procedure for executing foreign requests which, on the other hand, might also represent an impediment to timely execution of foreign requests. **R.37 is rated LC.**

*Recommendation 38 – Mutual legal assistance: freezing and confiscation*

427. In its 2011 report, Albania was rated PC on R.38 as there were significant limitations stemming from the legal framework on the ability of the authorities to provide assistance in the confiscation of assets and due to issues related to effectiveness. The legal framework has not changed since the previous round.

428. *Criterion 38.1* – Where the relevant International Conventions are not applicable, Art. 517 CPC together with Art. 22, 23 and 26 of the MLA Law allow the Albanian authorities to order at the request of foreign judicial authorities the search and seizure of assets that can be confiscated under Art. 36 CC (see more in details under R.4.). Under Art. 23 of the MLA Law, unless there are Albanian-based third party interests or potential compensation claims, upon the foreign authorities' request, the property which has been subject to provisional measures is sent to the requesting authorities either for confiscation purposes or so that they can be returned to their lawful owner. These provisions do not specify the time-frame for their execution.

429. Albanian authorities confirmed that seizure of assets and, if applicable, a property investigation pursuant to the Anti-Mafia Law can also take place on the basis of requests submitted by foreign authorities prior to criminal charges having been laid against a concrete person. In such cases the letter rogatory is considered as indicia (see Art.3 [1]) upon which a domestic property investigation is then initiated (case example was mentioned in this respect). Even if this law were applicable in response to a foreign request, it would only cover extended confiscation in respect of a range of offences (see Criterion 38.2).

430. Confiscation upon the request of a foreign authority can be carried out, to a limited extent, under Art. 516-518, read in conjunction with Art. 512(1) of the CPC. These provisions permit the recognition and enforcement of foreign judicial sentences. As described in the previous MERs on Albania, relying solely on these provisions to provide assistance with respect to foreign confiscation requests is problematic as it relies on the existence of a foreign criminal sentence and would not apply in other circumstances. Art. 513 of the CPC provides for recognition of foreign criminal sentences and permits, in the recognition and enforcement of such sentences, the enforcement of a convicted defendant's related obligations to return property or compensate victims. If a State seeks recognition of its confiscation order which is part of a sentence, the confiscated property may be sent to the State seeking the recognition under Art. 518 (5) CPC assuming the foreign State would reciprocate (see Criterion 38.4). Here again, the applicable provisions do not specify the time-frame for the response to a request to confiscate assets. In addition, the dual criminality condition may limit the scope of MLA in the case of a request to freeze/seize or confiscate.

431. *Criterion 38.2* – According to the authorities, Albania can provide assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings and related provisional measures under the Anti-Mafia Law. Nonetheless, the confiscation proceedings pursuant to Anti-Mafia Law only apply to a range of criminal offences (see under Criterion 4.2) so the provision of any assistance seems to be excluded in instances that are not within the scope of the law and, apparently, in cases when a perpetrator is unavailable by reason of death, flight, absence or the perpetrator is unknown. In case that a MLA involves an order of freezing, seizure or confiscation issued by the respective legal authority of the requesting state than it is applied directly according to CPC rules. If the MLA is about conducting financial and criminal investigation to identify proceeds of crime then such MLA is enough and is considered to be an indicia according to Art. 3(1) of the Anti-Mafia law to initiate a financial investigation and apply all the provision of this law (seizure and confiscation) as noted above under Criterion 38.1.

432. *Criterion 38.3* –

(a) According to the authorities, seizure and confiscation actions can be coordinated with other countries on a case-by-case basis, by use of international agreements and authorities provided the assessment team with some examples in this field (e.g. 2 agreements from 2016-2017 concluded between the SCPO of Albania and the competent units of the National Anti-Mafia Directorate of Italy for setting up 2 Joint Investigative Teams). No agreements of a more general scope or nature were reported to the assessment team.

(b) As discussed in Criterion 4.4 the AASCA is responsible for managing and disposing, among others, criminal assets the administration of which is assigned to them by the court upon Council of Ministers Decision no. 687. In principle, the court that orders the sequestration of any property item by executing the request of a foreign jurisdiction could delegate the same property to the administration of AASCA by use of the same Decision but there has been no practice in this field.

There are no bilateral or multilateral agreements in force to authorise the AASCA to manage seized/frozen or confiscated assets further to requests by foreign authorities.

433. *Criterion 38.4* – Assets confiscated in Albania are acquired by the State budget and, as a main rule, the same refers to assets confiscated upon a foreign request. No bilateral asset-sharing agreements have been concluded by Albania and, without such an international legal instrument, confiscated property may only and exceptionally be delivered to another State upon request and in case of reciprocity (Art. 518 para 5 CPC). There has been no practice in sharing confiscated assets with another country.

#### *Weighting and Conclusion*

434. There continue to be significant limitations stemming from the legal framework on the ability of the authorities to provide assistance in the confiscation of assets. It is unclear whether and to what extent Albania can provide assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings. Albania could not demonstrate its ability to share confiscated property with other countries. **R.38 is rated PC.**

#### *Recommendation 39 – Extradition*

435. Albania was rated LC on R.39 in the previous evaluation round. The shortcomings which were identified included the limited ability to grant extradition in relation to ML due to the deficiencies in the criminalisation of this offence; and the too wide discretion given by the CPC to the MoJ in imposing requirements on extradition.

#### *436. Criterion 39.1 –*

(a) Provided that extradition is explicitly provided by international agreements to which Albania is a party, ML and TF are extraditable offences subject to the requirements/conditions provided under the CPC (Art. 490-491), Art. 11 of the CC and Art. 32 of the MLA Law. In case of lack of an international agreement, the reciprocity principle is applicable.

Albania is a party to the Council of Europe Convention on Extradition and its Protocols and has bilateral extradition treaties with the Czech Republic, Slovakia, the United Kingdom, Egypt, “the former Yugoslav Republic of Macedonia”, the USA, Kosovo and Italy: all these treaties take precedence over domestic law in case of conflict.

Extradition is subject to the condition of dual criminality, as a result, the deficiencies identified in the criminalisation of ML and TF can limit the extradition of individuals where the underlying conduct is not covered by the Albanian criminal offence provision (see also Criterion 39.3 below).

The provisions of the CPC and the MLA law provide for time-frames which ensure that extradition can be provided without undue delay.

(b) As noted under Recommendation 37 above, the MoJ has no case management system in place for the timely execution, including prioritisation of extradition requests.

(c) As already indicated in the previous round, Art. 490 (3) CPC gives wide discretion to the MoJ to impose additional requirements, such as specific safeguards and guarantees, which it considers appropriate – but without exceeding the provisions of international acts to which Albania is party to.

*437. Criterion 39.2 –*

(a) Under Art.39 of the Constitution and Art. 11 of the CC extradition of Albanian nationals is prohibited unless otherwise provided by an international treaty. Bilateral agreements that allow for the extradition of Albanian citizens have so far been concluded with the USA, Italy and Kosovo.

(b) Art. 38 of the MLA law provides for rules of domestic criminal proceedings instead of extradition in case an international arrest warrant is received against an Albanian citizen. In such cases, the prosecutor may seek the temporary arrest of the suspect and verifies a number of aspects, including the citizenship of the suspect and notifies the MoJ of the inability to extradite on grounds of citizenship and whether; the criminal proceedings will be transferred in Albania; the foreign criminal decision shall be recognised; or acts and evidence will be sent to Albania through letters rogatory for action. However, the prosecutor may also decide not to start criminal proceedings and notifies the MoJ through the General Prosecutor accordingly – in which case there seems to be no legal remedy against the decision of not prosecuting.

*438. Criterion 39.3 -* Dual criminality is required for extradition but the Albanian authorities claim that there is no requirement that both countries place the offence within the same category or use the same terminology. However, the assessment team was not provided with legislation or jurisprudence to confirm this interpretation.

*439. Criterion 39.4 –* Art. 44 of the MLA law provides for a procedure of simplified extradition if a person consents to surrender himself to the requesting state and to waive the right the benefit from the principle of speciality through a simplified procedure. This consent is given by the person in a judicial session (so there is no need for a formal trial on the examination of the request) and the law provides for strict deadlines for the further proceedings.

*Weighting and Conclusion*

440. Albania has an appropriate legal framework governing extradition. Nonetheless the deficiencies identified in the criminalisation of ML and TF can still limit the scope of extradition. There is no case management systems in place for the timely execution, including prioritisation of extradition requests and certain cases of dismissal of extradition requests do not appear to be in line with international standards. **R.39 is rated LC.**

*Recommendation 40 – Other forms of international cooperation*

441. Albania was rated LC on Recommendation 40. The 4<sup>th</sup> round MER found that no channels of cooperation had been established with DNFBP supervisors on AML/CFT issues; there was lack of clear authority of supervisory agencies to make inquiries on behalf of foreign counterparts; and the ASP, BoA and FSA had not demonstrated that safeguards were in place to protect information received by foreign counterparts.

*442. Criterion 40.1 –* The State Police can exchange information (spontaneously and upon request) on all types of criminal offences with its foreign counterparts, including ML, TF and predicate offences. The channels used (EUROPOL, INTERPOL, SELEC, CARIN) ensure the rapid exchange. GDPML can exchange information (spontaneously and upon request) on ML and TF with its foreign counterparts (Art. 22 of the AML/CFT law). However, the exchange does not explicitly extend to predicate offences (see c.40.8).

443. The BoA and FSA can engage in international cooperation and share information (see c.40.2).

444. Prosecutors Office provides international cooperation on the basis of the Constitution of Albania, Art. 116, International Conventions and Bilateral Agreements ratified, CPC provisions, Art. 488 up to 523 and Law 10193, date 03.12.2009 “For jurisdictional relations with foreign authority on criminal matters”.

445. *Criterion 40.2* – Competent authorities can exchange data and information with their foreign counterparts on the basis of the following legal provisions:

a) Art. 22, letter d)<sup>165</sup> of the AML/CFT Law for the FIU and Art. 84 and 128 of Law No. 108/2014 on the State Police which enables the police to cooperate with foreign counterparts or international police organisations on the basis of international bilateral or multilateral agreements and, in the absence of agreements – through the INTERPOL and EUROPOL channels.

Art. 23 of the Law on BoA provides that the BoA can cooperate with corresponding foreign counterparts in relation to the supervision of banks that operate in both jurisdictions on the basis of reciprocity, subject to the respect of the confidentiality of information. Art. 58 of the same law provides that the exchange of material non-public information obtained by the BoA may be communicated to foreign counterparts pursuant to agreements with them.

Under Art. 25(3) and Art. 18/1 of the FSA Law, the FSA have lawful bases to provide international cooperation to counterparts. The FSA can conclude agreements with foreign supervisory authorities in order to cooperate, exchange information or carry out joint inspections (Art. 18/1 point 1). The FSA can conduct investigations on behalf of foreign institutions upon their request (Art. 18/1 point 2). At the same time the FSA can share information with domestic and foreign authorities and institutions (Art. 18/1 point 3). It can provide information which is confidential based on joint agreements on information exchange, and subject to some additional conditions (e.g. justified requests, confidentiality safeguards) (Art. 25(3)). Sectoral legislation contains similar provisions on the possibilities and conditions for agreements or MoUs with foreign supervisory authorities (Art. 72 Law on VPFs); Art. 236/3 Law on Insurance; Art. 121 Law on CIFs.

It is recalled that the GDPML has a function as AML/CFT supervisor for all REs (see R.26, R.27). Under the AML/CFT Law, GDPML can exchange information ‘for prevention and fight of ML/TF’ with ‘foreign counterparts, subject to similar obligations of confidentiality’ (Art. 22(d)). It is not explicit that this includes supervisory information, but according to GDPML’s interpretation such information exchange would not be precluded.

b) GDPML is authorised (Art. 22 letter dh) of the AML/CFT law) to use MoUs as a means to cooperation<sup>166</sup>, but the lack of a MoU is not an impediment for the exchange of information. There do not appear to be impediments that would prevent the other competent authorities from using the most efficient means to cooperate. The state police exchanges information via the SIENA network, EUROPOL, the INTERPOL channel besides them and the Police Liaison Officers. CARIN web is also accessible by the State Police. State police also have cooperation agreements with lot of countries in the region and further against OC, ML and FT.

c) The GDPML is a member of the Egmont Group and exchanges information through the ESW. Albania is a member of INTERPOL, thus the State Police can use this channel to exchange information with its counterparts. Legal provisions are in place with regard to classified information exchanged (law "For classified information classified as state secret" No. 8457 dated 11.02.1999, and further amendments and Decision of the Council of Ministers no. 992 dated 19.12.2007 "On the securing of classified state classified information that is produced, stored, processed or transmitted to the INFOSEC communication systems").

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<sup>165</sup> Art. 22 Duties and functions of the responsible authority-The General Directorate for the Prevention of Money Laundering as a financial intelligence unit, shall, pursuant to this law, have the following duties and functions: a) collects, manages, processes, analyses and disseminates to the competent authorities, data, reports and information regarding cases of money laundering and terrorism financing. b) has access to databases and any information managed by the state institutions, as well as in any other public registry within the competencies of this law; c) for the purpose of preventing money laundering and terrorism financing, requests any kind of information from the entities subject to this law; d) exchanges information with any foreign counterpart, subjected to similar obligations of confidentiality. The information offered should be utilised only for the purposes of prevention and fighting of ML and FT. The information may be disseminated only upon prior consent of the parties; dh) enter into agreements with any foreign counterpart, subjected to similar obligations of confidentiality.

<sup>166</sup> 44 MoUs have been signed by the GDPML.



The BoA considers that the MoUs provide for appropriate channels for transmitting and executing requests. The FSA uses gateways for the transmission or execution of cooperation requests as agreed by bilateral agreements concluded with foreign counterparts. Under Art. 18/1 of Law on the FSA and Art. 3 and 4.2 of Regulation No. 114 dated 11.09.2008 on the Confidentiality in the FSA, the FSA must ensure that there is a secure electronic information system in place for the networks and the telecommunication system to process confidential information. This includes all information received from and provided to other supervisory authorities.

d) Despite of the lack of relevant written rules and regulations, the prioritisation and timely execution of requests by the GDPML is guaranteed by the long-standing good practices demonstrated to evaluators during the on-site visit (See c.29.3 and IO.2). There are no written rules or regulations which would describe the process for prioritisation and timeline for execution of requests at the ASP.

There are no written rules or regulations which would describe the process for prioritisation and timeline for execution of requests for information with regard to the BoA. Regarding the FSA, it is required to respond 'immediately' to any requests for information exchange, and shall upon receipt of the request take the necessary measures to collect the requested information. In case of failure to provide an immediate response, the FSA shall give a reasoned notification to the requesting authority (FSA Regulation No. 114). There are no explicit prioritisation processes in place in the FSA, but given the low level of development of the sectors under its supervision, incoming requests have been very limited (e.g. no requests were received in 2016-2017) and past requests have been dealt with promptly.

e) The processes for safeguarding the information received by the GDPML is the same as for domestically acquired information (see the analysis of Criterion 29.6 and Criterion 40.7). For the State Police, the exchange of information in the context of international cooperation is to be carried out in line with the enacted domestic and international legislation on protection of personal data (Art. 128 of the law on State Police.), classified information (Law No. 108/2014 on the State Police (Art. 6/5) and the Law No. 8457, date 11.02.1999 "On information classified "State Secret" (Art. 24)), as well as in accordance with internal rules imposing technical and other measures for data protection and safeguarding.<sup>167</sup>

In addition, technical and other measures (regulated in internal regulations) are in place to protect the information received. Detailed rules on data security are defined by a commissioner's decision. Procedures for administration of data entry, data entry, processing and extraction shall be determined by a decision of the Commissioner. The data are used for the purposes for which were collected.

Under Art. 58 of the Law on the BoA, its employees cannot give access to, disclose or publish non-public material obtained in the performance of their duties or use such information or allow the use of such information for personal gain. Non-public information may only be disclosed outside of the BoA (other than tax authorities) "if the disclosure would serve to provide evidence of (circumstances or conditions of) a legal act committed by a person requesting such disclosure in writing". According to BoA, this means that the information can be given to authorities that enjoy a legal right to obtain such information based on the law or an agreement in place.

Under Art. 24 of the Law on the FSA, members of the Board, the staff and the other employees of the FSA shall preserve and not disclose confidential information. Regulation No. 114 further outlines several procedures for the safeguarding of confidential information by the FSA, including rules on secure systems confidentiality requirements on staff.

446. *Criterion 40.3* – Provided that foreign counterparts are bound by similar obligations of confidentiality, the GDPML can sign agreements with any foreign counterpart (45 MoUs are in place).

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<sup>167</sup> According to the authorities, detailed rules on data security are defined by a commissioner's decision, including procedures for administration of data entry, data entry, processing and extraction shall be determined by a decision of the Commissioner.

However, it may cooperate also where MoUs are not in place, under Art. 22, letters d) and dh) of the AML/CFT Law.

447. The ASP cooperates with foreign counterparts or international police organisations on the basis of international bilateral or multilateral agreements. Besides being a member of the EUROPOL and SELEC, the ASP has a liaison officer at the Criminal Investigation Office Network and has signed agreements with 22 countries.

448. The BoA has bilateral MoUs in place with Greece, Bulgaria, 'the former Yugoslav Republic of Macedonia' and Montenegro (already in place at the time of the 4<sup>th</sup> round MER), Italy (2011) and Germany (2012). Furthermore, there is a multilateral MoU in place on High Level Principles of Cooperation and Co-ordination among the Banking Supervisors of South Eastern Europe, with parties BoA and the central banks of Greece, FYROM, Romania, Serbia, and Cyprus (2007). On 23 October 2015, a multilateral cooperation agreement was signed between the United Arab Emirates and 6 non-EU Balkan countries including Albania.

449. There is no agreement in place with some of the home supervisors of European banking groups with branches in Albania (e.g. France, Austria – with whom negotiations were on-going at the time of the 4<sup>th</sup> round MER).

450. The authorities advised that these negotiations were halted due to the developments of the EU Single Supervisory Mechanism<sup>168</sup>. Pursuant to these developments, authorities advised priority was given to develop a MoU with the European Central Bank (ECB), which is currently in the process of finalisation. It does not appear that agreements are negotiated or signed in a timely manner, given that 1) the negotiations with France and Austria were on-going in 2010 and the decision for the SSM was taken in 2012 (and only introduced in 2013), so it is unclear what happened in the intermediate years and 2) almost 4 years have passed since the SSM has been in place but the MoU with the ECB has still not been adopted. In the meantime, in 2017 two specific agreements with the ECB for joint inspections of Albanian branches of EU banking groups were signed. The draft agreement and the 2 specific agreements do not explicitly include AML/CFT elements (although the draft ECB agreement includes provisions on fit and proper tests). Authorities maintain that the MOU clearly defines the obligations for cooperation in different fields (on-site inspections, exchange of information etc.) without giving details on the scope of cooperation, meaning that it does not prohibit the case of cooperation in the field of AML/CFT. As defined in the MoU, the authority can cooperate or exchange information on *"any information that is likely to be of assistance to it in order to promote the safe and sound functioning of supervised entities"*.

451. The FSA needs a prior agreement to cooperate (Art. 18/1, 25(3) Law on the FSA). At the time of the 4<sup>th</sup> round MER, the FSA had signed 15 agreements with foreign counterparts. Since that time, 5 more agreements have been signed<sup>169</sup>. Most of these agreements are in the field of securities, including the multilateral MoU of the IOSCO and a MoU with the European Security and Market Authority (ESMA). A more limited number of agreements concern cooperation in the insurance and VPFs sectors. Bilateral MoUs are mostly concluded with neighbourhood countries.

452. *Criterion 40.4* – There are no provisions which oblige the GDPML, ASP, BoA and FSA to provide feedback in the timely manner to counterparts from whom they have received assistance on the use/usefulness of the information received. However, the laws do not preclude the authorities from

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<sup>168</sup> The Single Supervisory Mechanism (SSM) refers to the system of banking supervision in the EU. It comprises the ECB and the national supervisory authorities of the participating countries. The SSM is one of the two pillars of the EU banking union, along with the Single Resolution Mechanism. The ECB, in cooperation with the national supervisors, is responsible to ensure that European banking supervision is effective and consistent.

<sup>169</sup> With the Macedonian Insurance Supervision Agency, the Agency for Supervision of Fully Funded Pension Insurance of Macedonia, the European Security and Market Authority, the Insurance Supervision Agency of Slovenia, and the Swiss Financial Market Supervisory Authority for the college of supervisors of an international insurance group. After the on-site visit, another MoU was signed, with the Italian Insurance Supervision Agency.

doing so. MoUs may also provide relevant obligation. Practical examples have been provided to the assessment team in this regard by the GDPML.

453. *Criterion 40.5* – The AML/CFT Law (Art. 22, letter d), the Law on the State Police (Art. 128) and the Law on BoA (Art. 58(2)) do not apply specific restrictive conditions.

454. Regulation No. 11 (Art. 8.3) gives optional grounds for refusal of cooperation for the FSA (unless otherwise determined under a joint agreement). In addition to the ground described under 'c' below, a request for information may be refused when the exchange of information may affect the independence, security or State public policies; and when a final decision has been reached on the same actions or persons in respect of which the request is related. This last ground appears unduly restrictive, because there may be valid reasons for parallel (criminal, civil or administrative) proceedings in other countries in respect of the same persons or actions.

455. More specifically, in relation to:

a) No specific information has been provided for the ASP. According to GDPML, BoA and FSA there are no legal provisions setting restriction in case fiscal matters are involved.

b) Compliance with the standards is guaranteed under Art. 25 of the AML/CFT Law and the sanctions foreseen in Art. 27 of the same law which provide that REs under the AML/CFT law (including DNFBPs and FIs) cannot refuse to provide information on the grounds of secrecy or confidentiality requirements.

c) According to Art. 8.3 of Regulation No. 114, the FSA may refuse to act on an application for information if 'Penal or administrative proceedings have started on the same actions and against the same persons, with which the application is connected, before the application is submitted to the Authority'. No specific information has been provided for the ASP, GDPML and BoA.

d) There are no such restrictions for the international exchange of information by the GDPML. No information has been provided by the ASP.

456. *Criterion 40.6* – The GDPML can use the information received through international cooperation only for the prevention and fighting ML and TF (Art. 22, letter d) of the AML/CFT Law). Information can be disseminated to other authorities only upon prior consent of the sending authorities. With regard to ASP, according to commissioner's decision described in c.40.2 regarding rules on data security received data are used for the purposes for which were collected.

457. According to Art. 23 of the Law on BoA, BoA may exchange information with foreign banking supervisory authorities with respect to the supervision and inspection of banks that operate directly in both their respective jurisdictions information concerning any bank that operates in both their respective jurisdictions, provided that such authority undertakes to respect the confidentiality of the information so receive. Under Art. 19 of "Regulation No. 42 on the Transparency and Confidentiality of the BoA", information obtained from foreign supervisory authorities, foreign central banks, and foreign banks non-resident in Albania cannot be disclosed to third parties or other institutions without prior written approval by the authority from which this information was obtained. Furthermore, the authorities have advised that all MoUs include a clause regarding the need to obtain prior consent from the counterpart when there is a legally enforceable demand for information-sharing to third parties.

458. Art. 18/1 (4) of the Law on the FSA requires that any information that the FSA exchanges with other supervisors shall be used only for the purposes specified in the law or regulations. The Law on Insurance specifies that this must be only for the purposes of supervision (Art. 236/4). FSA Regulation No. 114 specifies that any information received from foreign authorities cannot be shared with third parties without the former's prior consent. If prior consent is not given, then the FSA has the obligation to use all legal means or any other means to not disclose this information.

459. Art. 58 of BoA Law requires that any person who serves or has served as a member of the Supervisory Council, management or staff or as an auditor, agent or correspondent of the BoA shall

permit access to, disclose or publicise non-public material information or use such information for personal gain, but only if BoA is a part of an international agreement. Moreover paragraph 8 of Art. 19 of Regulation "On transparency and confidentiality at the Bank of Albania" also provides that information in any case cannot be given to third parties or other institutions without the prior written consent of the owner of this information.

460. Criterion 40.7 – The security and confidentiality measures described in Criterion 29.6. are applicable also to information received by the GDPML through international cooperation. If such information is disseminated to LEAs, it is subject to classification as a state secret (Art. 22/1) and a dissemination consent is also required.

461. For the State Police, the exchange of information in the context of international cooperation is to be carried out in line with the enacted domestic and international legislation on protection of personal data (Art. 128 of the law on State Police). Besides this very general provision, Law No. 108/2014 on the State Police (Art. 6/5) and the Law No.8457, date 11.02.1999 "On information classified "State Secret" (Art. 24) refer only to the safeguarding of classified information. Further measures for the safeguarding and confidentiality of the received information are in place at the ASP (see also Criterion 40.2. letter "e"). Art. 128, paragraph 2, letter b) of Law No. 108/2014 on State Police and Art. 22, letter d) of the AML/CFT Law also impose appropriate requirements of the protection of data to the requesting party.

462. The BoA may exchange information provided that the foreign supervisory authority undertakes to respect the confidentiality of the information (Art. 23 (2) Law on the BoA). Thus, it can be inferred that the BoA can refuse to provide information if it believes that the foreign authority cannot protect the confidentiality of the information. Authorities further advised that all MoUs include provisions on the issue of confidentiality of information shared. Authorities provided relevant provisions of a MoU to support this statement.

463. Art. 18/1 (4) Law on the FSA requires that all information received from and any information provided to other supervisory authorities shall be treated as confidential. The safeguards in the laws and regulations to protect confidentiality are the same for domestically acquired and foreign acquired information (see also criterion 40.2). Regulation No. 114 states that users of confidential information shall be held accountable for dissemination, use and supervision of information of which they have been trusted. FSA has confirmed that they are able to refuse to provide information if it believes that the foreign country cannot protect the shared information because all the signed MoUs by FSA include provisions on issues of confidentiality and information shared. Under Art. 24 Law on the FSA, administrative measures (dismissal from position/removal from office); can be taken against staff/employees which violate the obligation to preserve confidential information.

464. In general, there are administrative fines available for breaches of personal data protection (Art. 39 Law on Protection of Personal Data); and spreading personal secrets obtained through one's profession when compelled not to spread the information without prior authorisation, constitutes a criminal misdemeanour (Art. 122 CC). It is punishable with up to one year imprisonment (2 in case of aggravating circumstances).

465. *Criterion 40.8* – Although the AML/CFT law does not explicitly empower the FIU to conduct inquiries on behalf of foreign counterparts and exchange the information obtained, the broad formulation of letters b) and c) of Art. 22 of the AML/CFT are compatible with the standard. Practical examples have been presented to the assessment team.

466. The scope of the AML/CFT law is limited to ML and TF and does not extend explicitly to associated predicate offences. According to the authorities and during the interviews on-site it was established that this type of information is exchanged when the request has also an indicated link to ML.

467. In relation to BoA and the FSA please see under Criterion 40.15.

468. *Criterion 40.9* – The legal basis for the exchange of information between the GDPML and its foreign counterparts is Art. 22, letter d), however, it does not explicitly extend to information in relation to associated predicate offences.

469. *Criterion 40.10* – Please see the analysis under Criterion 40.4.

470. *Criterion 40.11* – Art. 22 of the AML/CFT law enables the FIU to exchange with competent foreign counterparts all information which is accessible or obtainable by the FIU and any other information which it has the power to obtain or access at the domestic level provided: they are subject to similar obligations of confidentiality; the information offered is used only for the purpose of the prevention and the fight against ML and TF. The shortcoming with regard to information on associated predicate offences pointed in the comments for c.40.9. affect also the compliance with this criterion.

471. *Criterion 40.12* – The BoA provides cooperation to and exchanges information with their foreign counterparts on the basis of signed agreements (Art. 23 & 58, Law on BoA; see also criterion 40.2). The BoA is empowered to supervise compliance with AML/CFT requirements (Art. 24 AML/CFT Law) through various means, including through cooperation agreements with foreign supervisory authorities (Art. 72 Law on Banks). The FSA can provide cooperation to its foreign counterparts provided: an agreement has been entered into; reciprocity requirements; the foreign authority ensures at least the same level of confidentiality for the information; and has a justified reason to request the information (Art. 25(3) Law on the FSA). The FSA is empowered to supervise compliance with AML/CFT requirements (Art. 24 AML/CFT Law); and may exchange supervisory information relevant for AML/CFT purposes (Art. 18/1 (3) point c Law on the FSA).

472. *Criterion 40.13* – As explained under c.40.2 and c.40.12, the BoA and the FSA can exchange supervisory information that is domestically available to them with foreign counterparts, on the basis of reciprocity and provided that confidentiality is sufficiently ensured.

473. *Criterion 40.14* – According to the BoA, the information that can be exchanged under bilateral MoUs includes information on the regulatory system, general information on the financial sectors, prudential information and AML/CFT information. Authorities provided an extract of relevant provisions of a MoU to support this statement.

474. The FSA is explicitly empowered by the law to exchange information in relation to supervised entities, licensing, financial data, the prevention of ML/TF, fraud, and the natural persons holding positions of responsibility in the supervised entities (Art. 18/1 (3) Law on the FSA).

475. *Criterion 40.15* – The law does not provide explicitly for the possibility for the BoA to conduct inquiries on behalf of foreign counterparts. Authorities have stated that this may form part of an MoU although no further information was provided on the extent to which this is the case for existing MoUs.

476. The authorities have further argued that the possibility can be inferred from Art. 72 and 73 of the Law on Banks, according to which the BoA can exercise its power to supervise through various means, including cooperation agreements for inspections with foreign supervisory authorities. Art. 73(5) Law on Banks stipulates that, following an agreement, authorised employees of foreign supervisory authorities may be allowed to inspect a bank in Albania which is 1) a branch or subsidiary of the foreign bank with its head office in that country or which 2) a qualifying holder of the foreign bank with its legal seat in that country.

477. The FSA is able to conduct investigations on behalf of and for foreign supervisory authorities upon their request (Art. 18/1 of the Law on the FSA). This is a new explicit power introduced since the time of the 4<sup>th</sup> round MER, through the insertion of Art. 18/1 in the Law on the FSA.

478. *Criterion 40.16* – See c.40.6 on the relevant provisions related to the authorisation of the requested supervisor to disseminate or use acquired information.

479. There appear to be no provisions addressing situations in which the supervisors would be under a legal obligation to disclose or report received information and would inform the requested authority promptly of this obligation.

480. In particular, Art. 24(3) of the AML/CFT Law provides the obligation of supervisory authorities (BoA, FSA) to inform immediately the GDPML about every suspicion, information or data related to ML/FT for the activities under their jurisdiction. Authorities advised that MoUs might contain an obligation to inform the foreign supervisor of such information provision, but no example was provided.

481. *Criterion 40.17* - Under Art. 128 of the Law No. 108/2014 on State Police, the ASP can exchange information with foreign police authorities for all types of criminal offences. The assessment team considers that this provision covers ML, TF and associated predicate offences. No specific information was provided for the exchange of information on the identification and tracing of proceeds of crime. Such actions undertaken by the ASP are noted in some of the case examples provided to the assessment team.

482. *Criterion 40.18* - Under Art. 84 of the Law No. 108/2014 "On State Police" the ASP has power to cooperate with police of other countries or international police organisations according to international bilateral or multilateral agreements. As for the international regimes and practices that govern cooperation in the legal sphere, Albania signed agreements with EUROPOL, INTERPOL, SELEC and CARIN. ASP operates in compliance with these agreements.

483. *Criterion 40.19* - Albania has ratified "Convention of Police Cooperation for South-East Europe", Law No. 9604, dated 11.09.2006. Art. 27 of the Convention (Joint Investigation Team) provides the possibility to the parties to set up JITs for a specific purpose on the basis of mutual agreements. At the same time, the Convention covers the question of joint investigation only between 11 contracting parties of the South-East Europe region, what can be stated as a limitation. However, several examples of international operations provided by the authorities demonstrate the presence of mechanisms to create JITs with countries which are not party to Convention (e.g. Italy, Spain, Greece, Kosovo, Turkey).

484. *Criterion 40.20* - There is no legal provision enabling the ASP to exchange information with non-counterparts. Art. 128, paragraph 2 of the Law No. 108/2014 on State Police allows the exchange of information only with police bodies. GDPML can exchange any information concerning its supervisory activities through the communication that BoA or FSA has with its respective counterparts. Letter d) of Art. 22 of the AML/CFT Law also limits the FIU's exchange of information to counterparts only and BoA has confirmed to evaluators that there must be MoU in order to exchange information.

### *Weighing and Conclusion*

485. Most of criteria under Recommendation 40 are either met or mostly met. Concerning criterion 40.4 the law has no provisions which oblige the authorities to provide feedback in the timely manner to counterparts. As concerns criterion 40.5 there are minor unduly restrictive conditions and absence of information from a number of authorities. The AML/CFT Law does not explicitly cover exchange of information on associated predicate offences and limits the FIU's power on information exchange with non-counterparts. Concerning criterion 40.20, police can also exchange information only with their counterparts. **R.40 is rated LC.**

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>• Risk assessments lack depth in some areas (TF, informal economy, corruption, legal persons, NPOs).</li> <li>• For some sectors, there was limited outreach activity undertaken to communicate the results of the NRAs.</li> <li>• Existing strategies against organised and financial crime do not ensure that all risks, including more complex ones, are addressed by all relevant authorities.</li> <li>• Requirement to apply enhanced CDD measures in higher risk situations identified by the REs mentions only ML risks (not TF risks).</li> <li>• Except for entities supervised by BoA, there is no requirement for FIs and DNFBPs to take the findings of the NRA into account in their internal risk assessments.</li> <li>• With regard to policies, controls and procedures of FIs and DNFBPs for ML/TF risk management and mitigation, there are no specific requirements that these must be approved by senior management or that their implementation must be monitored and enhanced if necessary.</li> <li>• It is not clear whether physical presence of customers is part of the implementation of EDD when higher-risk factors are detected or come forth in the course of the transaction or business relationship.</li> <li>• There are no clear indications for FIs and DNFBPs on what enhanced measures should entail in case of identified risks outside of the mandatory high-risk categories stipulated by law.</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>• There is no sufficient evidence to conclude that all of the key risks identified in the 2015 NRA are adequately addressed through national policies.</li> <li>• No cooperation and coordination mechanisms are in place to combat the PF.</li> </ul>
3. Money laundering offence	LC	<ul style="list-style-type: none"> <li>• The purpose requirement for the conversion and transfer of property offence in Art. 287 (1) is limited to concealing or disguising the illicit origin of the property and it does not extend to the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.</li> <li>• There is some uncertainty concerning the coverage of indirect proceeds and the actual scope of “assistance” as an ancillary offence.</li> <li>• Abandonment of fine as additional punishment seems to limit the proportionality of the sanctioning regime</li> </ul>
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> <li>• In lack of case law, it is unclear whether Art. 36 CC covers also laundered property (i.e. the object or <i>corpus delicti</i> of the ML offence, particularly in cases of third-party ML).</li> <li>• Confiscation of property of corresponding value only applies to proceeds of crime but not to instrumentalities.</li> <li>• Third party confiscation is still covered implicitly.</li> <li>• In lack of a proper statutory basis and case law, it remains doubtful whether all aspects of property used in or intended or</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>allocated for use in the FT and terrorist-related offences are covered by Art. 36 CC.</p> <ul style="list-style-type: none"> <li>• There are no provisions applicable in the sequestration procedure regarding the protection for the rights of bona fide third parties in the confiscation proceedings.</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>• TF offences should extend to any person who wilfully provides or collects funds or <i>other assets</i></li> <li>• Art. 230/a does not criminalise explicitly the financing of the travel of FTFs and in lack of the case law it is unclear whether TF offence would be interpreted to encompass the financing of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.</li> </ul>
6. Targeted financial sanctions related to terrorism & FT	PC	<ul style="list-style-type: none"> <li>• The listing criteria do not cover undertakings having links to designated persons or entities.</li> <li>• There is no reflection on the evidentiary standard to be applied in the national legislation.</li> <li>• There are no detailed, explicit procedures at the national level in relation to proposing designations to UNSC Committees.</li> <li>• There are no specific legal provisions in Albania determining the procedures for requesting foreign country to give effect to the actions initiated under the freezing mechanisms, and provision of identifying information.</li> <li>• TFS are not implemented “without delay”.</li> <li>• Application of assets freezing by all natural and legal persons is cumbersome, and discretionary-based.</li> <li>• The freezing obligations by natural and legal persons does not clearly extend to all types of funds and property as required under UN Resolutions 1267, 1988 and 1373.</li> <li>• Reporting obligation does not extend to the attempted transaction.</li> <li>• There are no national procedures for submitting de-listing requests to the UN sanctions Committees 1267/1989 and 1988.</li> <li>• Rules and procedures on return of the seized funds and other property to be determined by the Council of Ministers decision are not adopted.</li> <li>• There are no procedures set out on unfreezing of funds of inadvertently affected persons and entities.</li> <li>• There are no mechanisms in place to communicate unfreezing to the FIs and DNFBPs immediately, upon taking such actions.</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<p>There is no legal and institutional framework in place to implement UNSCRs related to the prevention, suppression and disruption of proliferation of WMD and its financing.</p>
8. Non-profit organisations	PC	<ul style="list-style-type: none"> <li>• Analysis of the NPO sector has not identified the ones at risk of TF abuse, and the nature of threats posed.</li> <li>• A review of legislation and measures from the perspective of TF has not been undertaken.</li> <li>• Albania has no clear, if any, policies to promote accountability,</li> </ul>



## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>integrity, and public confidence in the administration and management of NPOs.</p> <ul style="list-style-type: none"> <li>• Albania has taken limited outreach to the NPO sector and the donor community concerning TF issues.</li> <li>• There is no best practice document was developed by Albania with involvement of NPOs.</li> <li>• Albania has not taken steps to promote targeted risk-based supervision or monitoring of NPOs.</li> <li>• Supervisory powers of the GDT are limited and do not cover appropriately the CFT aspects.</li> </ul>
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> <li>• Except for banks, there are no provisions on sharing of information between FIs.</li> <li>• There are no specific provisions governing information sharing between FIs for the purposes of correspondent banking and wire transfers.</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>• There are slight definitional inconsistencies in the AML/CFT Law in relation to CDD requirements.</li> <li>• For customers that are natural persons, there is no requirement to verify if any person acting on behalf of the customer is authorised to do so and identify and verify the identity of that person.</li> <li>• The provisions regarding the timing of verification are not fully in line with the standard as they broaden the situations in which verification may be postponed, and make no mention of management of TF risks.</li> <li>• The requirement to apply EDD to higher-risk categories of business relationships, customers and transactions as identified by the FI, does not mention TF risks (only ML risks).</li> <li>• There is no specific provision allowing FIs to file an STR without pursuing CDD in case of a customer who might be tipped off due to the CDD process.</li> <li>• There is no requirement to distinguish between the address of the registered office or principal place of business.</li> <li>• There are no provisions governing the identification of a protector or a class of beneficiaries in case of a customer that is a legal arrangement.</li> <li>• There are no provisions indicating that, where no natural person with controlling interest or ultimate control over a legal person can be identified, FIs must identify the relevant natural person who holds the position of senior managing official.</li> <li>• There is no explicit requirement to verify the identity of the beneficiary.</li> <li>• There is no specific provision requiring FIs to consider the beneficiary as a relevant risk factor in determining whether EDD measures are applicable.</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>• By referring to keeping records of 'financial' transactions, the scope of the AML/CFT Law appears narrower than the standard</li> <li>• It is not unequivocally clear that FIs must keep all CDD documentation and not only documentation concerning customer</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>identification.</p> <ul style="list-style-type: none"> <li>• Although some specific forms of analysis are covered, there is no explicit, all-encompassing requirement to keep records of any analysis undertaken by the FI.</li> </ul>
12. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>• The definition of domestic PEPs does not cover directors of state-owned companies with less than 50 employees or all senior politicians / important political party officials.</li> <li>• Persons who are entrusted with a prominent function by an international organisation are not included in the definition of PEP.</li> <li>• The abovementioned definitional gaps have a cascading effect on the coverage of family members or close associates of PEPs.</li> <li>• The one-year limitation period of domestic PEPs following the end of their functions is inconsistent with the FATF approach.</li> <li>• There is no specific requirement for FIs to identify whether beneficiaries of life insurance policies or their BOs are PEPs.</li> </ul>
13. Correspondent banking	LC	<ul style="list-style-type: none"> <li>• Non-banking correspondent relationships are not covered by the Albanian legal framework.</li> <li>• The requirement for FIs under Albanian law to satisfy themselves that respondents can provide 'customer identification documents' appears narrower than the required 'relevant CDD information' of the standard.</li> <li>• The obligation for FIs to undertake the necessary measures to satisfy themselves that respondent banks do not allow the use of their accounts by shell banks does not apply to domestic respondents.</li> </ul>
14. Money or value transfer services	C	
15. New technologies	LC	<p>There is no legal requirement for REs to apply the obligation to consider and mitigate risks associated with new technologies via a risk management process to new and existing products.</p>
16. Wire transfers	LC	<ul style="list-style-type: none"> <li>• There is no specific requirement to ensure that originator information included in the wire transfer is verified for accuracy</li> <li>• There is no provision outlining that, in the absence of a beneficiary account number, a unique transaction reference number must be added which permits traceability of the transaction</li> <li>• The law does not explicitly regulate situations where technical limitations prevent the intermediary FI from transmitting the information accompanying a cross border wire transfer from remaining with a related domestic wire transfer</li> <li>• There are no specific provisions requiring intermediaries and beneficiaries to take reasonable measures to identify transfers that lack information and to implement a RBA to define the steps to be taken if the required information is not sent with the transfer</li> <li>• There is no specific requirement for the beneficiary institution to verify the identity of the beneficiary if this has not been verified before</li> <li>• There are no provisions requiring beneficiary FIs to implement a RBA to define the steps to be taken if the required information is</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>not sent with the transfer</p> <ul style="list-style-type: none"> <li>• There are no specific provisions governing the case of a MVTs provider that controls both the ordering and the beneficiary side of the transfer</li> <li>• There is no explicit legal requirement for FIs to freeze assets and funds which are subject to UN TFS without delay</li> </ul>
17. Reliance on third parties	N/A	
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> <li>• There is no requirement to implement programmes against ML/TF having regard to ML/TF risk and the size of the business.</li> <li>• Screening procedures do not cover the compliance officers in case they are appointed at the administrative level.</li> <li>• There is no explicit requirement for the FIs to have an on-going training programme for the responsible persons. The scope of the training programme for the staff is limited.</li> <li>• FIs except for banks, Insurance companies, Management Companies and SLAs are not required to implement an independent audit function.</li> <li>• There is no legislative requirement imposed upon FIs to implement group-wide programmes against ML/TF. Limited requirements are set only for the banking financial and insurance groups.</li> <li>• There is no requirement for the FIs to apply additional measures to manage the ML/TF risks in case the host country does not permit the proper implementation of the AML/CFT measures.</li> </ul>
19. Higher-risk countries	PC	<ul style="list-style-type: none"> <li>• There is no explicit requirement to apply the EDD measures, proportionate to the risks, to business relationships and transactions with customers from countries for which it is called for by the FATF.</li> <li>• Application of the EDD measures does not extend to mitigation of the TF risk.</li> <li>• There are no requirements on proportionality of countermeasures with the risks posed by the countries either called upon by the FATF or identified by Albania.</li> </ul>
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> <li>• Legislation does not clearly define the scope of the proceeds of the criminal activity.</li> <li>• Minor shortcomings in criminalisation of ML and TF might limit the scope of the reporting obligation.</li> <li>• Not all cases of attempted transaction are covered by the AML/CFT Law.</li> <li>• Definition of the term “transaction” might limit the scope of transactions to be reported.</li> </ul>
21. Tipping-off and confidentiality	LC	Exemption from legal liability for the information disclosures to the GDPML is limited to professional and banking secrecy disclosures and does not cover the disclosure of other information protected by contract or law, regulatory or administrative provision (e.g. tax secrecy, commercial or business secrecy, etc.).
22. DNFBPs: Customer due diligence	LC	The deficiencies noted in CDD requirements under R. 10, 11, 12 and 15 for FIs are valid for DNFBPs.

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
23. DNFBPs: Other measures	LC	The deficiencies noted under R.18-21 are valid for DNFBPs.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>• There are no mechanisms in place that identify and describe the processes for obtaining and recording BO information.</li> <li>• Albania has not conducted a comprehensive assessment of the ML/TF risks associated with all types of legal persons created in the country.</li> <li>• There is no requirement for LEs to maintain basic information and a register of their shareholders or members by their own.</li> <li>• Neither the NBC nor the DCoT are responsible for the accuracy of registered data.</li> <li>• There is no timeframe set for NPOs to provide data on amendments of previously submitted information.</li> <li>• There is no requirement either for LEs or Registries to obtain and hold, or take reasonable measures to obtain and hold accurate and up-to-date information on BO. The current mechanism does not ensure that information collected by REs performing CDD measures ensures coverage of all legal persons concerned.</li> <li>• There is no specific requirement for the legal representative of a legal person to be a resident of a country, thus enforcement of the LEAs powers for cooperation could be challenging.</li> <li>• There is no requirement for NPOs to have an authorised person to act as a representative and provide information to competent authorities.</li> <li>• There is no requirement to maintain basic and BO information and records for at least 5 years after the date on which the company is dissolved or otherwise ceases to exist, except for by the NBC, DCoT and the REs.</li> <li>• Bearer shares or bearer share warrants are not prohibited. There is a lack of measures to ensure that they are not misused for ML/TF.</li> <li>• Nominee shares and nominee directors are not explicitly allowed in Albania but neither do they appear to be specifically prohibited or controlled.</li> <li>• There are no sanctions set out for associations, foundations and centres failing to comply with the requirements.</li> <li>• There is no mechanism for any formal assessment of the quality of assistance received from other countries by the Albanian authorities, except for the Police and the GDPML.</li> <li>• The range of sanctions that can be applied by the NBC and the supervisory authorities is not proportionate. No sanctions are available for the associations, foundations and centres by the DCoT. The competent authorities' ability to rapidly provide international cooperation in relation to BO information is hampered by deficiencies identified in R. 37,40 and c.24.10.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>• Requirements on REs to conduct CDD, maintain records and provide information do not extend to trust relevant parties.</li> <li>• Information available to national and foreign competent authorities is limited by deficiencies identified above.</li> <li>• There is no explicit requirement for trustees to disclose their</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>status to REs when forming a business relationship or carrying out a transaction above the threshold.</p> <ul style="list-style-type: none"> <li>• There are no sanctions set out for trustees apart from ones under the AML/CFT Law.</li> </ul> <p>Powers of supervisory authorities to obtain information held by the entities are limited.</p>
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> <li>• There are gaps in the fit and proper requirements for shareholders and administrators of FIs (e.g. associates are not covered; not all senior management positions are covered for certain FIs; thresholds of ownership requiring integrity checks are inconsistent for certain FIs; no provisions allowing on-going fit and proper monitoring beyond initial licensing for certain FIs).</li> <li>• For core principle FIs, there are some deficiencies in regulation and supervision as benchmarked against relevant international standards.</li> <li>• The frequency and intensity of BoA supervision has not necessarily correlated to ML/TF risk.</li> <li>• The BoA has not yet applied the enhanced ML/TF risk assessment facilitated by offsite supervision for sectors under its supervision to the currency exchange sector.</li> <li>• There is not yet a document in place setting out a RBA for supervision of investment funds by the FSA.</li> <li>• For BoA and FSA supervision, there is no indication in the relevant documents that assessment of the ML/TF risk profile should be reviewed when there are major events or developments in the management and operations of the FI.</li> </ul>
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>• Sanctioning powers are limited (see R.35 for details).</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>• Fit and proper requirements for casinos do not specifically mention criminal associates and BOs.</li> <li>• There are no detailed licensing requirements for online gaming.</li> <li>• Limited measures to prevent criminals or their associates from controlling or managing DNFBPs.</li> <li>• Sanctions framework is not sufficiently proportionate and dissuasive.</li> <li>• No requirement for supervisors to take into account the ML/TF risk profile when assessing the adequacy of the AML/CFT internal controls, policies and procedures.</li> <li>• Supervision of DNFBPs is not performed on a risk-sensitive basis.</li> </ul>
29. Financial intelligence units	LC	<p>The GDPML is not explicitly vested with powers to receive, analyse and disseminate information on ML associated predicate offences.</p>
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• Wide range of special investigative techniques available in the CPC, should be applicable for the investigation of all forms of ML/TF and associated predicate offences.</li> <li>• There is no reliable mechanism for the timely and accurate (and</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		simple) identification of whether natural or legal persons hold or control bank accounts
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>• Cross-border transportation of cash by mail or cargo does not fall within its scope of the declaration system.</li> <li>• Some of the powers of authorities are applicable only in case a criminal offence is suspected and the criminal offence under Art. 179a CC "<i>Failure to declare at the border of money and valuables</i>", does not cover BNIs.</li> </ul>
33. Statistics	LC	There appears to be a lack of statistics in some of the reported areas (c.33.1(d))
34. Guidance and feedback	LC	<ul style="list-style-type: none"> <li>• There has been no guidance developed on risk indicators for the classification of customers and transactions for certain types of DNFBPs (listed under Art. 3 letters "g", "gj", "h" and "k" of the AML/CFT law)</li> <li>• The REs which pose high ML/TF risk, such as real estate agents, accountants and Games of Chance have not been targeted by the GDPML trainings, organised as a mean of feedback.</li> </ul>
35. Sanctions	PC	<ul style="list-style-type: none"> <li>• It is not unequivocally clear if there are sanctions available for failure of REs to provide information to supervisors (relevant for R.9)</li> <li>• The range of sanctions that can be imposed on REs for breaches of AML/CFT obligations under R.10 – R.23 is not sufficiently proportionate or dissuasive</li> <li>• There is no proportionate range of sanctions available for directors and senior management</li> <li>• There is no clear link between sanction powers and the requirements that are covered by other documents than the AML/CFT Law (e.g. guidance, regulations issued by supervisors)</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• Shortcomings identified with respect to R.3, R.4 and R.5 have a bearing on the full implementation of a number of Articles of the Vienna, Palermo, Merida and TF Conventions.</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• The dual criminality principle is applicable at all times, even when the requests do not involve coercive actions.</li> <li>• MLA relating to offences exclusively of a fiscal nature are not executed unless on the basis of the European Convention.</li> <li>• The lack of a case management system in the MoJ is also an issue considering the complex procedure for executing foreign requests which might also represent an impediment to timely execution of foreign requests.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	PC	<ul style="list-style-type: none"> <li>• Significant limitations stemming from the legal framework on the ability of the authorities to provide assistance in the confiscation of assets.</li> <li>• It is unclear whether and to what extent Albania can provide assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings.</li> <li>• Ability to share confiscated property with other countries was not demonstrated</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• The deficiencies identified in the criminalisation of ML and TF</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>can still limit the scope of extradition.</p> <ul style="list-style-type: none"> <li>• There is no case management systems in place for the timely execution, including prioritisation of extradition requests and certain cases of dismissal of extradition requests do not appear to be in line with international standards</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• It is not explicit that GDPML can exchange supervisory information.</li> <li>• There are no clear processes in place for the BoA and GDPML to regulate prioritisation and timely execution of requests for information; and no processes for prioritisation for the FSA and ASP.</li> <li>• The legal basis for the exchange of information between the GDPML and its foreign counterparts does not explicitly extend to information in relation to associated predicate offences.</li> <li>• Convention of Police Cooperation for South-East Europe covers the joint investigation only between 11 contracting parties of the South-East Europe region.</li> <li>• There is no legal provision enabling the ASP to exchange information with non-counterparts. BoA has also confirmed to evaluators that there must be MoU in order to exchange information.</li> <li>• The BoA and the FSA have not signed cooperation agreements with the widest range of foreign counterparts.</li> <li>• For BoA, cooperation agreements are not negotiated or signed in a timely manner.</li> <li>• Art. 8.3 of Regulation No. 114 contains an unduly restrictive ground to refuse a request for information from the FSA.</li> <li>• There are no provisions in the Law which explicitly provide to the BoA the possibility to conduct inquiries on behalf of foreign counterparts.</li> <li>• There are no provisions addressing situations in which the supervisors as requesting authority would be under a legal obligation to disclose or report received information and would inform the requested authority promptly of this obligation.</li> </ul>

## GLOSSARY OF ACRONYMS

AASCA	Agency for the Administration of the Seized and Confiscated Assets
ABA	Albanian Banking Association
AKSHE	Albanian State Export Control Authority
ALL	Albanian LEK (Albanian currency)
AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
AML/CFT Law	Law on the prevention of money laundering and financing of terrorism
Art.	Article
ASP	Albanian State Police
BNIs	Bearer Negotiable Instruments
BoA	Bank of Albania
BO	Beneficial Owner
CARIN	Camden Assets Recovery Interagency Network
CC	Criminal Code
CCFML	Coordination Committee for the Fight against ML
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CIU	Collective Investment Undertakings
CPC	Code of Criminal Procedure
CTR	Cash transaction report
DCoT	District Court of Tirana
DNFBPs	Designated Non-Financial Businesses and Professions
DPMS	Dealers in Precious Metals and Stones
EDD	Enhanced Due Diligence
EUROPOL	European Police Office
FATF	Financial Action Task Force
FEO	Foreign exchange office
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FSA	Financial Supervisory Authority
FT	Financing of terrorism



GDC	General Directorate of Customs
GDP	Gross Domestic Product
GDPML	General Directorate for the Prevention of Money Laundering
GDT	General Directorate of Taxation
GPO	General Prosecutor's Office
GSA	Gambling Supervision Authority
HIDAACI	The High Inspectorate of Declaration and Audit of Assets and Conflict of Interest
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organisation
IT	Information Technology
LEAs	Law Enforcement Agencies
MER	Mutual Evaluation Report
MFA	Ministry of Foreign Affairs
ML	Money Laundering
MLA	Mutual Legal Assistance
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MVTS	Money or Value Transfer Services
NBC	National Business Centre
NBFIs	Non-Banking Financial Institutions
NCA	National Chamber of Advocacy
NCN	National Chamber of Notaries
NPOs	Non-Profit Organisations
NRA	National Risk Assessment
OC	Organised crime
OCG	Organised crime group
PEPs	Politically Exposed Persons
PF	Proliferation Financing
POB	Public Oversight Board
RBA	Risk-Based Approach

REs	Reporting Entities
SAR	Suspicious Activity Report
SIS	State Intelligence Service
SLA	Saving and Loan Association
SWIFT	Society for Worldwide Interbank Financial Telecommunication
STR	Suspicious Transaction Report
TCSP	Trust and company service provider
TFS	Targeted financial sanctions
VPFs	Voluntary Pension Funds
WG	Working Group
WMDs	Weapons of Mass Destruction

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July 2018

Anti-money laundering and counter-terrorism financing measures

**Albania**

*Fifth Round Mutual Evaluation Report*

This report provides a summary of AML/CFT measures in place in Albania as at the date of the on-site visit (1 to 14 October 2017). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Albania's AML/CFT system, and provides recommendations on how the system could be strengthened.