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CONFERENCE OF THE PARTIES

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no°198)

1st Assessment Report of the Conference of the Parties to CETS no°198 on Albania[1]

[1] Adopted by the 3rd meeting of the C198-COP, Strasbourg, 7-8 March 2011

Albania is a State Party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no°198) since 1 May 2008. This assessment of the implementation of the Convention in Albania followed the decision of the 2nd meeting of the Conference of the Parties (C198-COP) in 2010. This Assessment Report was adopted at its 3rd meeting (Strasbourg, 7 – 8 March 2011).

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A. Background information and general information on the implementation of the Convention

1. The Convention of the Council of Europe N° 198 on Laundering, Search, Seizure, Confiscation of the Proceeds from Crime and Financing of Terrorism establishes under Article 48 a monitoring mechanism that is responsible for following the implementation of the Convention, the Conference of the Parties (COP).

2. The Convention came into force on 1 May 2008, when 6 instruments of ratification were deposited with the Secretary General of the Council of Europe, all of which were Member States of the Council of Europe.

3. The monitoring procedure under this Convention deals with areas covered by the Convention that are not covered by other relevant international standards on which mutual evaluations are carried out by MONEYVAL and the Financial Action TASK Force (FATF). At its second meeting in April 2010, the COP adopted an evaluation questionnaire based on areas where the Convention "adds value" to the current international AML/CFT standards. The second meeting also decided that Albania should be the first country to be assessed under this mechanism.

4. The monitoring questionnaire was sent to the Albanian authorities in May 2010, who sent their replies in July 2010. The responses to the Questionnaire were coordinated by the Albanian Ministry of Justice.

5. In June 2010, a training seminar for potential rapporteurs took place and three rapporteurs were identified to assess the implementation of the Convention by the Albanian authorities.

6. A draft report was prepared by the rapporteurs, namely, Mr Ion Florin (Romania) on the issues of the functioning of FIU, Ms Hasmik Musikyan (Armenia) on new legal aspects under the CETS 198 and Mrs Henriett Nagy (Hungary) on international co-operation. This first monitoring report by the COP is based primarily on a desk review of the replies by Albania to the monitoring questionnaire. Public information available in MONEYVAL adopted evaluation or progress reports have been considered and taken into account. This report is not intended to duplicate but complement the work of other assessment bodies.

7. Albania signed the Convention on 22/12/05 and ratified it on 6/2/2007 and it was brought into force in Albania on 1/5/2008. At the time of ratification Albania made no reservations or declarations.

8. The draft report was discussed at a pre-meeting on 18 and 19 January 2011 and will be presented for discussion to the COP in March 2011.

9. Albania is a founder member of MONEYVAL and has been the subject of three evaluations by MONEYVAL. A fourth round assessment will be discussed by MONEYVAL in April 2011. The adopted third round report and third round progress reports are available on MONEYVAL's website. The most recent progress report was adopted in September 2009. Since then two important new laws were adopted by the Albanian Assembly and have entered into force: Law No 10192, dated 3/7/2009 "On the Prevention and Striking of Organised Crime through Preventive Measures against property" introducing non-conviction based confiscation, and Law No 10193, dated 3/12/2009 "On jurisdictional relations with foreign authorities in

criminal matters", providing supplementary procedural rules on international judicial cooperation.

B. Measures to be taken at national level

I. General provisions

1. Criminalisation of money laundering – Article 9 paragraphs 3, 4, 5, 6

The areas where it is considered that the Convention adds value on money laundering criminalisation are as follows:

- The predicate offences to money laundering have to, as a minimum, include the categories of offence in the Appendix to the Convention (which puts the FATF requirements on this issue into an international legal treaty [A.9(4)]).
- As to proof of predicate offence, paragraphs 5 and 6 establish new legally binding standards to better facilitate the prevention of money laundering: clarification that a prior or simultaneous conviction for the predicate offence is not required [A.9(5)], and to clarify that a prosecutor does not have to establish a particularised predicate offence on a particular date [A.9(6)].
- To allow for lesser mental elements for money laundering of suspicion (and negligence, the latter of which was to be found also in ETS141) [A.9(3)].

10. The relevant Convention provisions are set out in Annex I.

Description and analysis

11. Under Article 287(1) of the Criminal Code of Albania, *"laundering of the proceeds of the criminal offence committed through*:

a) the conversion or transfer of property that is known to be a product of a criminal offence with the purpose of hiding, concealing the origin of the property or aiding to avoid legal consequences related to the commission of the criminal offence;
b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of property or rights with respect to the money laundering;
c) performance of financial activities and fragmented/structured transactions to avoid reporting according to the money laundering;
d) advice, encouragement, or public call for the commission of any of the offences described above;
e) the use and investment in economic or financial activities of money laundering or means that derive from a criminal offence is punishable by three to ten years of imprisonment and a fine from 500 thousand to 5 million ALL."

12. The knowledge of the criminal origin of the property is required only for the establishment of money laundering through conversion or transfer of such property. The language of Article 287 of the Criminal Code does not require for the criminal to know that the property is proceeds in order to establish *corpus delicti* for the deeds envisaged through paragraphs 1(b)-1(e). Hence, though not stipulated explicitly acts

covered under Article 287 (paragraphs 1(b)-1(e)) of the Criminal Code can constitute money laundering even when the offender suspected that the property was proceeds or when the person ought to have assumed that the property was proceeds.

13. Albania applies the all crimes approach, thus considering every criminal offence provided for in the Criminal Code as a predicate for money laundering. However, not all the categories of offences listed in the Appendix to the CETS N° 198 constitute criminal offences under the Criminal Code of Albania. In particular, terrorism, piracy, insider trading, and market manipulation are not fully criminalised in Albania.

14. Under Article 287(3), provisions of this Article (criminalization of ML) apply even in cases where the person that has committed the offence the proceeds derive from, cannot be a defendant, cannot be convicted or there is a cause that wipes out the offence or one of the conditions for criminal proceedings of such an offence is lacking.

15. It can be seen from the language of the referred provision that there is an uncertainty concerning the necessity of a prior or simultaneous conviction for a predicate offence to establish the link between money laundering and the predicate offence.[2]

16. The Criminal Code of Albania does not require establishing precisely which predicate offence generated the criminal proceeds, as required by A. 9(6) of the Convention. The Albanian authorities have recently reported that two convictions were rendered (by the First Instance Court of Fier in 2007 and the First Instance Court of Tirana in 2009) where the court did not indicate the predicate offence/s. However, as the translations of these court judgments have not been made available, the rapporteurs could not verify whether A 9(6) of the Convention has been applied in any particular case.

Effective implementation

17. While the statistics published in the 2nd 3rd round MONEYVAL progress report indicate that there have been convictions against defendants for money laundering, the authorities advised that the statistics contain only general information without specification of the facts in each case. In the circumstances, the Albanian authorities are not in a position to demonstrate that the new provisions of the Convention that add value on criminalisation are being used to enhance national performance on money laundering criminalisation. From publicly available information in MONEYVAL's 2nd 3rd round progress report there were final convictions against 4 persons in 2007 and 2008 respectively and against 11 persons in 2009 up to 15 August.[3] The Albanian authorities have not been able to demonstrate the effective implementation of the relevant Convention provisions which add value to the international standards.

[2] The Albanian authorities indicated that they were in the process of drafting the legislation to meet this Convention requirement.

[3] The Albanian authorities have subsequently advised that one stand alone money laundering case is under investigation and a second one is currently under judicial review.

Recommendations and comments

- To consider redrafting Article 287(1) of the Criminal Code to criminalise some of the acts referred to in paragraph 1 of Article 9 of the CETS N°198, in either or both of the following cases where the offender:
  - suspected that the property was proceeds;
  - ought to have assumed that the property was proceeds.

- To fully criminalise terrorism and piracy, and to criminalise insider trading, and market manipulation, so that all these are predicate offences to money laundering in all their internationally understood formulations.

- To provide for an explicit provision ruling out the necessity of the prior or simultaneous conviction for the predicate offence for rendering conviction for money laundering, and to bring prosecutions in serious cases where there is no prior or simultaneous convictions for predicate offences.[4]

- To consider placing the principle in A.9(6) of the Convention into Albanian legislation or alternatively to issue prosecutorial guidance in appropriate domestic money laundering cases, and to familiarise prosecutors and investigators with the mandatory provisions of A.9(5) and A.9(6) of the Convention.

2. Corporate criminal liability – Article 10 paragraphs 1 and 2

The areas where it is considered that the Convention adds value are as follows:

- Some form of liability by legal persons has become a mandatory legal requirement (criminal, administrative or civil liability possible) where a natural person commits a criminal offence of money laundering committed for the benefit of the legal person, acting individually who has a leading position within the legal person (to limit the potential scope of the liability). The leading position can be assumed to exist in the three situations described in the provisions (see Annex II).

- According to Article 10 paragraph 1:

  "*Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*

  a. a power of representation of the legal person; or

  b. an authority to take decisions on behalf of the legal person; or

  c. an authority to exercise control within the legal person,

  as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences."

- The Convention expressly covers lack of supervision.

Description and analysis

[4] The Albanian rapporteurs were advised that legislation had been prepared to criminalise financing of terrorism in line with FATF standards and to ensure that ML can be prosecuted in the absence of a prior conviction.

18. Legal persons are criminally liable under Article 45 of the Criminal Code. Further provisions on corporate criminal liability are set forth by the Law on the "Criminal Liability of Legal Persons" adopted on 14 June 2007 and according to its Article 3:

"The legal person is liable for the offences committed:

a) by his representatives and departments on his behalf or for his benefit;

b) on his behalf or for his benefit, from a person under its authority that represents, directs or administers the legal person;

c) on his behalf or for his benefit , due to lack of control or oversight by the person directing, representing or administering the legal person."

19. This Article covers the categories of persons set forth by the CETS N°198 under the definition of *"natural person who has a leading position within the legal person"*.

20. Furthermore, according to Article 3(c) a legal person can be held liable where the lack of supervision or control by a natural person has made possible the commission of the criminal offences for the benefit of that legal person by a natural person under its authority.

Effective implementation

21. Though the legal provisions with regard to corporate liability are in line with Article 10 (1, 2) of CETS N° 198, questions arise regarding their effective implementation. According to the authorities there was one conviction of a legal person for money laundering with a fine (and the administrator was civilly sanctioned). Two other cases are said to be under investigation with regard to legal persons. However, given the period of the application of the Law "on Criminal Liability of Legal Persons, it is difficult to conclude that the provisions are yet being implemented effectively.

Recommendations

22. It is recognised that a conviction has been achieved on the basis of corporate criminal liability. Given the short period of time that corporate criminal liability has been in place, the Albanian authorities are advised to review the effectiveness of its implementation after 2 years to assess any potential obstacles in place to holding legal persons liable in practice for criminal offences of money laundering committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person (or due to lack of control and oversight) and take necessary steps to eliminate them.

3. Previous decisions – Article 11

23. Article 11 is a new standard dealing with international recidivism. It recognises that money laundering and financing of terrorism are often carried out transnationally by criminal organisations whose members may have been tried and convicted in more than one country. A.11 provides that:

"Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty,

final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention."

Description and analysis

24. According to Article 50 of the Criminal Code, the repetition of the crime constitutes an aggravating circumstance. Final decisions against natural persons rendered by a court of another Party can be taken into account when determining the penalty if they are recognised by an Albanian court.

25. As regards legal persons, according to Article 21 of the Law "on Criminal Liability of Legal Persons", if a legal person has committed a criminal offence and within a 5 year- period afterwards if the latter commits a new offence or contravention a new fine or penalty is applied – the amount of the fine and the duration of the penalty in these cases is doubled or tripled.

26. The CETS N° 198 establishes a mandatory require ment to take into account final decisions against a natural or legal person rendered in another Party in relation to offences established in accordance with the Convention. The Criminal Procedure Code of Albania establishes the recognition of the final decisions as a precondition for taking them into account when determining the penalty.

Recommendations and Comments

27. The Albanian authorities are in a position to take into account final decisions taken in another Party in relation to offences established in accordance with the CETS N° 198, though it appears not to have occurred in practice as yet. The rapporteurs consider that steps should be taken to ensure that prosecutors are familiar with the procedures to bring a foreign conviction before the domestic court if such information is available.

4. Confiscation and provisional measures Article 3 paragraph 1, 2, 3, 4 of the CETS 198

The confiscation and provisional measures set out in the Convention which are considered to add value to the international standards are in the following areas:

- Article 3 paragraph 1 introduces a new notion to avoid any legal gaps between the definitions of proceeds and instrumentalities as, according to it, *"Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds* ***and laundered property****."*

- Confiscation has to be available for ML **and to the categories of offences in the Appendix** (and no reservation is possible).

- Mandatory confiscation for some major proceeds-generating offences is contemplated under this Convention (Article 3 paragraph 3 [Annex III]). Though not a mandatory provision, the drafters sent a signal that, given the essential discretionary character of criminal confiscation in some countries, it may be advisable for confiscation to be mandatory in particularly serious offences, and for offences where there is no victim claiming to be compensated.

- Reverse burdens are possible (after conviction for the criminal offence) to establish the lawful or other origin of alleged proceeds liable to confiscation - A.3(4) [subject to a declaration procedure in whole or in part].

Description and analysis

a) Confiscation

28. The Albanian legislation provides for two types of confiscation: criminal confiscation as supplementary to the conviction for a criminal offence and non-conviction based confiscation.

Criminal Confiscation

29. Articles 30 and 36 of the Criminal Code provide for confiscation of instrumentalities and direct and indirect proceeds of criminal offences, and objects of the offence. According to this provision, confiscation is applied by the court in respect of objects that have served or are defined as instrumentalities for the commission of a criminal offence; of the proceeds of the criminal offence, including any type of assets, as well as legal documents or legal instruments verifying titles or other interests in the assets deriving from the criminal offence (which is understood to cover indirect proceeds); promised or given remuneration for the commission of the criminal offence; any other assets the value of which corresponds to that of proceeds from criminal offences; objects, the production, use, possession or alienation of which constitutes a criminal offence, even when a conviction has not been issued.

30. As regards the confiscation of the laundered property in a "stand alone" money laundering case, the general provisions on confiscation apply. The Criminal Code provides for the criminalisation of money laundering as a stand alone criminal offence (Article 287(1(c)) and the confiscation provision applies to all offences established by in the Criminal Code. There is no specific reference in the legislation to laundered property, and no statistics in relation to money laundering as a stand-alone offence. [5]

31. Albania has not made any declarations concerning the categories of offences to which confiscation applies.

32. Not all categories of offences included in the Appendix to the Convention are criminalized. In particular the Criminal Code of Albania does not envisage terrorism, piracy, insider trading, and market manipulation. Therefore, these enumerated crimes may not result in criminal confiscation.

33. According to Article 36(1) of the Criminal Code of Albania, confiscation of instrumentalities, proceeds or property the value of which corresponds to such proceeds is mandatory, inclusive of money laundering, drug trafficking, and trafficking in human beings. Albanian legislation does not envisage a list of serious crimes. However, the Criminal Procedure Code provides for the jurisdiction of the Court of Serious Crimes as a First Instance Court and Court of Appeal for serious crimes, which can indirectly imply the scope of serious crimes.

[5] See the comments at footnote 2 – in respect of the two stand alone cases that are under investigation or judicial review.

Non-conviction based confiscation

34. The Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property" (Annex IV) introduced a form of preventive non-conviction based confiscation. Under A.3 of the Law (non-conviction based confiscation) the field of application of this law is set out. A.3 provides that the provisions of the law apply to the assets of persons as to whom there exists a reasonable suspicion based on indications of :

- A.333, 333a CC – participation in a criminal organisation or structured criminal group and of the commission of crimes by them;
- A234/a, 234/b CC – participation in terrorist organisations or armed bands and of the commission of crimes by them;
- the commission of other actions for terrorist purposes provided in the Special Part of the CC;
- the commission of crimes provided in A.109 – kidnapping;
- the commission of crimes provided in A.109b – extortion;
- the commission of crimes provided in A.110a – trafficking in persons;
- the commission of crimes provided in A.114b – trafficking in females;
- the commission of crimes provided in A.128b – trafficking in minors;
- the commission of crimes provided in A.278a – trafficking in weapons and munitions;
- the commission of crimes provided in A.282a – trafficking in explosives, combustibles, poisonous substances and radioactive matter;
- the commission of crimes provided in A.283 – manufacturing and selling narcotics;
- the commission of crimes provided in A.283a – trafficking in narcotics;
- the commission of crimes provided in A.284a – organising and leading criminal organisations;
- the commission of crimes provided in A.114a – exploiting prostitution in aggravating circumstances;
- the commission of crimes provided in A.287 – laundering of criminal proceeds.

35. Under Article 21 of the law, confiscation is ordered at the request of the prosecutor, who submits to the court the reasons for the request. The confiscation of assets can also be sought and ordered in cases when a sequestration measure has not been sought and ordered against the assets.

36. The implementation of non-conviction based confiscation is distinct from the criminal proceeding against the persons who are subject to the above-mentioned law. According to Article 5(3) of the law, in cases when the assets confiscated according to the law on "Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property" are also subject to confiscation according to the Criminal Code and the Code of Criminal Procedure, the court orders the suspension of the confiscation according to the abovementioned law. A judgement in the criminal case revoking or extinguishing the confiscation ends the suspension.

37. The provisions of the Code of Civil Procedure are applied to the largest possible extent within the framework of the confiscation procedure.

38. The abovementioned law provides for mandatory and discretionary confiscations by the court. In particular, the court orders the confiscation of assets when all the following conditions are met:

a) when there are reasonable suspicions based on indications of the participation of the person in the criminal activities covered by the law in question;

b) when it has not been proven that the assets have a lawful origin or the person does not justify the possession of the assets or income which obviously do not correspond to the level of income, profits or lawful activities declared and

c) when it appears that the assets are directly or indirectly in the full or partial ownership of the person.

39. In the meantime, the court may decide to accept the request for the confiscation of assets when:

a) a criminal proceeding started against the person is dismissed by the court because:
i) of the lack of sufficient evidence;
ii) of the death of the person;
iii) the person cannot be taken as indicted and cannot be convicted;

b) the person is acquitted because:
i) of the lack of sufficient evidence;
ii) the criminal offence was committed by a person who cannot be indicted or convicted;

c) the person has been prosecuted for a criminal offence which is covered by the provisions of this law, but during the criminal proceedings the legal qualification of the offence has changed and the law is not applicable anymore to this offense.

40. Reversed burden of proof is introduced by the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Assets", according to which, in a confiscation procedure the burden of proof that the assets were gained in a lawful manner is on the person against whom the assets confiscation is sought (Article 21). Reversed burden of proof applies to the designated category of offences covered by the mentioned law.

41. Non-conviction based confiscation according to the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Assets" is not applicable to a number of offences covered by the Appendix to CETS N°198.

b) Provisional measures

42. Provisional measures are applied under the Criminal Procedure Code, the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property", and the Law "on the Prevention of Money Laundering and Terrorism Financing" (AML/CFT Law).

Provisional measures under the Criminal Procedure Code

43. When a criminal investigation is under way, a judge or a prosecutor can take provisional measures. The Criminal Procedure Code provides for the seizure of items which have a value as evidence and instruments of crime and as criminal assets. As to the items of probative value they can be seized either upon the decision of a judge or a prosecutor (Article 208). According to Article 274 of the Criminal Procedure Code, when there is a danger that the possession of an item

linked to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences, the relevant court, on the request of the prosecutor, orders its sequestration. Sequestration is applicable to all items, proceeds of criminal offences and all other kind of property that can be confiscated according to the provisions of Article 36 of the Criminal Code.

Provisional measures under the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property"

44. According to Article 11 of the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property", following the motivated request of the prosecutor, the court orders the sequestration of assets of persons, when there are reasonable suspicions based on indications that show that the person may participate in criminal activities and has assets or income that do not obviously correspond to the level of income, profits or lawful activities declared when there:

    a) is a real danger of loss or alienation of the funds, assets or other rights in respect of which confiscation may be applied according to the provisions of this law; or

    b) there are reasonable suspicions showing that the possession of assets and the exercise of specific economic, commercial and professional activities can be influenced by a criminal organisation or that may facilitate criminal activities.

45. The sequestration measure is valid for a six-month period (A.12). In the case of complex verifications (of assets), at the request of the prosecutor, the court may decide to extend the time period of implementation of the sequestration measure for three month periods, but not more than one year from the date of the end of the initial sequestration.

46. The implementation of such measure against the individuals who are subject to the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property" is separate from a criminal proceeding. If the assets seized under the law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Property" are also subject to sequestration according to the Criminal Procedure Code, the court suspends the sequestration applied according to the above-mentioned law.

Provisional measures under the Law "on the Prevention of Money Laundering and Terrorism Financing"

47. Administrative "provisional measures" can also be taken by the GDPML, which in cases of suspicion of money laundering or terrorism financing can order blocking or temporary freezing of the transaction or financial action for a period no longer than 72 hours. Within this time limit, if it detects elements of a criminal offence, ie, confirms the suspicion, the GDPML should refer the case to the Prosecutor's Office.

Effective implementation

48. The tables below provide statistics on provisional measures and confiscation over the period of 2008-2010.

Properties seized

Period	2008	2009	2010
Properties seized by a court decision.	1	1	10
Persons Concerned	1	1	13
Properties seized			50
Bank Accounts	1		
Other assets		1 (car)	

Seizures over the period of 2008-2010

Properties	Quantity	Value	Currency
Bank account	28	420.887.399	Al. Lek
Vehicles	9	7.440.000	Al. Lek
Commercial Companies	3	50.000.000	Al. Lek
Real estate	12	252.469.040	Al. Lek
Total value		730.796.439	Al. Lek

Confiscated properties

Period	2008	2009	2010
Confiscations on a court decision.	3		9
Confiscated properties	8		12
Value of confiscated property	62.274.820 Al. Lek		14.305.000 Al. Lek

Recommendations and comments

- Though the Albanian authorities do not consider this a problem (and anticipate that this may be covered either as objects of the offence or instrumentalities), the Albanian authorities should take legislative measures to ensure that the requirement of confiscation of "laundered property" as required by Article 3(i) of the Convention is covered in national legislation;

- As certain designated categories of predicate offence in the Appendix to the Convention are not fully and explicitly covered there is no criminal confiscation obligation attached to all the offences in the Appendix, and this can be addressed by clarification that they are explicit predicate offences in Albania;

- Broadly, confiscation and provisional measures appear to be well implemented. The Albanian authorities are encouraged to maintain detailed statistics[6] and take measures to raise the effectiveness of the requirement set out in Article 3(4) of the CETS N°198.

[6] The Albanian authorities advised that the Albanian government is planning an improvement of the statistical system with the ultimate goal of creating a unified system of data for all structures.

5. Management of frozen and seized property – Article 6

The Convention introduces a new standard which relates to the requirement of proper management of the frozen and seized property enshrined in Article 6 which reads as follows:

"Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention."

Description and analysis

49. The provisions on the management of both frozen and seized property are set forth by the Criminal Procedure Code, the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Assets", as well as the Council of Ministers Decision No.563, dated 14.07.2010 "On the rules and procedures of cooperation of the Agency of Administration of Sequestered and Confiscated Properties and the Bailiff Service".

50. According to the Criminal Procedure Code sequestrated objects are kept by the secretary of the proceeding authority. When this is not possible or appropriate, the proceeding authority orders their safeguarding in another place defining the manner in which it has to be done.

51. The Law on "Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Assets" defines the procedures, competences and criteria for the implementation of preventive measures against the assets of persons who are suspected in participating in organised crime and trafficking.

52. Article 6 of CETS N° 198 makes a reference to Article 4, which specifies the property subject to freezing or seizure. This property can originate from money laundering or from the category offences in the Appendix to the Convention. It covers a number of offences to which the Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Assets" is not applicable.

53. The Law "on Preventing and Striking at Organized Crime and Trafficking through Preventive Measures against Assets" (Article 34) designates the Agency for the Administration of Seized and Confiscated Assets as the responsible institution for the administration of seized and confiscated assets under the law in question. For the supervision of the administration of confiscated assets by the Agency of Administration of Sequestered and Confiscated Assets, as well as for taking decisions about the destination of the confiscated assets, the Inter-institutional Expert Advisory Committee for Measures against Organized Crime is created and functions (Article 35). The law envisages the establishment of a special fund for the prevention of criminality and for legal education out of 50% of the income received from the implementation of the law in the fiscal years 2009-2010. As of now the amount of the special fund is to be defined yearly by the law on state budget (Article 37). This fund is designed to:

a) improve the functioning of criminal justice, giving a destination for assets in the administration of the General Prosecutor's Office and of the Ministry of Justice;

b) improve the preliminary criminal investigations of organized crime and developing programmes for the protection of witnesses and justice collaborators, giving a destination for assets in the administration of the ministry that covers issues of public order;

c) provide assistance to the victims of organized and violence, as well as encouraging social programs for those categories, giving a destination for assets in the administration of the ministry that covers social issues.

54. In addition to the central institutions, the beneficiaries of the financing of projects for the prevention of criminality may also be:

a) the units of local government where the confiscated immovable assets are located;

b) non-profit organizations involved with social, cultural and health rehabilitation of persons in need, especially those affected or endangered by criminal activities, including therapeutic centres and organisations, centres of re-training and curing users of narcotic substances, as well as centres of assistance and rehabilitation of the victims of trafficking in human beings, which have been conducting such activities in the last three years from submission of the request.

55. According to Article 35(5), based on these priorities the committee gives recommendations, which are addressed to the Ministry of Finance, for the effective disposition of the income within the State Budget, also including a recommendation for the payment of the operating expenses of the agency.

56. When applying a seizure measure under this law, in the decision of sequestration of assets, the court also designates one or more administrators from the list of experts of the Agency of Administration of Sequestered and Confiscated Assets (Article 15). The administrator has the duty of preserving and administering the sequestered assets. In addition, he has the duty of increasing, if possible, the value of those assets.

57. The administrator designated by decision of the court for the execution of the sequestration measure and for the administration of the object submits every necessary request to the prosecutor's office, the bailiff's service or any other state institution (Article 16).

58. The administrator submits periodic reports to the agency about the administration of the sequestered assets, accompanied by the respective documentation if requested. For properties that are damaged, whose value falls in a significant manner or which go out of use, the court, on its own initiative or at the request of the parties, may decide the transfer of the real rights to third parties, based on the principles of good administration of the assets with the exception of persons subjected to this law (Articles 18 and 19). As the new law has only recently come into force there have not been any cases as yet of transfer of real rights to third parties.

Effective implementation

59. The new law entered into force in January 2010 and according to the authorities the Agency has taken measures provided for by the law in 5 cases, applying

sequestration measures. The number of sequestrations shows that the authorities are taking steps in the right direction.

Recommendations

60. The Albanian authorities should continue to develop best practices in asset management, particularly in respect of potentially deteriorating assets, and to extend the application of asset management measures to all the categories of offences set out in the Appendix to the CETS N°198.

6. Investigative powers and techniques required at the national level – Article 7 paragraphs 1, 2a, 2b, 2c, 2d

The areas where the Convention is considered to add value are as follows:

- The provisions of Article 7 introduce powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation. In particular: Article 7 paragraph 1 provides that "Each Party shall adopt *such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy*."

- Article 7 paragraph (2a) provides for power to determine who are account holders: "*To determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts*;"

- Article 7 paragraph (2b) provides for the power to obtain "historic" banking information *"To obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account*;"

- Article 7 paragraph (2c) [subject to declaration under A.53] provides for the power to conduct "prospective" monitoring of accounts as it provides for "*To monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts;*"

- Article 7 paragraph (2d) provides for the power to ensure non-disclosure *"To ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out*."

- States should also consider extending these powers to non-banking financial institutions.

Description and analysis

61. According to Article 210 of the Criminal Procedure Code, the court may decide to seize bank documents, negotiable instruments, sums deposited in current accounts and any other object even if found in safety vaults when there are reasonable

grounds to think that they are connected to the criminal offence even though they do not belong to the defendant or are not under his name. In cases of urgency the decision may be taken by the prosecutor.

62. According to Article 211, persons bound to maintain professional or state secrecy must immediately hand in to the proceeding authority acts and documents, even in the original copies, and anything else kept by them because of their duty, service or profession, except when they declare that it is a state secret or a secret related to their duty or profession. In the latter case, the necessary verifications are conducted and, when it is established that the declaration is groundless, the proceeding authority orders the seizure. When the competent authority confirms the state secret and the evidence is crucial to the solution of the case, the proceeding authority can still decide to acquire the evidence. If within thirty days from the request, the competent authority does not confirm the secret, the proceeding authority orders its seizure.

63. According to Article 14 of the AML/CFT Law, subjects or supervisory authorities, their executives, officials or employees when reporting or submitting information in compliance with provisions of this law are exempted from criminal, civil or administrative liability arising from disclosure of professional or banking secrecy.

64. In relation to confiscation proceedings under Law no.10 193 according to Article 9 of the Law "on the Prevention and Striking at Organized Crime and Trafficking through Preventive Measures against Property", the prosecutor may directly, or through judicial police, ask any office of state administration, public legal person or entity, and other natural or legal persons for data and copies of documents that are judged essential for the purposes of verifying the assets of the persons subject to this law. With an authorization issued by the prosecutor or the court, the officers of the judicial police, according to rules provided for in the Criminal Procedure Code, may order sequestration of the documents examined.

Paragraph 2a)

65. There is no central database of domestic bank accounts, but the prosecutor would simply make enquiries, where necessary, of the 16 commercial banks. According to Article 22(c) of the AML/CFT Law (Duties and functions of the Competent Authority), the GDPML is vested with the authority to request, in the context of the implementation of its legal obligations, financial information from the subjects with respect to transactions performed, for the purposes of the prevention of money laundering and financing of terrorism.

66. The implementation of this power of the GDPML is underpinned by corresponding relevant obligations of subjects. In particular, the obliged entities have the obligation to submit to the GDPML information, data and additional documents (Article 7 of the Instruction "On the Reporting Methods and Procedures of the Obliged Entities Pursuant to Law N° 9917, date 19.5.2008 On the Prev ention of Money Laundering and Terrorism Financing").

67. Special requirements are in place for ensuring data collection. Under the AML/CFT Law the reporting entities are required to perform customer identification (including identification of beneficial owners). They are also required to establish a centralized system in charge of data collection and analysis (Article 7of the Instruction "On the Reporting Methods and Procedures of the Obliged Entities Pursuant to Law N° 9917, date 19.5.2008 "On the Prevention of Money Laundering and Terrorism

Financing"). Meanwhile, there is an obligation for subjects to enter in their database any information related to customer identification and any financial transaction carried out on behalf of or on the account of the customer (Article 7 of Bank of Albania Regulation no. 44, dated 10.06.2009 "On Prevention of Money Laundering and Terrorist Financing").

68. These legislative requirements appear to provide a sufficient basis for determining whether a natural or legal person is the holder or beneficial owner of one or more accounts in any bank located in Albania and for obtaining the details of identified accounts. The definition of "beneficial owner" in the AML law appears in line with international standards but it is unclear in this desk review how extensively full information on beneficial owners is available in Albania in practice.

Paragraph 2b)

69. The AML/CFT Law (Annex V) specifies the identification data which should be subject to regular up-date. According to Article 16 the subjects should keep data registers, reports and documents related to financial transactions, national or international, regardless of whether the transaction was carried out in the name of the client or of third parties, together with all supporting documentation, including account files and business correspondence, for 5 years from the date of the execution of the financial transaction. At the request of the GDPML, the information is stored for longer than 5 years. The subjects should keep the data of the transactions with all the necessary details to allow for the reconstruction of the entire cycle of transactions, with the aim of providing information to the FIU (GDPML).

70. The reporting entities should ensure that all client and transaction data, as well as the information kept according to the referred Article, are immediately made available, at the request of the GDPML.

71. The above provisions seem to ensure that obtaining the data specified in Article 7(2(b)) of the CETS N°198 is possible domestically by competent authorities.

Paragraph 2c)

72. Despite the requirements of the Convention and Article 210 of the Criminal Procedure Code, there is no explicit requirement for competent authorities to request prospective monitoring of bank accounts. The Albanian authorities consider this is not possible, though they made no declaration or reservation under A.53 of the Convention in relation to A.7(2)(c). Thus, there are no legislative or other measures requiring the monitoring during a specified period of the banking operations that are being carried out through one or more identified accounts, though the Albanian authorities indicated that banks sometimes co-operate with the authorities on this basis.

Paragraph 2d)

73. Disclosure of the information envisaged by Article 7(2) of the Convention to the bank customer concerned or to other third persons or the fact of investigation is prohibited by legislation.

74. The employees of the reporting entities are not allowed to inform the client or any other person about the verification procedures regarding suspicious cases, as well as any reporting made to the GDPML (Article 15 of the AML/CFT Law). The Albanian authorities provide for administrative penalties under Article 27 AML Act, with penalties of 2 500 000 ALL for individuals and 5 000 000 ALL for legal entities. Criminal proceedings are only possible where the person concerned can be considered as an aider & abettor.

75. Non-bank financial institutions cannot hold accounts, and thus no consideration has been given to extending these provisions to accounts held in non-bank financial institutions.

Effective implementation

76. In the course of the first 6 months of 2010, 2 savings deposits of a total amount of 1,946,267 Lek, 8 bank accounts of a total amount of 1,550,254.81 Lek and 334,997 Euro were seized on the basis of identification of these accounts using the appropriate domestic provisions outlined above.

77. The statistics provided indicate that information on the date of account opening, initial amounts on the accounts, transactions, current balances, etc. were all available to the competent authorities.

Recommendations and comments

- In the absence of any declarations or reservations when acceding to this treaty, to provide for legislative and other measures to enable Albania to monitor during a specified period the banking operations that are being carried out through one or more identified accounts.

7. International co-operation

7.1. Confiscation – Articles 23 paragraph 5, Article 25 paragraphs 2 and 3

The Convention is considered to add value in the following areas:

The Convention introduces a new obligation to confiscate that extends to "*in rem*" procedures. Hence, Article 23 paragraph 5 reads as follows:

> "*The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures* ***equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions****, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention*." (i.e. transformed or converted etc)

Asset sharing (though A.25(1) retains the basic concept that assets remain in the country where found, the new provisions in A.25(2) and (3) require priority consideration to returning assets, where requested, and concluding agreements).

Description and analysis

78. As noted earlier, the Albanian authorities recognise non conviction based confiscation domestically under the law on the Prevention and striking of organised crime through preventive measures against property. The Albanian authorities therefore consider that they can co-operate under domestic law with Parties requesting the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, in relation to matters connected with organised crime or the offences set out in the Law on preventing and striking at organised crime and trafficking through preventive measures against assets. The Albanian authorities indicated that requests in these circumstances could be presented to the Ministry of Justice which would support the application and pass the request to the General Prosecutor to obtain an order by the court –Article 506 of the Criminal Procedure Code. The Albanian authorities initially indicated that they did not consider that they could process any application which is not covered by this special law. They have subsequently advised the rapporteurs that the Constitution of the Republic of Albania ranks ratified agreements immediately after the Constitution and above domestic legislation and that they are thus directly enforceable.

Article 25 paragraphs 2 and 3

79. When acting on the request made by another Party in accordance with Articles 23 and 24 of the CETS N° 198 the Albanian authorities consider they are in a position to return the confiscated property to the requesting Party in the light of Article 217 of the Penal Code and Article 23 of the Law on Jurisdictional relations with foreign authorities in criminal matters, which provides that "the objects sequestered are sent to the foreign judicial authority at its request, in execution of the rogatory letter, to be confiscated or returned to the lawful owner".

80. Albania has not entered into international agreements or arrangements related specifically to sharing confiscated property with other Parties.

Effective implementation

81. There is no practice so far on either of these Articles.

82. There have been no requests to Albania for either the enforcement of a non-conviction based order or for mutual legal assistance in respect of such an order. So far as the rapporteurs are aware there have been no applications as yet for the return of confiscated property.

Recommendations and comments

- The ability to cooperate under A.23(5) would seem to be possible in respect of organised crime cases and in the offences to which the Law on Preventing and striking at Organised Crime and Trafficking is concerned, though this has not been tested. Likewise the assertion of an ability to co-operate under A.23(5) in respect of any offence (whether or not it is mentioned in the new law on the Prevention and Striking of Organised Crime) because the Convention obligation is thought to be directly enforceable appears, at best, questionable, given the Albanian stance on investigative assistance on the monitoring of accounts (see below). The Albanian

authorities should consider clarifying their ability to cooperate on this basis to a wider range of serious cases than are set out in the law on the Prevention and Striking at Organised Crime. The Albanian authorities should at least clarify their ability to co-operate under Article 23 paragraph 5 of the Convention in respect of the full range of offences set out in the Appendix to the Convention. The Albanian authorities should also consider setting out appropriate procedures for handling such requests for international assistance.

- The ability to return confiscated property under A.25(2) to the requesting Party appears to be in place. However, A.25(3) does not appear to have been directly addressed. The Albanian authorities should consider concluding agreements or arrangements on sharing confiscated property with other Parties either on a regular or case by case basis.

7.2. Investigative assistance – Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5

The areas where the Convention is considered to add value here are the following:

- The Convention introduces the power to provide international assistance in respect of requests for information on whether subjects of criminal investigations abroad hold or control accounts in the requested State Party. Indeed, Article 17 paragraph 1 reads as follows: *"Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts."* This provision may be extended to accounts held in non-bank financial institutions and such an extension may be subject to the principle of reciprocity.

- The Convention also introduces power to provide international assistance in respect of requests for historic information on banking transactions in the requested Party (which may also be extended to non bank financial institutions and such extension may also be subject to the principle of reciprocity). Article 18 paragraph 1 provides that *"On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account*."

Description and analysis

Article 17 paragraphs 1, 4, 6

83. Information requested by another Party as to whether a natural or legal person that is subject to criminal investigation holds or controls one or more accounts in any bank located in their territory can be provided in answer to a mutual legal assistance request addressed to the Ministry of Justice by rogatory letter. The Ministry of Justice would satisfy themselves that this request is covered by CETS 198 or other relevant international agreements or bilateral agreements and, if so, transfer the request to the General Prosecutor's Office which submits the request to the court under Article 7 of the Law on Jurisdictional Relations with Foreign Authorities (N° 10 193, 3 December 2009) and Article 506 of the Criminal Procedure Code. The Albanian authorities advised that there are no special provisions or conditions which

would apply in these circumstances, of the type envisaged under Article 17 paragraph 4 of the Convention. The General Prosecutor's Office would make the necessary inquiries with the16 commercial banks operating in Albania and report back to the Ministry of Justice. Insofar as Article 17 (6) of the Convention is concerned, the Albanian authorities have not extended this provision to non-bank financial institutions because such institutions cannot hold accounts on behalf of their clients.

Article 18 paragraphs 1 and 5

84. On request of another party the particulars of specified bank accounts and banking operations which have been carried out during the specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account data can be provided for intelligence purposes only.

85. The provisions of Article 18 are not applicable to non-financial institutions as the latter cannot hold accounts on behalf of their clients.

Effective implementation

86. So far as Article 17 is concerned there appear to have been no requests under this Convention so far.

Recommendations and comments

- The Albanian authorities should also consider extending this power to non-bank financial institutions, even if they cannot supply such information as such institutions do not hold accounts. It may be helpful to Albania to request such information in the future from other States Parties and they would then be in a position, at least, to show reciprocity on paper.

7.3. Requests for the monitoring of banking transactions - Article 19 paras 1 and 5

The Convention is considered to add value here as it establishes the power to provide international assistance on requests for prospective monitoring of banking transactions in the requested Party (and may be extended to non bank financial institutions). Article 19 paragraph 1 reads as follows:

"Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party."

Description and analysis

87. The Albanian authorities have argued that they do not have the power, at the request of another Party to monitor banking operations that are being carried out through one or more accounts, during a specified period. The authorities did not provide information as to whether they have received such requests in practice. It is unclear why they have argued the primacy of A.116 and 122 of the Constitution in connection with A.23(5) of the Convention but not in relation to A19(1). The rapporteurs have nonetheless accepted what they say and consider therefore that

provision needs to be made for this, given that they have not entered any declaration at the time of ratification as to how A.19 will be applied.

88. Non banking institutions can not hold accounts on behalf of their clients.

Effective implementation

89. No such requests have been made so far as the Rapporteurs are aware.

Recommendations and comments

The Albanian authorities need to provide for the power to monitor banking operations on request of other contracting parties as a matter of urgency, if this is required to fulfil Convention obligations. It could also be considered extending this power to prospective monitoring in respect of non-bank financial institutions.

7.4. Procedural and other rules (Direct communication) – Article 34 paragraphs 2 and 6

The Convention is considered to add value in that it introduces the possibility for direct communication prior to formal requests. According to Article 34 paragraph 6:

"Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party."

Description and analysis

90. Article 509 of the Criminal Procedure Code and Article 6 paragraph 2 of the Law on "jurisdictional relations with foreign authorities in criminal matters" provide that in urgent cases the domestic judicial authorities can transmit directly a request to the foreign authority, but also informing the Ministry of Justice. Article 15 of the above-mentioned law provides that rogatory letters can be forwarded directly between local and foreign judicial authorities in urgent cases, provided that the Ministry of Justice receives a copy of these rogatory letters.

91. Foreign authorities can contact directly the Albanian authorities prior to a formal request to ensure that it can be dealt efficiently upon receipt and that it contains sufficient information and supporting documentation to meet the Albanian legislative requirements provided that there is an international agreement based on the reciprocity principle. There have been no such cases of co-operation under the Convention as yet.

Effective implementation

92. So far these provisions have not been applied under this Convention.

Recommendations

- The Albanian authorities should consider applying the principles in Article 34 paragraphs 2 and 6 to all money laundering and financing of terrorism cases and all annexed predicate offences in practice.

8. International co-operation – Financial Intelligence Units - Article 46 paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

It is considered that the added value of the Convention in A.46 is that it sets out a *"detailed machinery for FIU to FIU cooperation, which is not subject to the same formalities as judicial legal cooperation."* The relevant provisions are set out in full.

Paragraph 1 *Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.*

Paragraph 2 *For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.*

Paragraph 3 *Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.*

Paragraph 4 *Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.*

Paragraph 5 *When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.*

Paragraph 6 *An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.*

Paragraph 7 *Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.*

Paragraph 8 *When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.*

Paragraph 9 *Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on*

the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.

Paragraph 10 *FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.*

Paragraph 11 *The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.*

Paragraph 12 *The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.*

Description and analysis

93. According the provisions of Article 22 of the AML/CFT Law " the GDPML can:

"e) exchange information with any foreign homologue agency, (which means all FIUs to whom the GDPML can send ML/TF requests or provide ML/TF related information/responses based on Egmont Group Principles of Information Exchange), subject to similar obligations of confidentiality. The provided information should be used only for the purposes of prevention and fight against money laundering, criminal offences that generate crime proceeds and financing of terrorism and can be shared with others only with prior approval.
f) can enter in agreements with any homologue foreign agency that exercises similar functions and is subject to similar obligations of confidentiality".

94. With regard to paragraph 3 of Article 46, the above mentioned provisions constitute the domestic framework allowing the FIU to co-operate with any types of FIU. So far, the Albanian authorities indicated that no request for exchange of information with another FIU has been made explicitly based on CETS 198. The Albanian authorities indicated that they respond to requests for exchange of information without enquiring into the nature of the requesting FIU as far as the information requested is for intelligence use. However, they were unable to provide statistics which confirm that requests are responded to in respect of all types of FIUs.

95. With regard to paragraph 4 of Article 46, the primary law does not prevent the submission of a brief statement of relevant facts by the Albanian FIU to its counterparts. There is no secondary legislation (by-laws) regulating the Article 46 paragraph 4 requirement. Nonetheless, the Albanian authorities indicated that they have presently entered into bilateral agreements (Memoranda of Understanding) with 36 FIUs and that MoUs are in the process of negotiation. All of these Memoranda contain a requirement for a brief statement of facts as required under paragraph 4 of Article 46. The Albanian authorities also advised that, based on the Egmont principles on the exchange of information, up till now it has been the general practice to provide statements of facts, regardless of whether a MoU had been agreed with the requesting party.

96. With regard to paragraph 5 of Article 46, the Albanian authorities indicated that, further to Article 22 of the AML/CFT Law, every request for information is processed by Egmont Secure Web without the need for a formal letter of request under applicable conventions or agreements, although there is no formal regulation on this point. Replies are said to include all the necessary information on the subjects of the requests, the financial data and a short description of the cases. If law enforcement data is available, the Albanian authorities stated that this is also included in the reply to a request.

97. With regard to paragraph 6 of Article 46, the Albanian authorities indicated that they cannot divulge information that is considered a state secret without permission of the Department classifying such information. The Albanian authorities pointed out that almost all of the data received from financial institutions is not classified. There is no notion of "official" secrecy in Albania. The notion of State secrecy is covered in Article 2 of Law 8457 on State secrecy.[7] So far, the Albanian authorities indicated that no refusal had been made to another FIU on the basis of state secrecy. Any refusals would however be explained and documented. There is no by-law which would regulate the general conditions under which the FIU may refuse to divulge information under Article 46 paragraph 6 (impairment of a criminal investigation being conducted in the requested party; where divulging information would be clearly disproportionate to the interests of a natural or legal person or the party concerned; or would otherwise not be in accordance with fundamental law of the requested party).

98. With regard to paragraph 7 of Article 46, the Albanian authorities pointed to Article 22 (e) of the AML/CFT Law, which clearly prohibits the dissemination of received information from a counterpart FIU to a third party without prior approval. However, Article 22 (e) does not provide authority directly for the requirement that a receiving FIU should only use information received for purposes other than analysis with prior consent. Indeed, Article 22 (e) (which is primarily aimed at information received from the reporting entities) has a wide formulation for the use of information by the FIU which may not be appropriate in the context of FIU to FIU exchange of information. As noted above, there is no secondary legislation or by-law regulating the handling or use of information subject to FIU to FIU co-operation.

99. With regard to paragraph 8 of Article 46, the Albanian authorities do not have a provision in either primary or secondary legislation which would cover the Article 8 requirement (to impose restrictions and conditions on the use of information and to comply with such restrictions in respect of requests made to them). In practice the Albanian authorities indicated that all transmitted information is intended for intelligence purposes and this is written in all responses.

100. With regard to paragraph 9 of Article 46, the Albanian FIU does not have a legal basis on which it could consent to the use of transmitted information (from any type of FIU) for criminal investigations or prosecutions. So far, the Albanian FIU advised that no such requests have been made to it. If such requests were made the FIU would advise the counterpart authority that it would have to proceed by commission rogatoire.

[7] According to article 2 of Law 8457 on State secrecy "State secret" according to this law, means classified information, its unauthorized exposure can threaten the national security. "National security" means the protection of the independence, territorial integrity, constitution order and foreign relations of the Republic of Albania. "Information" means every knowledge which can be communicated or documented, independent of the form, and that is under the control of the state.

101. With regard to paragraph 10 of Article 46, the Albanian authorities advised that all archives are held in a high security area with video surveillance to which access is limited only to employees of the FIU who require such access. The FIU uses the Egmont Secure Web for sharing information with counterparts. The FIU indicated that the physical security measures apply equally to information transmitted by exchange from counterpart FIUs as to information received from subject persons in Albania. That said, there is no provision in the AML/CFT Law which specifically regulates this issue. The handling of data in the FIU and by FIU staff is subject to an instruction that Law N° 8457 (11 February 1999) on "the information classified "state secret" further amended by Law N° 9541 (22 May 2006) on "some additions and amendments to Law N° 8457 and the decision N° 1 22 (15 March 2001) of the Council of Ministers on "the consideration and the issuance of the "security certificate" for persons to be acquainted with information classified as "state secret" shall apply.

102. With regard to paragraph 11 of Article 46 the Council of Europe Convention for the protection of individuals with regard to processing of personal data (ETS. N° 108) was ratified in 2004. According to Article 24, paragraphs 1 and 2, of the Law "On information classified "State Secret" the appropriate institutions protect the classified information of foreign countries or international organisations in accordance with the standards that provide a protection level as required by the country or international organisation.

103. With regard to paragraph 12 of Article 46 currently there is no requirement based on primary or secondary legislation to ask for or to provide feedback to counterpart FIUs. Notwithstanding this the Albanian FIU indicated that, in line with Egmont best practice, they would both seek feedback in respect of materials they have transmitted and send feedback to FIUs to which materials have been sent. There have been no requests directly under this Convention. However, the Albanian authorities provided some indicative statistics on requests from and to counterparts but it is unclear whether these counterparts are Parties to the Convention.

Effective implementation

104. Though, in the main, the Rapporteurs accepted that the Albanian FIU was implementing most of the requirements, difficulties presented themselves especially in respect of the requirements of paragraphs 6 and 9 of Article 46.

Recommendations and comments

- To take appropriate steps to ensure that the requirements of Article 46 (in particular paragraphs 4, 6, 8, 9 and 12) are fully reflected in the national AML/CFT framework so they are clearly applicable to the FIU.

- To utilise the CETS 198 provisions in the field of FIU exchange of information set out in Article 46 with FIU counterparts which have ratified the Convention.

- To develop more detailed statistics in the field of information exchange between States, with special reference to States Party FIUs under Article 46.

9. Postponement of domestic suspicious transactions – Article 14

The Convention is considered to provide added value by requiring State Parties to take measures to permit urgent action in appropriate cases to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.

Description and analysis

105. According to the provisions of Article 22 (j) of the AML/CFT Law, the General Directorate for the Prevention of Money Laundering (GDPML) can order the blocking or temporary freezing of transactions or financial actions for a period up to 72 hours, when there are reasons based on facts and specific circumstances relating to money laundering or financing of terrorism. If within this period it detects elements of a criminal offence, the Authority should refer the case to the Prosecutor's Office. The referral should contain a copy of the order as well as all other information regarding the case.

Freezing Orders issued from the GDPML between 2007 and 2010 according to Article 22 of the AML/CFT Law

	2007	2008	2009	2010
Freezing Orders	0	5	23	23
Frozen EUR	0	504,934	3,736,275	891,881
Frozen USD	0	486,046	20,000	11,163
Frozen ALL	0	952,032	31,737,850	8,355,972
Frozen land lots and apartments	0	0	1,060 m2	8 Apartments valued 371,800 Eur; 45,960 USD and 9,333,280 Lek Total: 473,625 Eur.
Seized by the Prosecution and Courts	0	0	2,946,275 EUR 31,662,565 ALL 1,060 m2	480,000 Euros from bank accounts 8 Apartments valued 371,800 Eur; 45,960 USD and 9,333,280 Lek Total: 473,625 Eur.

In some cases the real value of the apartments could be higher as the value indicated is the one from the selling contract. The exchange rate of 30.12.2010 was used to calculate the total amounts of properties frozen and seized.

106. According to Article 12 paragraph 2 of the AML/CFT Law when a reporting entity is requested by a client to carry out a transaction and the former suspects that the transaction may be related to money laundering or terrorism financing, it should immediately report the case to the GDPML and to request instructions as to whether

it should execute the transaction or not. The GDPML is under the obligation to respond within 48 hours.

107. This obligation is further developed by the Instructions of the Minister of Finance No. 12 dated 5 April 2009 "On the Reporting Methods and Procedures of the Obliged Entities".

Effective implementation

108. With regard to the implementation of Article 12 of the AML/CFT Law the Albanian authorities reported that in 2010 there has been one case in which a bank suspended the transactions and reported the case to the GDPML. The GDPML, within 48 hours, issued a freezing order blocking 426,900 EUR and duly informed the Prosecutor's Office. The futher reported that there has also been one case in 2011 where a bank suspended the transactions and reported the case to the GDPML. Due to the lack of evidence that could link this transaction to potential any ML or FT activity the GDPML did provide the consent permitting the execution of such transaction.

Recommendations and comments

- This provision appears to be implemented effectively.

10. Postponement of transactions on behalf of foreign FIUs – Article 47

Article 47 establishes a new international standard, namely:

"1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.

2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:

a the transaction is related to money laundering; and

b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report."

Description and analysis

109. The Albanian authorities do not have a special legal provision to permit the full application of the provision of Article 47 and to utilise the same conditions as apply in its domestic law in respect of postponement of transactions.

Effective implementation

110. As there have not been any requests under the Convention, no statistical data has been provided. In one such case the Albanian FIU issued a freezing order on the basis of the general provisions in the domestic legislation (Article 22 (j) of the AML/CFT Law) but not based on the provisions of the Convention.

Recommendations

- It is recommended that Albania upgrades its AML/CFT Law to clearly cover the requirements of Article 47 of the Convention by creating a specific provision (or to extend relevant domestic provisions) to suspend or withhold consent to a transaction on behalf of a foreign FIU for such periods and on the same conditions as apply in domestic law for the purpose of analysing the transaction and confirming the suspicion.

11. Refusal and postponement of co-operation – Article 28 paragraphs 1d, 1e, 8c.

The Convention is considered to add value here as, according to A.28(ie) and A.28 (id), the political offence ground for refusal of judicial international cooperation can never be applied to financing of terrorism (it is the same in respect of the fiscal excuse)

Provision is made in A.28(8c)to prevent refusal of international cooperation by States (which do not recognise self laundering domestically) on the grounds that, in the internal law of the requesting Party, the subject is the author of both the predicate offence and the ML offence.

Description and analysis

111. According to the authorities, as there are no provisions in domestic legislation preventing such co-operation, they consider such co-operation cannot be refused on the grounds that the request relates to a fiscal offence, where the offence also relates to financing of terrorism.

112. The Albanian authorities consider that co-operation cannot be refused on the grounds that the offence was a political one, especially if the offence constitutes a crime against humanity (including terrorism financing offences).

Effective implementation

113. The Albanian authorities consider that co-operation would be granted in cases of self-laundering offences and in respect of confiscations based on this offence. However, no information has been provided as to whether any cooperation has been granted in such cases.

Recommendation

- The Albanian authorities should ensure that they are in position to provide meaningful statistical information on the practice of international co-operation in these two areas.

II. Overall Conclusions on implementation of the Convention

114. The information provided on the legal structure and practice in response to the questionnaire is basically adequate. Where information is generally lacking is on evidence of effective implementation and, in particular, evidence that the new measures in the Convention which add value to the existing international standards are being used to improve the national performance on AML/CFT issues (e.g., in the area of criminalisation of money laundering). It is important that these new measures are tested in practice, and that statistical data is maintained to demonstrate that the authorities are making use of these provisions, wherever possible, to improve national AML/CFT performance.

115. Several of the Convention provisions have been taken on board. The new law on "Striking at Organised Crime and Trafficking Through Preventive Measures" is a welcome step forward in the country's ability to take away criminal profit through a non-conviction based route. Its results need careful monitoring.

116. It is important that the mandatory convention provisions (where there are no reservations or declarations) are placed within domestic law, where currently there is doubt – e.g., in respect of the monitoring of transactions for domestic purposes and for international cooperation purposes.

* * * *

III. Annexes

ANNEX I

Article 9 of the Convention – Laundering offences

3. Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender

    a) suspected that the property was proceeds,

    b) ought to have assumed that the property was proceeds.

4. Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

    a) only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or

    b) only to a list of specified predicate offences; and/or

    c) to a category of serious offences in the national law of the Party.

5. Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.
6. Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.

ANNEX II

Article 10 of the Convention – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

   a) a power of representation of the legal person; or

   b) an authority to take decisions on behalf of the legal person; or

   c) an authority to exercise control within the legal person,

   as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

ANNEX III

Article 3 of the Convention – Confiscation measures

3. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4. Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

ANNEX IV

Law No. 10 192 on Preventing and Striking at Organised Crime and Trafficking through Preventive Measures against Assets (3.12.2009)

In reliance on articles 78 and 83, point 1, of the Constitution, on the proposal of the Council of Ministers,

THE ASSEMBLY

OF THE REPUBLIC OF ALBANIA

D E C I D E D:

CHAPTER I
GENERAL PRINCIPLES AND PROVISIONS

Article 1
Object

This law defines the procedures, competences and criteria for the implementation of preventive measures against the assets of persons who are subject to this law as suspected of participation in organised crime and trafficking.

Article 2
Purpose

The purpose of this law is preventing and striking at organised crime and trafficking through the confiscation of the assets of persons who have an unjustified economic level as a result of suspected criminal activity.

Article 3

Field of application

1. The provisions of this law are applicable to the assets of persons as to whom there exists a reasonable suspicion, based on indicia, of:
   a) participation in criminal organisations or structured criminal groups, according to the provisions of articles 333 and 333/a of the Criminal Code and of the commission of crimes by them;
   b) participation in terrorist organisations or armed bands, according to the provisions of articles 234/a and 234/b of the Criminal Code, and of the commission of crimes by them;
   c) the commission of other actions for terrorist purposes, provided in the special part of the Criminal Code, chapter VII;
   ç) the commission of the crimes provided in articles 109, 109/b, 110/a, 114/b, 128/b, 278/a, 282/a, 283, 283/a, 284/a of the Criminal Code;
   d) the commission of the crimes for purposes of earning unlawful assets provided in articles 114/a and 287 of the Criminal Code.

2. The provisions of this law are also applicable to assets of:
   a) close persons (spouse, children, ancestors, descendants, brothers, sisters, uncles, aunts, grandsons/nephews, granddaughters/nieces, children of brothers and sisters, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, cohabitant, step-son, stepdaughter, step-father and step-mother) of the subjects of point 1 of this article;
   b) natural or legal persons as to which there are sufficient data that their assets or activities are possessed, partially or entirely, in a direct or indirect way, or have been used, have facilitated or in a form have affected the commission of unlawful activities by the persons provided in point 1 of this article.
3. Preventive measures may also be sought against the heirs of a person subject to the implementation of this law, but in any case, no later than five years from the date of death.
4. This law is also applicable to the assets of persons created before the entry of this law into force, provided that the assets shall have been gotten during his suspected inclusion in criminal activity according to this law.

Article 4
Preventive measure

In the meaning of this law, a "preventive measure" is any measure of a property nature that the court orders in a judicial proceeding through the sequestration of assets, the economic, commercial and professional activity of persons, as well as through their confiscation.

Article 5
Relation to the criminal proceeding

1. The procedure of setting and implementing preventive measures according to this law is autonomous from the condition, level or conclusion of a criminal proceeding that is held against the persons who are subjects of this law.
2. Verifications, investigations and trial according to this law rely on the procedural rules of this law and are supplemented by the rules defined in the Code of Civil Procedure.
3. In cases when the assets sequestered or confiscated according to this law are also subject to sequestration or confiscation according to the Criminal Code and the Code of Criminal Procedure, the court orders the suspension of the consequences of the implementation of the measures of sequestration and confiscation according to this law. The suspension ends with the rendering of a criminal judicial decision for the revocation or extinguishment of those measures.

Article 6
Object of the verifications

1. Verifications are performed against the persons provided in article 3 of this law about the financial means, assets, economic, commercial and professional activities, economic level and sources of their income.
2. The verifications are done, in particular, if these persons have permits, licenses, authorisations, concessions and other rights to conduct economic, commercial and professional activity, as well as to verify whether they enjoy contributions, financing or credit of any kind given by or gained from the state, public legal persons or entities, international institutions or bodies as well as to verify whether the assets, activities or property rights are justified.

Article 7
Competence and composition of the court

1. A request to take preventive measures is examined at the first instance by the court of first instance for serious crimes and at the second instance, by the court of appeal for serious crimes.
2. The court of first instance for serious crimes tries requests for the sequestration of assets with a single judge. Requests for the confiscation of assets are tried by a judicial panel consisting of three judges.
3. The court of appeal for serious crimes tries [cases] with a judicial panel consisting of three judges.
4. For notifications, time periods and the procedure of the adjudication, the rules of the Code of Civil Procedure are applied, to the extent they are compatible.

Article 8
Preliminary verifications

1. The prosecutor's office and the judicial police receive knowledge about the assets that are to be verified according to this law on their own initiative or with a notification made by third parties.
2. On receiving knowledge about assets that are to be verified according to this law, the judicial police without delay refer to the prosecutor in writing the fundamental elements of the fact and the other elements that have been collected.
3. The prosecutor carries out actions himself and through the Judicial Police for the investigation of the financial means, assets, economic, commercial and professional activities, manner of living, as well as the sources of income of the persons who are subjects of the implementation of this law.

Article 9
Obligation to hand over information and documents

1. Directly or through the Judicial Police, the prosecutor may ask any office of the state administration, public legal person or entity, and other natural and legal persons for data and copies of documents that are judged essential for purposes of verifying the assets of the persons provided in article 3 of this law.
2. With an authorisation issued by the prosecutor or the court, the officers of the Judicial Police may order the sequestration of the documents examined, according to the rules provided in articles 208, 209, 210 and 211 of the Code of Criminal Procedure.

Article 10
Performance of special actions

1. The court, at the request of the parties or on its own initiative, may perform other special actions that are not regulated expressly by law if they have value for the resolution of the case and do not affect the essence of the fundamental human rights and freedoms.
2. If during the adjudication, the need arises for international legal assistance, the international agreements accepted by the Albanian state, as well as respective procedural provisions, are applicable.

CHAPTER II
SEQUESTRATION OF ASSETS

Article 11
Criteria for sequestration of assets

1. At the motivated request of the prosecutor, the court orders the sequestration of assets of the persons according to article 3 of this law, when there is a reasonable suspicion based on indicia that show that the person may be included in criminal activity and has assets or income that do not respond obviously to the level of income, profits or lawful activities declared, nor are they justified by them and when:
   a) a real danger exists of the loss, taking or alienation of the funds, assets or other rights over which the putting into implementation of the measure of confiscation according to the provisions of this law is provided; or
   b) there are reasonable suspicions that show that the possession of the assets and the exercise of the particular economic, commercial and professional activities are in a state of danger or influence by a criminal organisation or that may facilitate criminal activities.
2. The request of the prosecutor for the sequestration of assets contains the indicia on which the reasonable suspicion is based, as well as the reasoning for at least one of the conditions of point 1 of this article.

Article 12
Sequestration procedure

1. A request for the sequestration of assets is examined by the court with the participation of the prosecutor, within five days from the date of submission, on the basis of the documents submitted by him.
2. The decision for a sequestration measure can be executed upon its announcement. The sequestration measure is valid for a six-month period, starting immediately after the moment of its implementation.
3. In the case of complex verifications, at the request of the prosecutor, the court may decide to extend the time period of implementation of the sequestration measure for three month periods, but no more than one year from the date of the ending of the time period of the sequestration measure according to point 2 of this article. An appeal to a court of a higher level may be taken against this decision.
4. When the sequestration measure is set against immovable assets or assets registered in public registers, the administrator appointed immediately notifies the offices where these registers are kept of this measure.
5. No later than five days before the end of the time period of the sequestration measure provided in point 2 or 3 of this article, the prosecutor may submit a request for the confiscation of the assets or the extension of the time period of the sequestration measure. In the case of a request for confiscation, the sequestration measure continues until the end of the adjudication for the confiscation of the assets.
6. Failure to submit a request according to point 5 of this article brings about the extinguishment of the sequestration measure. However, the extinguishment of the sequestration does not hinder the submission and acceptance of a request for confiscation of the assets.

Article 13
Court decisions when the sequestration measure is revoked

1. With a decision of revocation of the sequestration measure, the court may impose the

obligation on the owner of the assets or the person who has the assets, or part of them, in his use or administration to notify the Tax Police for a period of no less than five years of acts of ownership, purchase or payments made, payments received, professional duties of administration or guardianship, as well as other contracts or acts, according to the type and value designated by the court depending on the assets and the income of the person, but not for a value smaller than two million lek.

2. The notifications contemplated in point 1 are made within ten days from the conclusion of the act and, in any case, by 31 January of each year, for acts performed in the preceding year.
3. The objects earned and the payments received as to which the obligation of notification was not respected are confiscated, wholly or in part, from a person who does not respect the obligations of notification within the time periods defined in point 2 of this article.

Article 14
Execution of the sequestration measure

1. For the execution of the sequestration measure according to this law, the rules of the Code of Civil Procedure are applied, to the extent possible, if this law does not provide otherwise.
2. The decision for taking the measure of sequestration of assets and the decision to extend the time period of the sequestration measure are made known by the court to the possessor of the sequestered assets according to articles 130, 131, 132, and 133 of the Code of Civil Procedure.
3. The judicial bailiff makes an inventory of the sequestered objects in the presence of the administrator of the assets designated for the administration of these assets, and of the person possessing the assets over which the sequestration measure has been taken, if he asks for such a thing. The judicial bailiff documents the making of the inventory and the delivery of the assets to the administrator by an official written record [minutes], which is signed by those present.
4. The Council of Ministers defines by decision detailed procedures and rules of the cooperation of the bailiff's service with the Agency of Administration of Sequestered and Confiscated Assets, as well as the respective payment for the bailiff's service.

CHAPTER III
ADMINISTRATION OF SEQUESTERED ASSETS

Article 15
Administrator of sequestered assets

1. In the decision of sequestration of assets, the court also designates, from the list of experts of the Agency of Administration of Sequestered and Confiscated Assets, one or more administrators. The Agency puts at the disposition of the court at least once a year a list of administrators, with persons employed or authorised by it, and indicates the criteria of designating them.
2. At the request of the administrator, the Agency of Administration of Sequestered and Confiscated Assets may authorise him to ask for the assistance of specialists or other persons, who are compensated for the work done, in conformity with the decision of the Council of Ministers.

Article 16
Duties of the administrator

1. The administrator has the duty of preserving and administering the sequestered assets. In addition, he has the duty of increasing, if possible, the value of those assets.

2. The administrator designated by decision of the court for the execution of the sequestration measure and for the administration of the object submits every necessary request to the prosecutor's office, the bailiff's service or any other state institution.
3. Even on its own initiative, the court may discharge the administrator from duty, at any time, for incompetence or for failure to fulfil his duty. The request is submitted in court by the prosecutor on his own initiative or with a motivated proposal of the Agency of Administration of Sequestered and Confiscated Assets.

Article 17
Prohibitions for the administrator

Except for cases when he receives prior authorisation from the court, the administrator is not permitted to take part in the adjudication, to take loans, to sign agreements of conciliation, arbitration, promise, pledge, mortgaging or alienation of the sequestered assets or to perform other legal actions of administration that are not ordinary.

Article 18
Reporting of the administrator

1. Within 15 days from his appointment, the administrator is obliged to submit to the court a detailed report on the basic elements of the existence and condition in which the sequestered assets are. Subsequently, according to the time periods set by the court, the administrator submits periodic reports to it about the administration of the sequestered assets, accompanied by the respective documentation if requested.
2. The administrator is also obliged to notify the court about other assets that might be subject to the sequestration measure the existence of which he becomes aware of during the administration.
3. The administrator is obliged to send the reports specified in points 1 and 2 of this article at the same time to the prosecutor and the Agency of Administration of Sequestered and Confiscated Assets.

Article 19
Transfer of the real rights for the sequestered assets

For properties that are damaged, whose value falls in a significant manner or which go out of use, the court, on its own initiative or at the request of the parties, may decide the transfer of the real rights to third parties, based on the principles of good administration of the assets. The real rights are not transferred to the persons provided in article 3, point 2 of this law.

Article 20
Paying the expenses of administration

1. The expenses that are necessary or beneficial for the safekeeping and administration of the sequestered assets are paid by the funds secured by the administrator in every kind of lawful source or quality.
2. If sufficient funds to meet the expenses according to point 1 of this article are not earned through the administration of the sequestered assets, they are prepaid by the state, through the Agency of Administration of Sequestered and Confiscated Assets.
3. In cases of imposing the measure of confiscation of assets, the expenses paid for the administration of those assets by the administrator or the Agency of Administration of Sequestered and Confiscated Properties are included in the accounts of their administration. If the funds of the accounts of administration are not sufficient to meet the

payment of these expenses, they are paid, in whole or in part, by the state, without the right of compensation.

4. When the court orders the revocation of the sequestration measure, the owner of the assets has the right to ask for the proceeds of the assets realised during the administration. He has the right to ask for compensation in the amount of the reduction of the value of the assets or the damage that has been caused to the assets.

CHAPTER IV
CONFISCATION OF SEQUESTERED ASSETS

Article 21
Request for the confiscation of assets and burden of proof

1. The measure of confiscation is ordered at the request of the prosecutor, who submits to the court the reasons on which he bases the request.
2. The confiscation of assets is also sought and ordered in cases when a sequestration measure has not been sought and ordered against the assets.
3. The burden of proof to prove that the assets were gained in a lawful manner belongs to the person against whose assets confiscation is sought.

Article 22
Judicial procedure of confiscation

1. During the adjudication of a request for confiscation, the provisions of the Code of Civil Procedure are applied, so long as it is possible.
2. At the request of the prosecutor, the court may also continue the adjudication in cases when the person does not have a known residence within the country, has left the country or despite all the searches made is not found. In this case, the court declares the person not found, designating a lawyer for him. The lawyer may be designated by the court on its own initiative or be selected by the relatives of the person.
3. When during the judicial examination it comes out that the sequestered assets belong to third persons, the court, even on its own initiative, by a reasoned decision, calls them to intervene in the proceeding.
4. Within the time period designated by the court, the third person has the right to present his claims in a session, as well as to seek that other necessary data be received.
5. When it is proven that some of the assets have been transferred or were registered in the name of third parties by fictitious or simulated legal actions, the court finds the invalidity of those legal actions. For this purpose, when the contrary is not proven, [the following] are also presumed to be fictitious or simulated:
6. Transfers and registrations in the name of third parties and with a title that has a burden or charge on it done within two years before the submission of the request to take a preventive measure against the close persons;
7. Transfers and registrations in the name of third parties and with a title given for free or obviously below the market value done within two years before the submission of the request to take the preventive measure.

Article 23
Time length of the trial of a request for confiscation

1. Within three months from the date of submission of a request of the prosecutor according

to article 21 of this law, the court decides on the request for the confiscation of the assets.

2. In complex cases, the court even on its own initiative may give its decision at a later time period, but always within one year from the date of submission of the request for confiscation.

Article 24

Acceptance of the request for confiscation

1. The court decides the confiscation of assets when all the following conditions are met:

   a) when there are reasonable suspicions based on indicia of the participation of the person in the
   criminal activities provided in article 3 of this law;

   b) when it is not proven that the assets have a lawful provenance or the person does not justify
   the possession of the assets or income that do not respond obviously to the level of income,
   profits or lawful activities declared, nor are they justified by them; and

   c) when it turns out that the assets are directly or indirectly in the full or partial ownership of the
   person.

2. he court may also decide the acceptance of the request for the confiscation of assets when:

   a) a criminal proceeding started against the person is dismissed by the proceeding organ because:
      i) of the insufficiency of the evidence;
      ii) of the death of the person;
      iii) the person cannot be taken as a defendant and cannot be convicted;

   b) the person is declared criminally innocent because:
      i) of the insufficiency of the evidence;
      ii) the criminal offence was committed by a person who cannot be accused or convicted;

   c) the person was proceeded against for a criminal offence that is included in the field of application of this law, but during the criminal proceeding the legal qualification of the offence is changed and the new offense is outside the field of application of this law.

Article 25

Procedural expenses

1. Included in procedural expenses are expenses of sequestration, of administration, of confiscation, of the lawyer, as well as every other expense regularly documented.
2. The expenses for sequestration according to this law are prepaid by the state and paid by the person against whose assets the sequestration of assets is ordered.
3. In its final decision on a request for confiscation, the court sets the obligation for payment of the expenses prepaid by the state.
4. The expenses prepaid by the state are not paid according to point 2 of this article if the court does not order the measure of confiscation of the assets.
5. The court that has rendered the decision decides on complaints about procedural expenses.

CHAPTER V
DECISION, APPEAL AND EXECUTION
OF PREVENTIVE MEASURES

Article 26
Elements of the court decision

The decision of the court to take a preventive measure, in addition to the elements provided in article 310 of the Code of Civil Procedure, also contains:

a) the type of preventive measure and its time length, if the measure has been set with a time limit;

b) the type of assets with all the data that serve for their identification, including the location or anything else that has value in identifying it;

c) a summary presentation of the fact and the legal reason of the preventive measure;

ç) the amount of procedural expenses, their type as well as data about the person to whom they are charged.

Article 27
Appeal

1. An appeal may be taken to the court of a higher level against a decision of the court for the sequestration of assets, the extension of the time period of the sequestration measure, the revocation or extinguishment of the sequestration measure according to the time periods and conditions provided in the Code of Civil Procedure.
2. An appeal may be taken to a court of a higher level against a decision of the court for the confiscation of assets according to the time periods and conditions provided in the Code of Civil Procedure.
3. An appeal according to point 1 or 2 of this article does not suspend the implementation of the decision, except when the law provides otherwise.

Article 28
Execution of a decision of confiscation and revocation of Sequestration

1. A decision of the confiscation of assets is put into execution immediately after it is announced.
2. A decision revoking the measure of the sequestration of assets is put into execution 15 days after the notification of the interested parties.
3. During the execution of a decision of confiscation, the court that has rendered the decision may issue in chambers orders for the performance of special actions and the taking of other necessary measures, also determining in them the time periods and manner of performance of the actions and the necessary measures that should be taken.
4. The procedure of execution of a decision accepting a request for confiscation is exempted from the prior payment of the service tariff. The Council of Ministers determines detailed rules and procedures of cooperation of the bailiff's service with the Agency of Administration of Sequestered and Confiscated Assets.
5. The decision and special orders are implemented by the judicial bailiff designated by the court. The management organ of the bailiff's service puts at the disposition of court a list of judicial bailiffs at least once a year and shows the criteria for designating them.
6. The judicial bailiff reports on his own initiative or at the request of the court about the execution of the decision and the special orders.

CHAPTER VI
USE OF CONFISCATED ASSETS

Article 29
Passage of confiscated assets to the ownership of the state

1. Assets confiscated by court decision according to this law pass to the ownership of the state.
2. A final decision for the confiscation of assets is sent immediately to the Agency of Administration of Sequestered and Confiscated Assets.
3. When a decision of confiscation becomes final, the assets pass to the ownership of the state in a non-returnable manner. In this case their owner has the right to seek fair indemnification, if it is subsequently proven that the confiscation was illegal or not grounded.

Article 30
Competence for the manner of use of confiscated assets

1. The Minister of Finance decides on the manner of use of the assets confiscated according to this law, in conformity with the criteria of articles 32 and 32, based on the recommendations of the Inter-institutional Advisory Committee of Experts for the Measures against Organised crime and the technical-financial evaluation report of the Agency of Administration of Sequestered and Confiscated Assets.
2. Within 90 days from notification of the judicial decision provided in point 2 of article 29 of this law, the Agency of Administration of Sequestered and Confiscated Assets submits a report of technical-financial evaluation to the Minister of Finance for every asset confiscated.
3. The Minister of Finance, by order, determines the manner and conditions of use of the immovable assets confiscated and issues accompanying instructions of use within 30 days from the submission of the technical-financial evaluation report, but no later than 120 days from the date of notification of the judicial decision provided in point 2 of article 29 of this law.

Article 31
Duties of the administrator of confiscated assets

The administrator designated by the court during the phase of sequestration of the assets continues the exercise of duties in the name and for the account of the Agency of Administration of Sequestered and Confiscated Properties, so long as he has not been replaced by it with another person.

Article 32
Use of movable assets and monetary means

The administrator carries out actions necessary to deliver to the accounts of the Agency of Administration of Sequestered and Confiscated Assets funds in monetary means:

a) confiscated [and] which will not be used for the administration of other confiscated assets or which will not be used for the indemnification of the victims of the criminal offences of organized crime;

b) earned from the sale of movable assets that are not used in the activity of the commercial legal person and of the securities, in net value, earned from the sale of

assets for the indemnification of the victims of organised crime. If the procedures of sale are not economical, the Minister of Finance orders the transfer of ownership without payment or the destruction of the confiscated assets by the administrator;
c) which are earned by the taking again of personal loans, if the procedure of taking them again is not economical or when, after the verifications done by the Agency of Administration of Sequestered and Confiscated Assets about the payment ability of the debtor, it turns out that he is insolvent, the personal loans are annulled by the Minister of Finance.

Article 33
Use of immovable assets and those that serve for economic, commercial and professional activities

1. On the proposal of the Minister of Finance, the Council of Ministers determines the criteria, amount and manner of use of immovable assets and those that serve for economic, commercial and professional activities, part of the special fund, within the limits of the destination established by this law.
2. In issuing this decision, the Council of Ministers bases itself on the principles of good administration of property, the increase of effectiveness of criminal justice, as well as rehabilitation and fair indemnification.

Article 34
Agency of Administration of Sequestered and Confiscated Assets

1. The Agency of Administration of Sequestered and Confiscated Assets is the institution responsible for the administration of sequestered and confiscated assets.
2. Detailed rules about the organization, competences and functioning of the Agency of Administration of Sequestered and Confiscated Assets are set by the Council of Ministers.
3. Detailed rules about the criteria of evaluation, the manners and procedures of giving confiscated assets in use and of their alienation are set by the Council of Ministers.

Article 35
Inter-institutional Expert Advisory Committee for Measures against Organized Crime

1. For the supervision of the administration of confiscated assets by the Agency of Administration of Sequestered and Confiscated Assets, as well as for taking decisions about the destination of the confiscated assets, the Inter-institutional Expert Advisory Committee for Measures against Organized Crime is created and functions. This committee meets at the Ministry of Finance.
2. The Committee consists of eight members proposed, respectively, by the Minister of Finance, the Agency of Administration of Sequestered and Confiscated Assets, the General Prosecutor, the Chairman of the Office of Administration of the Judicial Budget, the Chief Registrar of Immovable Properties of the Republic of Albania, the Minister of Justice, the minister who covers issues of public order and the minister who covers social issues. The member proposed by the Minister of Finance is the chairman of the committee.
3. Representatives of public institutions or other organizations, local and foreign, active in fields of interest for the implementation of this law, may also be invited to take part in the activities of the committee.
4. The Agency of Administration of Sequestered and Confiscated Assets reports to the committee about its activity at least once every three months.
5. Based on the priorities defined in article 37 of this law, the committee gives

recommendations, which are addressed to the Ministry of Finance, for the effective disposition of the income within the State Budget, also including a recommendation for the payment of the operating expenses of the agency.

6. At least once every six months, the committee asks for information in writing from the central institutions that have [the assets] in administration, as well as detailed data on the condition and manner of use of immovable assets from the local units that own confiscated immovable assets.
7. The committee meets at least once every three months. The committee approves internal rules of its functioning.

Article 36

Periodic reporting to the Council of Ministers

At the end of every fiscal year, the Minister of Finance submits to the Council of Ministers a report about the administration of the assets sequestered and confiscated according to this law.

Article 37

Special fund for the prevention of criminality

1. For the fiscal years 2009-2010, the income gained from the implementation of this law will serve, in the amount of 50%, to create a special fund for the prevention of criminality and for legal education. After the expiration of this time period, the special fund and its amount are determined in the budgetary legislation.
2. This fund serves for:
   a) improving the functioning of criminal justice, giving a destination for assets in the administration of the General Prosecutor's Office and of the Ministry of Justice;
   b) improving preliminary criminal investigations of organized crime and developing programmers of the protection of witnesses and justice collaborators, giving a destination for assets in the administration of the ministry that covers issues of public order;
   c) giving assistance to the victims of organized and violence, as well as encouraging social programmers for those categories, giving a destination for assets in the administration of the ministry that covers social issues.
3. In addition to the central institutions, the beneficiaries of the financing of projects for the prevention of criminality may also be:
   a) the units of local government where the confiscated immovable assets are located;
   b) non-profit organizations that have as the object of their activity the social, cultural and health rehabilitation of persons in need, especially those affected or endangered by crime, including therapeutic centers and organizations, centers of re-training and curing users of narcotic substances, as well as centers of assistance and rehabilitation of the victims of trafficking in human beings, which have been conducting such activities in the last three years from submission of the request.
4. The requirements for the financing of projects according to this article, the verification and preparation of documentation for an opinion in the Inter-institutional Expert Committee for Measures against Organized Crime, as well as the following of their implementation, are done by the structures of the Agency of Administration of Sequestered and Confiscated Assets.
5. Relying on the recommendation of the Inter-institutional Expert Committee for Measures against Organized Crimes, the Minister of Finance, by order, determines the financing of a project and the manners of use of the fund put at the disposition of the applicant.
6. The part of the fund destined according to point 2 of this article cannot be used for compensation of functionaries of the beneficiary institutions.

CHAPTER VII
FINAL PROVISIONS

Article 38
Transitional provision

Requests for taking preventive measures submitted by the prosecutor in court before the entry of this law into force continue to be judged according to the rules of this law.

Article 39
Subordinate legal acts

The Council of Ministers is charged with issuing within three months from the entry of this law into force subordinate legal acts in implementation of articles 14, 15 point 2, 28 point 4, 33 and 34 of this law.

Article 40
Repeals

Law no. 9284 dated 30.9.2004 "For preventing and striking at organised crime," as well as every other provision that is contrary to this law is repealed.

Article 41
Entry into force

This law enters into force 30 days after publication in the Official Journal.

Speaker
Jozefina Topalli (Coba)

(1)Tr. note: "Zotërim" is translated as ownership. "Pronësia" is the usual word for ownership. "Zotërim" has more of a sense of control – owning and/or being the master of the activities and assets referred to.

ANNEX V

Law No. 9917, date May 19, 2008 "On the Prevention of Money laundering and Financing Terrorism"

Pursuant to Articles 78 and 83/ 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA
DECIDED

CHAPTER I
GENERAL PRINCIPLES

Article 1
Purpose

The purpose of this law is to prevent laundering of money and proceeds, derived from criminal offences, as well as, the financing of terrorism.

Article 2
Definitions

The terms used in this law have the following meaning:

1. "Responsible authority" is the General Directorate of Money Laundering Prevention that reports directly to the Minister of Finances, and serves as Financial Intelligence Unit of Albania.

2. "Shell bank" means a bank, which does not have a physical presence, including lack of administration and management, and, which is not included in any regulated financial group.

3. "Correspondent bank" means a bank that provides banking services in the interests of another bank (initiating bank) or its clients to a third bank (receiving bank) based on an agreement, or a contractual relation reached between them for this purpose.

4. "Financing of terrorism" has the same meaning as provided by articles 230/a through 230/d of the Criminal Code.

5. "Bearer's negotiable instruments" means unconditional payment orders or promises, which are easily transferable from a person to another and, which must meet a set of criteria including the criteria hereby defining that they must be signed by the issuer or the bearer, they must be a guaranteed and unconditional payment order or promise, they must be payable to the holder or according to the order upon request or after a specified deadline. This includes but is not limited to cheques, cambial, promise notes, credit cards and traveler's cheques.

6. "Client" means every person, who is or seeks to be party in a business relation with one of the entities referred to in Article 3 of this law.

7. "Business relation" means any professional or commercial relationship, which is related to the activities exercised by this law entities and their clients and, which, once established, is considered to be a continuous relation.

8. "Cash" means banknotes (paper banknotes and coins, national and foreign) in circulation.

9. "Laundering of criminal offence proceeds" has the same meaning as provided by Article 287 of the Criminal Code.

10. "Politically exposed persons" means persons who are obliged to declare their properties pursuant to law Nr. 9019, date April 10, 2003 "On the declaration and auditing of properties and financial obligations of elected officials and public employees".

11. "Criminal offence proceeds" has the same meaning as provided by Article 36 of Criminal Code.

12. "Beneficiary owner" means the individual or legal entity, which owns or, is the last to control a client and/or the person in whose interest a transaction is executed. This also includes the persons executing the last effective control on a legal person. The last effective control is the relationship in which a persons:

a) owns, through direct or indirect ownership, the majority of stocks or votes of a legal entity,

b) owns by himself the majority of votes of a legal entity, based on an agreement with the other partners or shareholders,

c) de facto controls the decisions made by the legal person,

d) in any way controls the selection, appointment or dismissal of the majority of administrators of the legal person.

13. "Property" means the right or property interest of any kind over an asset, either movable or immovable, tangible or intangible, material or non material, including those identified in an electronic or digital form including, but not limited to, instruments such as bank loans, traveler's cheques, bank cheques, payment orders, all kinds of securities, payment bills, and letters of credit, as well as any other interest, dividend, income or other value that derives from them.

14. "Entity" is a person or legal entity, which establishes business relations with clients in the course of its regular activity or, as part of its commercial or professional activity.

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, bills, deposit bills, credit or debit cards, electronic payment cards etc.), securities, as well as any other document to hereby confirm the existence of a monetary obligation or any other deposited value, and to pay to the beneficiary of a corresponding amount in cash, or in any other form, by means of communication, message, transfer or by means of the clearing or disbursement service, to which the service of the transfer of money or value belongs.

16. "Transaction" means a business relation or an exchange that involves two or more parties.

17. "Linked Transactions" means two or more transactions (including direct transfers) where each of them is smaller than the amount specified as threshold according to the article 4 of this law and when total amount of these transactions equals or exceeds the applicable threshold amount.

18. "Direct electronic transfer" means every transaction made in the name of a first mandating person (individual or legal entity) through a financial institution, through electronic or wire transfer, with the purpose of putting 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.

19. "Trust" means a good faith agreement, in which the ownership rests with the entrusted on behalf of the beneficiary.

20. "Enhanced Due Diligence" is a deeper control process, beyond the "Know Your Customer" procedure, the aim of which is to create sufficient security to verify and evaluate the client's identity, to understand and test the client's profile, business, and bank account activity profile, to identify information and to assess the possible risk of money laundering/terrorism financing pursuant to the decisions, the purpose of which is to provide protection against financial, regulatory or reputation risks in addition to compliance with legal provisions.

21. "Know Your Customer" procedure is a set or rules applied by financial institutions, which have to do with the client's identification policies and their risk. administration

Article 3
Entities subject to this law

Entities of this law include:

a) Commercial banks;

b) Nonbank financial institutions;

c) Exchange offices;

d) Saving and credit companies and their unions;

e) Postal services that perform payment services;

f) Any other physical or legal entity that issues or manages payment means or handles value transfers (debit and credit cards, cheques, traveller's cheques, payment orders and bank payment orders, e-money or other similar instruments);

g) Stock exchange and any other entity (agent, broker, brokerage house etc.), which carries out activities related to issuing, counselling, mediation, financing and any other service related to securities trading;

h) Companies involved in life insurance or re-insurance, agents and their intermediaries as well as retirement funds;

i) The Responsible State Authority for Administration and Sale of Public Property and any other public legal entity, which engages in legal transactions related to the public property alienation and granting of usufruct over it or which carries out recording, transfer or alienation of public property;

j) Gambling, casinos and hippodromes, of any kind;

k) Attorneys, public notaries and other legal representatives, when they prepare or carry out transactions for their clients in the following activities:

i) transfer of immovable properties, administration of money, securities and other assets;

ii) administration of bank accounts;

iii) administration of capital shares to be used for the foundation, operation or administration of commercial companies;

iv) foundation, functioning or administration of legal entities;

v) legal agreements, securities or capital shares transactions and the transfer of commercial activities;

l) Real estate agents and evaluators of immovable property;

m) Authorized independent public accountants, independent certified accountants, as well as, financial consulting offices;

n) The Agency for Legalization, Urbanization and Integration of Informal Areas/ Constructions;

o) Any other individual or legal entity, except for those mentioned above, engaged in:

i) The administration of third parties' assets/ managing the activities related to them;

ii) Financial lease;

iii) Constructions;

iv) The business of precious metals and stones;

v) Financial loans;

vi) Financial agreements and guarantees;

vii) Buying and selling of art master pieces, or buying and selling in auctions of objects valuable 1,500,000 ALL or more;

viii) Insurance and administration of cash or liquid securities in the name of other persons;

ix) Cash exchange;

x) Trade of motor vehicles, `

xi) Transportation and delivery;

xii) Travel agencies.

CHAPTER II
DUE DILIGENCE

Article 4
Identification of clients

The entities should identify their clients and verify their identities by means of identification documents:

Before establishing a business relation;

when the client carries out or, is willing to carry out in cases other than those referred to in letter “a” of this paragraph, the following:

A direct transfer inside or outside the country;

A transaction at an amount equal to:

Not less then 200,000 (two hundred thousand) ALL or its equivalent in foreign currency for buying or selling of gambling coins or their electronic equivalent, such as the case of gambling, casinos and hippodromes of any kind;

Not less that 1 500 000 (one million five hundred thousand) ALL or its equivalent in foreign currency in the case of a sole transaction or several transactions linked to each other. If the amount of the transaction is unknown at the time it is executed, the identification shall be made as soon as the amount is made known and the aforementioned limit is reached.

When there are doubts about the identification data previously collected

In all cases when there is reasonable doubt for money laundering or terrorism financing.

The entities should identify the beneficiary owner.

Article 5
Required documents for client's identification

1. For the purposes of confirmation and identification of the identity of clients, the entities must register and keep the following data:

a) In the case of individuals: name, father's name, last name, date of birth, place of birth, place of permanent residence and of temporary residence, type and number of identification document, as well as the issuing authority and all changes made at the moment of execution of the financial transaction;

b) In the case of individuals, which carry out for-profit activity: name, last name, number and date of registration with the National Registration Centre, documents certifying the scope of activity, Taxpayer Identification Number (TIN), address and all changes made in the moment of execution of the financial transaction;

c) In the case of private legal entities, which carry out for-profit activity: name, number and date of registration with the National Registration Centre, documents certifying the object of activity, Number of Identification as Taxable Person (NIPT), address and all changes made in the moment of execution of the financial transaction;

d) In the case of private legal entities, which do not carry out for-profit activity: name, number and date of court decision related to registration as legal person, statute and the act of foundation, number and date of the issuance of the license by tax authorities, permanent location, and the type of activity;

e) In the case of legal representatives of a client: name, last name, date of birth, place of birth, permanent and temporary residence, type and number of identification document, as well as the issuing authority and copy of the affidavit.

2. To gather data according to the stipulations of this article, the entities shall accept from the client only authentic documents or their notarized authentic photocopies. For the purposes of this Law, the entity shall keep in the clients' file copies of the documents submitted by the client in the above form stamped with the entity's seal, within the time limits of their validity.

3. When deemed necessary, the entities should ask the client to submit other identification documents to confirm the data provided by the latter.

Article 6
Monitoring of the business relation with the client

The entities must carry out continuous monitoring of business relations with their clients, in order to make sure that they are in conformity with the entity's information about the clients, the scope of their activity and their classification according to the level of risk they represent.

The entities must periodically update the client data in accordance with paragraph 1 of this Article and immediately when they have reasons to suspect that the conditions and the actual situation of the client have changed.

CHAPTER III
ENHANCED DUE DILIGENCE

Article 7
Enhanced due diligence

In order to reduce the risks of money laundering, the entities shall specify categories of clients and transactions, in addition to those referred to in Articles 8 and 9 of this law, against whom they will apply the enhanced due diligence.

In order to implement the enhanced due diligence, the entities should require the physical presence of clients and their representatives in the cases provided hereunder:

a) prior to establishing a business relationship with the client;

b) prior to executing transactions in their name and on their behalf.

Article 8
Categories of clients subject to enhanced due diligence

1. The entities should verify, based on the list referred to in Article 28, paragraph 2 of this law, if a client or a beneficiary owner is a politically exposed person and when this is the case:

a) Obtain the approval of the higher instances of administration or management before establishing a business relation with the client;

b) Obtain a declaration on the source of the client's wealth that belongs to this financial action;

c) Perform an increasing and continuous monitoring of the business relations.

2. When an existing client becomes a politically exposed person, the measures provided in the paragraph 1 of this Article shall be applied.

3. For clients that are non-profit organizations, the entities shall hereby:

a) Gather sufficient information about them, in order to completely understand the financing sources, the nature of the activity, as well as, their administration and management approach;

b) Verify by using public information or other means the clients' reputation;

c) Obtain the approval of the higher instances of administration/management before establishing a business relation with them;

d) Perform extended monitoring of the business relationship;

Article 9
Categories of transactions subject to enhanced due diligence

1. With regard to correspondent cross border banking services provided by banks subject to this law, they should, before establishing a business relationship, perform the following:

a) Gather sufficient information about the correspondent institution, in order to fully understand the character of its activity;

b) Determine the reputation of the recipient institution and the quality of its supervision through public information;

c) Evaluate whether or not the internal auditing procedures of the recipient institution against money laundering and financing of terrorism are satisfactory and effective;

d) Obtain the approval of the higher instances of administration/management and document the respective responsibilities of every institution.

Draft special procedures for the constant monitoring of direct electronic transactions.

2. The entities shall not carry out correspondent banking services with banks, the accounts of which are used by shell banks. The entities shall terminate any business relationship and report to the responsible authority, if they notice that, the accounts of the corresponding bank are used by shell banks.

3. The entities must examine through enhanced due diligence all complex transactions and all types of unusual transactions that do not have a clear economic or legal purpose.

4. The entities must apply enhanced due diligence to business relation and transactions with non-resident clients.

5. The entities must verify and apply enhanced due diligence to business relationships and transactions with clients residing or acting in countries that do not apply or partly apply the relevant international standards on the prevention and fight against money laundering and financing of terrorism.

6. The entities must apply enhanced due diligence to business relations and transactions with trusts and joint stock companies.

7. The entities must apply enhanced due diligence to business relations and transactions carried out by clients in the name of third parties, including the representation documents with which third parties have authorized the transactions.

8. The entities must adopt policies or respond appropriately according to the circumstances, in order to prevent the misuse of new technological developments for the purposes of money laundering or terrorism financing.

9. If an entity fails to fulfil its enhanced due diligence obligations, as prescribed in this article then:

a) it shall therefore not establish or carry on business relations with the client;

b) It shall report to the Responsible Authority its inability to fulfil its enhanced due diligence obligations and declare the reasons for this.

Article 10
Money or values transfer service obligations

1. The entities, the activities of which include money or value transfers, must ask for and verify first name, last name, permanent and temporary residence, document identification number and account number, if any, including the name of the financial institution from which the transfers is made. The information must be included in the message or payment form attached to the transfer. In case there is no account number, the transfer shall be accompanied by a unique reference number.

2. The entities transmit the information together with the payment, including the case when they act as intermediaries in a chain of payments.

3. If the entity referred to in paragraph 1 receives money or value transfers, including direct electronic transfers, which do not include the necessary information about the ordering person, the entity must request the missing information from the sending institution or from the beneficiary. If it fails to register the missing information, it should refuse the transfer and report it to the responsible authority.

Article 11
Prevention measures to be undertaken by entities

1. According to this law and bylaws pursuant to it, the entities shall have the following obligations:

a) draft and apply internal regulations and guidelines that take into account the money laundering and terrorism financing risk, which can originate from clients or businesses, including but not limited to:

A clients acceptance policy, and
A policy for the application of procedures of enhanced due diligence in the case of high-risk clients and transactions.

b) nominate a responsible person and his deputy for the prevention of money laundering, at the administrative/management level in the central office and in every representative office, branch, subsidiary or agency, to which all employees shall report all suspicious facts, which may comprise a suspicion related to money laundering or terrorism financing.

c) establish a centralized system, in charge of data collection and analysis;

d) apply fit and proper procedures when hiring new employees, to ensure their integrity.

e) train their employees on the prevention of money laundering and terrorism financing through regular organization of training programs.

f) assign the internal audit to check the compliance with the obligations of this law and of the relevant sublegal acts;

g) make sure that branches, sub-branches, as well as their agencies, inside or outside

the territory of the Republic of Albania act in compliance with this law. If the laws of the country where the branches or agencies have been established stipulate

impediments against meeting the obligations, the entity should report about those

impediments to the responsible authority and, as per the case, to its supervising authority.

h) submit information, data and additional documents to the responsible authority, in accordance with the provisions and time limits set forth in this law. The responsible authority may extend this time limit in writing for a period of no more than 15 days.

2. The entities shall be prohibited to start or maintain business relations with anonymous clients or clients using fake names. The entities shall not be allowed to open or maintain accounts that may be identified only based on the account number.

3. If the number of the employees of the entities referred to in this law is less than 3 persons, the obligations of this law shall be met by the administrator or by an authorized employee of the entity.

CHAPTER IV
OBLIGATION TO REPORT

Article 12
Reporting to the responsible authority

1. When the entities suspect that the property is proceeds of a criminal offence or is intended to be used for financing terrorism, they shall immediately present to the responsible

authority a report, in which they state their doubts by the time limit set forth in the sublegal acts pursuant to this law.

2. When the entity, which is asked by the client to carry out a transaction, suspects that the transaction may be related to money laundering or terrorism financing, it should immediately report the case to the responsible authority and ask for instructions as to whether it should execute the transaction or not. The responsible authority shall be obliged to provide a response within 48 hours.

The entities shall be required to report the following to the responsible authority within the time limits set forth in the sublegal acts pursuant to this law:

all cash transactions, equal to or greater than 1,500,000 (one million and five hundred thousand) ALL or its equivalent in other currencies,

all non-cash transactions, equal to or greater than 6,000,000 (six million) ALL or its equivalent in other currencies executed as a single transaction or as series of linked transactions.

Article 13
Exemption from reporting

The transactions hereunder described shall be exempted from reporting to the responsible authority:

a. cross bank transactions, except the ones performed on behalf of their customers
b. transactions between entities of this law and the Bank of Albania;
c. transactions performed on behalf of public institutions and entities;

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

The entities or supervising authorities, their managers, officials or employees who report or submit information in good faith in compliance with the stipulations of this law, shall be exempted from penal, civil or administrative liability arising from the disclosure of professional or banking secrecy.

Article 15
Tipping Off Prohibition

The employees of the entity shall be prohibited to inform the client or any other person about the verification procedures regarding suspicious cases, as well as any reporting made to the responsible authority.

Article 16
Obligations to maintain data

1. The entities must store the documentation used for the identification of the client and the client's beneficiary owner for 5 years from the date of the termination of the business

relation between the client and the entity. When requested by the responsible authority, the information shall be stored longer than 5 years.

2. The entities must keep data registers, reports and documents related to financial transactions, national or international, regardless of whether the transaction has been executed in the name of the client or of third parties, together with all supporting documentation, including account files and business correspondence, for 5 years from the date of the execution of the financial transaction. With the request of the responsible authority, the information shall be stored longer than 5 years, even if the account or the business relation has been terminated.

3. The entities must keep the data of the transactions, including those specified in article 10, with all the necessary details to allow the re-establishing of the entire cycle of transactions, with the aim of providing information to the responsible authority in accordance with this Law and the sub legislation pursuant to it. This information shall be stored for 5 years from the date when the last financial transaction has been carried out. This information shall, upon the request of the responsible authority, be stored longer than 5 years.

4. The entities must make sure that all client and transaction data, as well as the information kept according to this article, shall immediately be made available upon the request of the responsible authority.

Article 17
Customs authorities reporting

1. Every person, Albanian or foreigner, that enters or leaves the territory of the Republic of Albania, shall be obliged to declare 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, explain the purpose for carrying them and produce supporting documents. The customs authorities shall send a copy of the declaration form and the supporting document to the responsible authority. The customs authorities shall report immediately and no later than 72 hours to the responsible authority every suspicion, information or data related to money laundering or financing of terrorism for the activities under their jurisdiction.

2. Customs Authorities shall apply the provisions of article 11 of this law.

Article 18
Tax authorities reporting

Tax authorities identify their clients, according to procedures set in article 4 of this law, and report in all cases to the Competent Authority immediately and no later than 72 hours, every suspicion, indication, notification or data related to money laundering or terrorism financing.

Tax authorities apply the requirements of the article 11 of this law.

Article 19
Central Immovable Properties Registration Office Reporting

1. The Central Immovable Properties Registration Office shall report 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.

2. The Central Immovable Properties Registration Office shall report immediately and no later than 72 hours to the responsible authority every suspicion, information or data related to money laundering or terrorism financing for the activities under its jurisdiction.

3. The Central Immovable Properties Registration Office shall apply the provisions set forth in the article 11 of this law.

Article 20
Non-profit Organizations

Every authority that registers or licenses non-profit organizations shall report immediately to the responsible authority every suspicion, information or data related to money laundering or terrorism financing.

Article 21
Organization of the Responsible Authority

1. The General Directorate of Money Laundering Prevention shall, pursuant to this law, exercise the functions of the responsible authority as an institution subordinate to the Minister of Finances. This directorate, within its scope of activity, shall hereby be entitled to define the way of handling and resolving cases related to possible money laundering and to financing of possible terrorist activities.

2. The General Directorate of Money Laundering Prevention shall, pursuant to this law, operate as a specialized financial unit for the prevention and fight against money laundering and terrorism financing. Moreover, this directorate shall operate as the responsible national center for collection, analysis and dissemination to law enforcement agencies of information and the potential money laundering and terrorism financing activities.

3. Labour relations of the staff of this Directorate shall be regulated by the law no. 8549, date November 11, 1999 “On the Civil Servant Status” and by the Labour Code for the assistant staff.

4. The organization and functioning of the Directorate shall be hereby regulated by Council of Ministers’ Decision.

Article 22
Duties and functions of the responsible authority

The General Directorate of Money Laundering Prevention, as financial intelligence unit, shall, pursuant to this law, have the duties and functions hereunder described:

a) collect, manage and analyze reports and information from other entities and institutions in accordance with the provisions of this law;

b) access databases and any information managed by the state institutions, as well as in any other public registry in compliance with the authorities set forth in this law;

c) request, pursuant to its legal obligations, financial information from the entities on the completed transactions with the purpose money laundering and financing of terrorism prevention;

d) supervise the compliance of the entities with the obligations to report set in this Law, including on site inspections alone or in collaboration with relevant supervising authorities;

e) exchange information with any foreign counterpart, entity to similar obligations of confidentiality. The provided information should be used only for purposes of preventing and

fighting money laundering and financing of terrorism. Information may be disseminated only upon parties' prior approval;

f) enter in agreements with any foreign counterpart, which exercises similar functions and is subject to similar obligations of confidentiality;

g) exchange information with the Ministry of Interior, State Intelligence Service and other responsible law enforcement authorities regarding individuals or legal entities, if there is ground to suspect that this entity has committed money laundering or financing of terrorism;

h) inform, in co-operation with the prosecution office, the responsible authority on the conclusions of the registered criminal proceedings on money laundering and terror financing;

i) may issue a list of countries in accordance with paragraph 5 of article 9 of this law, in order to limit and/or check the transactions or business relations of the entities with these countries;

j) order, when there are reasons based on facts and concrete circumstances for money laundering or financing of terrorism, blocking or temporary freezing of the transaction or of the financial operation for a period not longer that 72 hours. In case of observing elements of a criminal offence, the Authority shall, by this time limit, file the case with the Prosecution Office by submitting also a copy of the order on transaction temporary freezing or on the account freezing, pursuant to this law, in addition to all the relevant documentation;

k) maintain and administer all data and other legal documentation on the reports or any other kind of documentation received over 10 years from the date of receiving the information on the last transaction;

l) provide its feedback on the reports presented by the entities to this authority;

m) organize and participate, together with public and private institutions, in training activities related to money laundering and terrorism financing, as well as, organize or participate in programs aimed at raising public awareness;

n) notify the relevant supervising authority when observing that an entity fails to comply with the obligations set forth in this law;

o) publish by the first quarter of each year the annual public report for the previous year on the activity of the responsible authority. The report shall include detailed statistics on the origin of the received reports and the results of the cases referred to the prosecution.

Article 23
Coordination Committee for the Fight against Money Laundering

1. The Coordination Committee for the Fight against Money Laundering shall be responsible for planning the directions of the general state policy in the area of the prevention and fight against money laundering and terrorism financing.

2. The Prime Minister shall chair the Committee consisting of the Minister of Finances, the Minister of Foreign Affairs, the Minister of Defence, the Minister of Justice, the General Prosecutor, the Governor of the Bank of Albania, the Director of the State Information Service and the General Inspector of High Inspectorate for the Assets Declaration and Auditing.

3. The Committee shall convene at least once a year to review and analyze the reports on the activities performed by the responsible authority and the reports on the documents drafted by the institutions and international organizations, which operate in the field of the fight against money laundering and terrorism financing. The general director of the

responsible authority shall provide advice to the Committee upon its request and act as an advisor during the meeting of the Committee.

4. Ministers, members of the parliament, managers or representatives of institutions and experts of the field of prevention and fight against money laundering and financing of terrorism may be invited to the meetings of the Committee.

5. The Committee may establish technical and/ or operational working groups to assist in the execution of its functions, as well as, to study money laundering and terrorism financing typologies and techniques.

6. The operation rules of Committee shall be defined in its internal regulation to be adopted by this Committee.

Article 24
Functions of supervisory authorities

1. The Supervising Authorities are:

The Bank of Albania for the entities referred to in letters “a”, ”b”, “c”, “d” and “e”, of Article 3,

The Financial Supervisory Authority for the entities referred to in letters “f”, “g” and “h” of Article 3,

Respective ministries for the supervision for the entities referred to in letters

“i” and “j” of Article 3,

d) The National Chamber of Advocates for lawyers;

e) The Ministry of Justice for notaries;

f) The relevant authorities for supervising entities defined in letters “l”, “m”, “n”

and “o” of Article 3,

1. The supervising authorities shall supervise, through on site inspections, the compliance of the activity of the entities with the obligations set forth in Articles 4, 5, 6, 7, 8 and 9, 10, 11 and 12 of this Law.

2. The Supervising Authorities shall immediately report to the responsible authority on every suspicion, information or data related to money laundering or financing of terrorism for the activities falling under their jurisdiction.

3. The Supervising Authorities shall also perform the following other duties:

check implementation by the entities of programs against money laundering and terrorism financing and make sure that these programs are appropriate;

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;

cooperate and provide expert assistance according to the field of their activity in the identification and investigation of money laundering and terrorism financing, in compliance with the requests of the responsible authority;

cooperate in drafting and distribution of training programs in the field of the fight against money laundering and terrorism financing;

keep statistics on the actions performed, as well as, on the sanctions imposed in the field of money laundering and financing of terrorism.

Article 25
Exclusion from speculation with professional secrecy or its benefits

1. Entities shall not use professional confidentiality or benefits deriving from it as a rationale for failing to comply with the legal provisions of this law, when information is requested or when, in accordance with this law, the release of a document, which is relevant to the information, is ordered.

2. Attorneys and notaries shall be subject to the obligation of reporting information about the client to the responsible authority, in accordance with this law. Attorneys shall be exempted from the obligation to report on the data that they have obtained from the person defended or represented by them in a court case, or from documents made available by the defendant in support of the needed defence.

Article 26
License revoking

1. The responsible authority may request the licensing/supervisory authority to restrict, suspend or revoke the license of an entity when:

it ascertains or has facts to believe that the entity has been involved in money laundering or terrorism financing;

when the entity repeatedly commits one or several of the administrative violations set forth in article 27 of this law and the sublegal acts.

2. The licensing / supervisory authority shall review the application of the responsible authority based on the accompanying documentation, which shall represent the suspicions or the data, based on concrete circumstances and facts, according to the paragraph 1 of this article. The licensing/supervisory authority shall make a decision to accept or refuse it in compliance with the provisions of this law and with the legal and sublegal provisions, which regulate its activity and the activity of the entities licensed and supervised by it.

Article 27
Administrative sanctions

Unless being a criminal offence, the violations committed by the entities shall be classified as administrative ones, while the entities shall be subject to sanctions;

In the cases when they fail to apply monitoring and identification procedures, as well as customer due diligence versus the client and transactions according to their risk level that they present as set forth in articles 4, 5, 6, 7, 8 and articles 9, paragraph 1 through 8, and the sub legislation pursuant to this law, the entities shall be subject to the following fines:

individuals: from 100,000 ALL up to 500,000 ALL;

legal entities: from 500,000 ALL up to 1,500,000 ALL;

In the cases of failing to collect data according to article 10 of this law:

individuals: from 400,000 ALL up to 1,600, 000 ALL;

legal entities: from 1,200,000 ALL up to 4,000,000 ALL;

In the cases when they shall fail to apply the provisions of article 9, paragraph 9, and article 10, paragraph 3, entities shall be subject to the following fines;

individuals: from 500,000 ALL up to 2, 000,000 ALL;

b) legal entities: from 2,000, 000 ALL up to 5,000,000 ALL;

In the cases when the entities shall fail to implement the preventive measures set forth in article 11 of this law, they shall be subject to the following fines:

individuals: from 300,000 ALL up to 1,500,000 ALL;

legal entities: from 1,000, 000 ALL up to 3,000,000 ALL;

In cases when failing to meet the reporting obligations as set forth in 12 of this law, the entities shall be subject to the following fines;

individuals: from 5 to 20 percent of the amount of the unreported transaction;

legal entities: from 10 to 50 percent of the amount of the unreported transaction;

For the violations prescribed in article 15 and 16 of this law, the entities shall be subject to the following fines:

individuals: 2,500,000 ALL;

legal entities: 5,000,000 ALL;

In addition to what is prescribed in the paragraphs 2, 3, 4, 5, 6, 7 of this article, when a legal entity is involved and the administrative violation is committed by :

an employee or non administrator of the entity, the person who has committed the violation shall be fined from 60,000 ALL up to 300,000 ALL.

from an administrator or a manager of the entity, the person who has committed the violation shall be fined from 100,000 ALL up to 500,000 ALL.

The fines shall be defined and set by the responsible authority.

The responsible authority shall inform the supervising/licensing authority on the sanctions imposed.

The procedures for the appeal against the decisions shall be performed in accordance with the Law No. 7697, dated July 04, 1993 “On the Administrative violations”, as amended.

The execution procedures of the administrative sanctions will be enforced in accordance with the articles 510 through 526/a of the Civil Procedures Code.

Article 28
Passing of regulations

1. The Council of Ministers, with the proposal of the Minister of Finance, shall, pursuant to this law, adopt, within 6 months of its coming into effect, detailed rules on the form, methods and data reporting procedures for the licensing and supervising authorities, the Central Immovable Properties Registration Office, and the Agency for the Legalization, Urbanization and Integration of Informal Areas and Buildings.

2. General Inspector of High Inspectorate for the Assets Declaration and Auditing shall regularly, although not less than twice per year, present to the responsible authority the

complete and updated list of the politically exposes persons drafted based on the provisions set forth in Law No. 9049, date April 10, 2003 "On the declaration and auditing of assets and financial obligations of the elected officials and of a number of public servants".

3. The Minister of Finance shall, upon the proposal of the responsible authority, adopt, within 6 months from the publishing of this law in the Official Journal, detailed rules related to the following:

Approaches and procedures for the reports of the entities described in article 3 of this law

Methods and procedures for the reports of the customs authorities,

Methods and procedures for the reports of the tax authorities,

Applicable standards or criteria in addition to the time limit for reporting

Suspicious activities, according to tendencies and typologies, in compliance with

International standards,

Detailed procedures for the verification of administrative violations committed by the reporting entities.

Article 29
Transitional Provisions

Provisions of the Law No. 8610, date May 17, .2000, "On the Prevention of Money Laundering", as amended, shall be applied until this Law enters into effect.

All other sub legal acts issued pursuant to Law No. 8610 shall be applied as long as they do not contravene this law and shall be effective until they are substituted by other sub legal acts to be issued pursuant to this Law.

Article 30
Repealing Provision

The Law No. 8610, date May 17, .2000, "On the Prevention of Money Laundering", as amended shall be repealed.

Article 31
Coming into effect

This law shall come into effect 3 months after being published in the Official Journal.

Promulgated upon Decree No. 5746, date June 09, 2008 of the President of the Republic of Albania, Mr. Bamir Topi.