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SELECT COMMITTEE OF EXPERTS
ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT
ON ALBANIA¹

ANTI-MONEY LAUNDERING
AND COMBATING THE FINANCING OF TERRORISM

Summary

¹ Adopted by MONEYVAL at its 19th Plenary meeting (Strasbourg, 4-7 July 2006)

1. Albania was the seventh MONEYVAL member evaluated under the third evaluation round based on the new Methodology of 2004 taking into account anti-money laundering and anti-terrorist financing (AML/CFT) measures. The country received the visit of a MONEYVAL delegation from 12 to 17 September 2005.
2. Below is a summary of the findings of the report which was adopted by MONEYVAL at its 19th plenary meeting (Strasbourg, 4-7 July 2006).

1. Background Information

3. Until 1991, Albania had one of the longest-lasting (and allegedly the most totalitarian) Stalinist regimes in Europe. With a total population of 3,14 million citizens, Albania is a smaller European country. A significant proportion of the population is working/living abroad. According to Albanian estimates, the informal economy represents 30% of the total economic activity. A vast majority of transactions are still made outside the banking system and/or below the real value (e.g. for real estate), and that investments and capital increases are generally not properly recorded for tax avoidance purposes.
4. Albania's rank in the most recent Corruption Perception Indexes published by Transparency International remains among the worst of all European countries. According to an opinion poll conducted in the period November 2003-March 2004 by the Citizen's Advocacy Office of Albania, the Customs, judges, deputies, police and prosecutors are perceived as particularly corrupt (out of 23 possible professions and on the basis of a broad definition of the concept of corruption which includes but is not limited to bribery and embezzlement).
5. As part of the anti-corruption efforts, measures have been taken to render those specialised bodies of the police, prosecution and judiciary dealing with organised crime and terrorist financing cases more resistant to corruption: better working conditions and salaries, screening procedures, protection measures etc. Despite the lack of Court rooms, efforts have also been made to make sure Penal trials take place in public court hearings rather than in the judge's office (which is still the cases for most civil cases). The profession of judges is now under better control of the High Council of Justice (which is in charge of the nomination and removal of magistrates). Codes of ethics have also been adopted for these professions and a general law on Rules of Ethics for Public Administration was introduced in 2003.
6. Several interlocutors from law enforcement, the judicial system and other bodies underlined that although the legal framework was not perfect, it was at least sufficient for them to do their work properly as long as there was no political interference (e.g. unnecessary movements of staff). According to representatives from the judicial authorities, it would now be easier to bring to court persons considered previously as "untouchables".
7. The characteristics of organised crime would have evolved in recent years. According to police representatives, criminal groups were using violence in the past, whereas at present, one has to deal with groups of a "higher level". They are still involved in drugs trafficking, arms trafficking, ammonia smuggling etc. The offences considered to be the most important sources of criminal

proceeds are drug trafficking, robbery, customs and tax crimes, theft through abuse of office, corruption, fraud, counterfeiting of currencies. Exploitation of prostitution is also considered to remain one of the major sources of criminal profit, although the Albanian authorities underline that trafficking in human beings is now under control.

8. The Albanian authorities have not provided a consolidated overview of money laundering characteristics in the country. The most vulnerable sectors seem to be for a large part the least controlled ones, that is the non financial sector and in particular (according to the replies to the questionnaire): construction, investment in hotels, restaurants, new businesses, mode shops, tourist and travel agencies, the trading/purchase of luxurious cars, trading in electrical equipment.
9. During the discussions held on site, there was large unanimity among practitioners from different fields that the real estate/construction sector, which experiences a significant growth at the moment, was largely used for the investment of criminal monies. The Albanian authorities also explain that a considerable part of constructions have not been declared/legalised.
10. Some interlocutors acknowledged on site that “under the counter” operations in foreign exchange offices has been quite widespread (failure of the electronic recording equipment, tax evasion motivations etc.). According to the replies to the questionnaire, there might also be some problems connected with the profession of lawyers, who provide the full range of legal services, especially when they represent a client on the occasion of a purchase or sale of property, opening bank accounts and conducting transactions with a power of attorney, and the provision of company formation services. It was also alleged that the existence of cases of fictitious shipping insurance, for instance, are of sufficient scale to offer an opportunity for the laundering of proceeds from other crimes.
11. The informal currency exchange business taking place openly on certain streets and in certain areas of Tirana was a particular source of concern for the evaluators. The authorities explained that their efforts to limit that kind of business had failed so far and prohibiting it on the streets would just lead it to move underground. For the time being, the authorities have managed to remove them from the immediate vicinity of the Bank of Albania.
12. The Law on Prevention of Money Laundering (LPML) was amended in 2003, notably with a longer list of obliged businesses and professions. The text (see annex) has not changed since the second round. A general redrafting of the LPML is envisaged, to increase consistency with the FATF 40+9 Recommendations and with the other texts adopted in the AML/CFT field (see below).

13. On the issue of CFT, the Albanian authorities reacted promptly with the adoption on 15 November 2001 of the Council of Ministers' National Action Plan against Terrorism (see annex) providing for a series of measures for the verification, identification, freezing and seizure of bank accounts and assets possibly connected with persons involved in terrorist financing. Subsequently, Law N° 9258 of 15.07.2004 on Measures for the Suppression of Terrorism Financing (LMSTF) introduced detailed mechanisms for the administrative freezing and seizure of proceeds suspected to be linked with listed terrorists and organisations, and for the reporting of transactions possibly linked with terrorist financing, as well as suspicions of terrorist financing more generally (see annex). The efforts of the Albanian authorities to identify and freeze assets potentially linked with terrorists, their organisations or activities, have shown that there was such presences on Albanian soil (islamic foundations, and to a lesser extent, certain companies). Several freezing and seizure orders have been issued after 2001.

2. Legal Systems and Related Institutional Measures

14. Albania has criminalised money laundering through Article 287 of the Criminal Code of the Republic of Albania. The definition of the money laundering offence is largely in line with the UN Conventions. Albania has adopted the “all-crime” approach. Money laundering is punishable if committed intentionally. Negligent money laundering is also covered, as a result of the provisions of the general part of the Penal Code (Art.14). It is now agreed that a conviction for the underlying offence is not needed anymore on the basis of jurisprudential developments and para. 3 of art. 287. it is still for the prosecution to prove that the proceeds are connected with a specific predicate offence. When the predicate crime is committed abroad by an Albanian citizen, money laundering in Albania is prosecutable domestically. Where the offender is a foreign citizen, money laundering in Albania is only prosecutable where it is committed against the interests of the Albanian State or an Albanian citizen. There is no unanimity as to whether self laundering is covered and it is not expressly stated that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. Nevertheless, the Albanian authorities advised that with the ratification of the Palermo Convention, Albania has accepted this principle. Albania has also introduced the concept of corporate criminal liability (art. 45) but the matter needs to be further regulated in a secondary piece of legislation (a draft has been prepared). Information on the exact number of cases and convictions for money laundering was difficult to obtain but there seem to have been 2 cases in which a total of 5 convictions have been pronounced. 5 further cases are in the hands of the prosecutors at the time the report was examined by MONEYVAL. The results appear to be modest, given the importance of criminal activities.
15. Article 230 of the Criminal Code criminalises terrorist acts. It was complemented in 2003 and 2004 by further provisions criminalising activities related to the financing of terrorism: articles 230/a deals with a general terrorist financing offence and 230/b with the hiding/concealing of funds and other wealth/goods that finance terrorism. Whilst these provisions are quite broad and allow in principle to address any terrorist financing situation, art. 234a criminalises the financing of terrorist organisations specifically. The lack of consistency raises certain interrogations as to whether the various elements of SRII are really covered. The jurisdiction of Albania over certain acts which have an international dimension also needs clarification. The figures on cases vary

but the most recent ones indicate that there have been 10 indictments so far and 8 convictions for terrorist financing².

16. The general seizure and confiscation measures are provided for in the Criminal Procedure Code (art. 274-276) and criminal Code (art. 36) respectively. A special regime was introduced in 2004 by virtue of the Law “on preventing and striking at organised crime”, which equally applies to terrorist financing. These special provisions have notably introduced the reversal of the burden of proof for the purpose of confiscation. The general measures have been applied moderately so far (there have been no confiscation orders applied despite the convictions obtained). These measures need to provide explicitly for the confiscation from third parties and the possibility to apply temporary measures with ex post approval of the court in case of urgency.
17. The LMSTF mentioned earlier is an important initiative in the field of the freezing of terrorist assets under SRIII.. Procedures are still needed to deal with actions initiated by foreign jurisdictions, measures need to be refined to ensure that requests for legitimate payments from frozen terrorist assets can be dealt with. Guidance for the private sector is also needed.
18. The General Directorate for the Prevention of Money Laundering is acting since 2001 as the Albanian FIU. This administrative entity was given wide responsibilities (including inspection powers and overall responsibility for the implementation of the LPML). The GDPML has suffered from a lack of autonomy and means until recently. It now has its own premises, budget and a well staffed structure (new staff was recruited). The issue of the political independence of the GDPML needs to be reconsidered and a developed IT system to perform real analytical work is needed. The first annual report (for 2005) was recently published. The issue of feedback needs to be considered though.
19. Despite the size of the country, Albania has managed to develop a high level of specialisation of law enforcement, prosecutorial and judicial bodies in the fields covered by the present report: the Police Directorate for Combating Organised Crime and Witness Protection (and its Division on the fight against money laundering and economic-financial crime), the Prosecutor’s Office to the Serious Crime Court and the Office for economic crime, money laundering and terrorist financing (which is competent for all forms of money laundering, whether connected or not with another offence or a criminal structure), and the Serious Crimes Court (competent for TF, and for ML when the latter is committed in connection with a serious crime or by a criminal structure). The existence of a continuous chain of specialist bodies able to deal with greater expertise, means and powers with organised crime activities and terrorist cases, and sophisticated forms of crime is a major asset for the country. Clarification is needed as to the exact responsibilities for ML investigations. Equally, there is a need for studies on the ML phenomenon, trends and techniques, for increasing the level of expertise at the level of the judicial police and judges, for reviewing the staffing of the specialist bodies of the police and prosecutor’s office. The legal framework on controlled deliveries also needs to be clarified. Overall, the work of the repressive authorities in the field of AML is difficult to assess due to missing information and statistics.

²The number of convictions is still unclear since the Albanian authorities indicated that these cases are still under investigations.

20. Albania has a system for the disclosure/declaration of cross border movements of funds and other values. The system needs to be completed to address under- or false declarations. Measures also need to be taken as regards the working culture needed from the point of view of AML/CFT.

3. Preventive Measures – Financial Institutions

21. A number of basic requirements regarding Customer Due Diligence are in place and the opening of anonymous and numbered accounts is prohibited. Albania needs to take several measures through primary or secondary legislation and other enforceable means to cover the detailed requirements of R5 for the entire financial sector and beyond. Currently, there is no general CDD approach as a duty, no general identification obligation when establishing a business relationship, no explicit CDD requirements in respect of FT, inadequate thresholds for identification etc.
22. The formalities for politically exposed persons, correspondent banking relationships, non-face-to-face situations and introduced business have yet to be addressed by the LPML. All third party transactions are conducted on the strength of an official and legal power of attorney. Third parties and introduced business are not known in Albania and financial institution secrecy or confidentiality does not seem to be an issue.
23. The record keeping requirements need to be reviewed and addressed in primary or secondary legislation so as to cover the various requirements of R10 and provisions need to be adopted in the field of wire transfers, a subject which is considered insufficiently covered at the moment. The issue of monitoring of transactions and relationships (R11 and 21) also need to be better regulated.
24. The transaction reporting regime adopted by Albania is ambitious as it takes into account suspicious transactions and those above a certain threshold (which is quite high – for most obliged institutions - in the context of Albania). Several inconsistencies between the LPML and other texts, and inaccurate legal provisions affect the smooth functioning of various mechanisms (attempted transactions are not explicitly covered, there are unjustified restrictions as to the categories of transactions to be reported by banks, the protection from civil and criminal liability can be misinterpreted, the coverage of suspicions of terrorism is insufficient etc.). The statistical results of the reporting regime show that the reporting system is mainly based on the threshold reporting. Whilst the banking sector and certain authorities send significant numbers of reports to the GDPML, the non financial (private) sector is totally uncooperative.
25. As for internal controls, the basic requirements are provided for (internal AML procedures and rules, “money laundering reporting officer” and central reporting collection unit, audit function etc). The articulation between some mechanisms and their exact roles is not always fully clear. Internal procedures are not required to address CDD measures. Albanian financial institutions seldom have branches abroad.

26. On the issue of shell banks, the licensing conditions of the BoA require physical presence of the bank but there are no explicit provisions in the LPML on this issue, the establishment of correspondent banking relationships and the opening of accounts by shell banks.
27. Competent authorities for the regulation, supervision, guidance, monitoring and sanction of financial services are: the Bank of Albania for credit institutions and other non-bank financial institutions, the Insurance Supervisory Authority (ISA) for the insurance business and the Albanian Securities Commission (ASC) as the supervisory and licensing authority for the securities market. These authorities supervise and oversee their respective sectors against the applicable (sector specific) regulations and the LPML to some extent. This is explicit in the case of the BoA under its Regulation of 2004 "*On money laundering prevention*". More generally, all supervisory authorities under art. 13 para.2 of the LPML are responsible for "*checking the implementation of the programs against money laundering and ensure that these programs are appropriate*". However, it is unclear which programs are addressed by this provision. There are currently two potential self regulatory organisations, the bar association and the chamber of notaries. They have not been granted nor recognised any particular AML/CFT responsibility so far. They both consider that these professions are not subject(able) to the LPML due to their own professional privilege and statutory rules. Overall, it appears that the necessary legal and regulatory framework is in place and there is evidence that they are being applied at least by the banking supervision. The securities market has yet to start operating and the insurance supervision needs to be established on a more continuous basis. Whilst the supervision of banks is deemed to be satisfactory, in line with the plan developed with the assistance of the IMF and the World Bank, supervision for other non-bank licensees especially foreign exchange bureaux needs to be more aggressive in order to minimise the AML/CFT risks inherent with the under-the-counter transactions conducted by the bureaux. The Insurance Supervisory Authority and the Albania Securities Commission need to ensure that their supervision resources are adequate to be able to meet their respective obligations. Establishing a dialogue and cooperating with the GDPML would help in the drafting of guidelines and planning of training programmes on AML/CFT issues. The Regulation/Guidelines for banks are deemed to be adequate and comprehensive, similar Regulation/Guidelines have not been issued for the financial sector not licensed by the BoA This situation has created an imbalance in the financial industry whereby BoA license holders are obliged to implement measures which other licensees are not burdened with. Albanian supervisors altogether have made a moderate use of sanctions so far despite occasional serious problems and insufficiencies. Improvements are needed in this respect.
28. Informal money transfer services are not an issue in Albania. The two companies licensed to operate a money transfer service networks in Albania are controlled by the BoA but the latter is not in a position to conduct examinations on affiliates (which are not BoA licensees).

4. Preventive Measures – Designated Non-Financial Businesses and Professions

29. The list of natural and legal persons subject to the AML/CFT obligations under the LPML includes various types of entities which fall under the category of designated non-financial businesses and professions (DNFBP) contemplated in Recommendation 12. The full list of obliged entities is detailed in Article 3.1 of the LPML. Accordingly:
- casinos: are listed (the first licence for operating a casino has just been delivered);
 - real estate Agents: are not listed as such; art. 3.1 covers every natural and legal person the business of which is related to the evaluation of real estate and construction: this could cover real estate agents in some cases. Other categories of listed entities, due to the broad wording, could also be considered as covering real estate agents (e.g. “offices that evidence the conveyances or alienation of property”); in any event, the concept of real estate agent which acts as intermediary in real estate transactions needs to be included explicitly;
 - dealers in precious metals and stones: are listed;
 - lawyers, notaries, other independent legal professionals and accountants: are listed (the LPML covers certified public accountants, financial advisors, auditors, attorneys, notaries and representatives with a power of attorney);
 - trusts and company service providers: are not listed; whilst trust services are offered by banks (and are thus covered in practice), providing company services is not an activity carried out in Albania.
30. The AML obligations have been extended to other businesses and professions not listed in the FATF 40 Recommendations nor the second EU Directive. These are: gambling clubs, financial advisors; transportation business including forwarding (shipping) activities; the trading of precious and antique things; the administration of third party property; travel agencies; the construction industry.
31. From a general point of view, it is important to underline that the LPML requirements for DNFBP are almost the same as for financial institutions. There are only very minor variations (e.g. thresholds for identification and reporting). The weaknesses identified in the previous Section also apply to this one. For the time being, it is acknowledged that there have been no particular measures taken to make DNFBP (and other businesses) comply with the LPML requirements. There is a general discussion going on as to how this situation needs to be addressed and adequate control mechanisms put in place.
32. It must be underlined that at the moment, the law does not exempt accountants, notaries, lawyers and other independent legal professions from the AML/CFT obligations when receiving or obtaining information in the course of ascertaining the legal position of their client or performing their responsibility of defending or representing their client in judicial proceedings. The examiners were also sometimes advised that their duties under the LPML (notably reporting) was totally incompatible with their professional statutory secrecy. Albania clearly needs to take important measures on the issue of DNFBP and other businesses.

5. Legal Persons and Arrangements & Non-Profit Organisations

33. The registration of legal persons (including companies, political parties and non-profit organisations in their various forms) was, in the past, under the responsibility of the various first instance courts and not centralised in Tirana. Since the recent creation of central registers in the capital (kept by the 1st Instance Court of Tirana), it can be said that there are over 30,000 companies and 1,000 NPOs registered. The Ministry of Labour and Social Affairs has its own register which comprises about 700 non-profit, non governmental organisations. Access to the register is open to the public. It is possible, also for obliged entities, to check information (including participations or investments) in legal persons but since the registers are not computerised, retrieving data remains a difficult task. Another difficulty is to keep the information up-to-date and to exert controls at the time of registration. Another characteristic of businesses and companies in Albania is that the practice of parallel balance sheets is very common. This could be due notably to the limited number of audit requirements (e.g. insurance companies have been subject to financial auditing only since 2005). There are no measure in place at the creation/registration stage to prevent the unlawful use of legal persons in relation to ML/FT. Albania clearly needs to take measures on those issues. The Albanian authorities also need to improve the situation as regards the NPO sector. Just like in company formation, for establishing an NPO/NGO there is no requirement to provide a certificate proving that founders or managers of an NPO have no previous convictions. There is no requirement nor policy to check whether they have been designated on terrorist lists.
34. As for legal arrangements, three banks have received a license authorising them to carry out certain additional services, in particular to provide trust services, including – without limitation – the investment and administration of funds received in trust. There is no information available at the moment on the importance of this sector or clientele, or on any other trusts or legal arrangements operating in Albania, although it has been said on one occasion that foreign trusts had tried to establish businesses in the country. Albanian interlocutors explained the little information available by the fact that this was not part of the Albanian tradition. The examiners understood that the three banks apply the same identification, CDD and other requirements in the case of trusts. The issue deserves further clarification and should be addressed in the LPML and other relevant texts as appropriate. For the time being, trust services are not dealt with at all.

6. National and International Co-operation

35. The national efforts in the field of AML are coordinated by the National Committee on Coordinating the Fight Against Money Laundering, the existence and responsibilities of which are provided for in Article 8 para. 1 of the AML Law. This committee, which was created in 2003, is directed by the Prime Minister. It has responsibility for the overall state policy for preventing and fighting money laundering on the basis of the half-yearly reports prepared by the GDPML and reports and documents prepared by international institutions in the field of AML. It also discusses any important matter and cases submitted to it. Besides, an Inter-Institutional Technical Working Group for the prevention of money laundering has been set up, with representatives from all the institutions involved in this field. This working group, which is involved in the overall decision-making and also technical implementation processes is led by the General Director of the GDPML. Monthly meetings are organised as a minimum. Concrete

issues are also dealt with in small groups. These coordination structures have resulted in the adoption of a Programme on money laundering prevention (with a focus on the elimination of cash economy and illegal foreign exchange activity), a series of recommendations concerning cross border movements of assets, and the initiation of a project to draft a national strategy and action plan in this area (notably to import the declaration system at the level of the Customs). Memoranda of understanding have also been concluded between some of these entities (including the GDPML). However, as far as the effectiveness of these coordination mechanisms is concerned, it seemed to the evaluators that there is much room for improvement since there is no concerted view or assessment of money laundering problems, no consistent sharing of information on the results of AML efforts (no consistent information or no information available at all), debatable success as far as black market foreign exchange business is concerned.

36. Albania has ratified (in 2002) the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the UN 1988 Convention (in 2000) against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the UN 1999 Convention on Transnational Organised Crime (the Palermo Convention) (in 2002), and the 1999 UN Convention on the suppression of financing of terrorism (in 2002). Various measures have been taken to implement also the UN Security Council Resolutions (adoption of a national list, procedures for listing/delisting and freezing/de-freezing etc. Some adjustments are needed to fully implement the various international instruments.
37. Albania is able, in principle, to cooperate internationally for the purpose of mutual assistance in the area of AML/CFT. Direct contacts as opposed to diplomatic channels are progressively used. It would seem that, for the time being, the provisions in place are little used for AML/CFT purposes. In any event, there is a need to make provision on certain issues (direct exchanges of rogatory letters, execution/recognition of foreign decisions on seizure and confiscation, sharing of assets). As regards the field of extradition, there seem to be no major problem, apart from the high discretionary powers of the Minister of Justice. Statistics need to be kept on an ongoing basis. In general, the ability of Albania to cooperate rapidly and effectively can be undermined by practical factors (incomplete information systems and central databases).

7. Other Issues

38. The evaluators felt that general efforts should be done to improve the drafting and consistency of legal texts. They were also concerned by the importance of money laundering vulnerabilities in the real estate sector (combined with the total uncooperative attitude of all non financial obliged entities.

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