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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**Select Committee of Experts on the Evaluation**  
**of Anti-Money Laundering Measures**  
**(PC-R-EV)**

***FIRST MUTUAL EVALUATION REPORT ON***  
***ALBANIA***

***SUMMARY***

## SUMMARY

1. A PC-R-EV team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Albania between 12-15 December 2000.
2. It is only in recent years that Albania has been open to the outside world. The opening of its national borders led to unprecedented cross border movement of commodities, persons and capital, which in themselves helped to create an environment conducive to crime.
3. The law enforcement and criminal justice systems function under difficult economic and social conditions, which developed during the transition from a socialist and strongly centralised economy to a capitalist, free market economy. The transition has been accompanied by rising criminality, particularly organised crime (which is known to be involved *inter alia* in money laundering). Social and economic tensions reached their peak in 1997 with large scale trading frauds (the so-called “pyramid schemes”). Their collapse caused multiple losses from which social unrest and a general breakdown of law and order resulted. From these events a profound distrust of the banking, financial and tax systems took hold. This distrust is still strong. Corruption is endemic and is thought to permeate most institutions.
4. The banking and financial system remains underdeveloped. Cash accounts for 90-95% of transactions. It was accepted that control over inward investment generally, notably in the privatisation process, is weak. Company formation in Albania is straightforward, both for foreign and local residents.
5. The main proceeds generating crimes include: smuggling; trafficking in drugs, arms, aliens and stolen vehicles; organised prostitution; extortion; bribery and corruption; and kidnapping. Economic and financial crime (including tax evasion and financial fraud generally) is increasing.
6. Albania is vulnerable to money laundering, firstly, at the placement stage – where controls on foreign exchange are very weak. Foreign exchange transactions take place openly on the streets. Secondly, organised crime profits are regularly moved abroad for layering, either through the financial system (often appearing as payments for goods and services from abroad) or by cash smuggling. Thirdly, criminal proceeds, both domestic and foreign, can be integrated into the Albanian economy, through the purchase of real estate and business investment.
7. The Albanian authorities are thus seeking to create an anti-money laundering system against a background of an underused financial system, in an environment where corruption is rife and organised crime is very strong. Efforts to tackle money laundering cannot be made in isolation from other important national priorities being pursued - to fight corruption and organised crime and to develop the financial sector. In particular, all related initiatives to fight corruption are critical in the anti-money laundering context, and are encouraged by the examiners. They are vital for the long-term fight against money laundering.
8. With such an underused financial sector more strenuous efforts to fight money laundering in the immediate future need to be taken on the law enforcement side. To support this, the Albanian repressive regime needs to be robust enough to pursue and obtain convictions for money laundering and to ensure that major confiscation orders can be obtained against

organised criminals. Equally all national initiatives to promote wider use of the financial system should be high priorities in the financial sector.

9. The Albanian authorities recognised at an early stage their vulnerabilities to money laundering and first passed some general requirements for banks in the Banking Law of 1998, including the lifting of banking confidentiality where suspicion of money laundering exists (though it was unclear whether any reports had ever been made to the authorities under this provision). Subsequently the Law on the Prevention of Money Laundering (Law N°8610) was passed on 17.05.00 and came into force on 06.12.00, shortly before the on-site visit. Its passage is welcomed as a necessary first step towards an anti-money laundering regime. However the Albanian authorities still have a very long way to go before an operational anti-money laundering regime can be said to be in place.
10. It was unclear to the examiners how far Law N°8610 was drafted as a result of a real analysis of the present money laundering situation in Albania. Law N°8610 covers a wide range of institutions. A number of the subjects covered have only a small significance currently in the Albanian anti-money laundering strategy, given the underdevelopment generally of the financial sector.
11. Law N°8610 creates a structure for the protection of the financial system based on a regime which includes: some customer identification rules; suspicious/unusual transaction reporting in respect of a range of natural and legal persons; reporting of cash transactions with a range of different reporting thresholds for various operations; and the creation of a “Responsible Authority”, which will receive, analyse and process reported information.
12. So far as customer identification is concerned, provisions in Law N°8610 do not create a legal obligation to identify customers prior to establishing business relations. General client identification requirements need to be introduced to cover this<sup>1</sup>. The examiners were advised by the Bank of Albania that in their opinion anonymous accounts were not allowed, but no specific legal provisions prohibit such accounts. This should be rectified. The law also needs amending to provide for record retention after account closure.
13. The judicial status and position of the “Responsible Authority” was still to be determined at the time of the on-site visit. While the law had been brought into force, it was not operational. Subjects of the law did not know where reports were to be sent. Making the law operational<sup>2</sup> through the urgent creation of the “Responsible Authority”, as the Albanian FIU, is vital for the credibility of their national anti-money laundering strategy. Awareness raising in respect of the new obligations in the law within the financial sector needs to be actively pursued in a way that encourages an understanding of why the law is necessary. Building the support, trust and confidence of the financial sector will be fundamental in making the law operational. Detailed guidelines need to be prepared by the supervisory authorities, in conjunction with the subjects of the law, and the “Responsible Authority”, setting out best practice in ensuring compliance with the anti-money laundering legislation, and setting out guidance on suspicious and unusual transactions. At the very least the preventive system which is being put into place needs to provide financial institutions with the capability of identifying quickly where the financial system (and the banks in particular) is presently used for inward and outward transmission of criminal proceeds.

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<sup>1</sup> The Albanian authorities at the time of the adoption of the Report indicated that there were current Regulations in existence which the examiners have not seen.

<sup>2</sup> The examiners were advised at the time of the adoption of the Report that the Responsible Authority became operational in August 2001.

14. Training programmes for the financial sector should be put in place as a matter of urgency. Existing supervisory bodies should thereafter implement supervision programmes to ensure that subjects comply with the requirements of Law N°8610. The Albanian authorities should also consider what, if any, new supervisory structures are required (particularly if and when casinos are introduced).
15. It should also be a priority on the financial side to eliminate illegal foreign exchange operations and to ensure that there is a rigorous authorisation regime in place for exchange houses, which is effective in guarding against criminal infiltration. A requirement to identify the sources of capital would be appropriate in this context. The foreign exchange offices should also be subject to active supervision to ensure compliance with Law N°8610.
16. Greater emphasis is required generally on investigating the sources of money when examining new business proposals. A review of the controls on company formation is recommended.
17. On the legal side immediate priorities should be the completion of the process of ratification of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention), which was signed on 04.04.00, and ratification (which was understood to be forthcoming) of the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention)<sup>3</sup>.
18. At present the legal provision, which was pointed to in the criminal context, is found in Article 287 of the Criminal Code of 1995. This is a pre-existing provision, which was drafted at a time when the Albanian experience of money laundering was very limited. Nonetheless approximately 27 money laundering investigations were reported as having been undertaken using this provision and two money laundering cases are before the courts, but have not been concluded. The Albanian authorities recognise the limitations of Article 287 for money laundering prosecution and are drafting a new money laundering criminal offence. This initiative is supported by the examiners. In the process of becoming full parties to the Strasbourg and Vienna Conventions there should be enacted a separate, modern criminal provision dealing specifically with money laundering, which needs to meet all the requirements of Articles 1 and 6 of the Strasbourg Convention<sup>4</sup>.
19. The Albanian authorities pointed to several articles in the Criminal Code and Criminal Procedure Code which cover confiscation and provisional measures. It appears that in all criminal offences confiscation can be considered as a supplementary punishment. The regime appears to be basically discretionary. In the absence of statistical information about the extent of its use it is difficult to make a meaningful judgement about how far confiscation is a real priority at present. The examiners were encouraged to note, however, that the prosecutors seemed engaged with this issue. There were real concerns, though, as to precisely how far the provisional measures regime (which should preserve the position in advance of confiscation) is really effective. Some parts, at least, seem clearly based on the seizure of items which will be of evidential value only. The provisional measures regime should therefore be reviewed urgently. Legislative provisions need to be robust enough to enable prosecutors and investigators to identify and trace, at an early enough stage to avoid assets being dissipated,

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<sup>3</sup> The examiners were advised at the time of the adoption of the Report that the Albanian Parliament has ratified both Conventions. Instruments of ratification in respect of the Strasbourg Convention were deposited on 31.10.01, and that Convention will enter into force on 01.02.02.

<sup>4</sup> It is understood that since the on-site visit a new Article 286a has been added to the Criminal Code and which came into effect on 13.3.2001. It separately criminalises money laundering on an all crimes basis. The basic offence carries a maximum sentence of 10 years, and where there are aggravating features, a sentence of 15 years can be imposed.

all property which is liable to confiscation, including both instrumentalities and proceeds (with the wide definition provided for in the Strasbourg Convention) and to prevent any dealing in, transfer or disposal of such property. Likewise the confiscation regime should be swiftly reviewed. It would help to make it clear that confiscation applies mandatorily to laundered proceeds and consideration should also be given to further strengthening the regime to establish more mandatory elements. The system needs to be capable of confiscating both proceeds (with the wide meaning attached to it by the Strasbourg Convention) and instrumentalities. Value confiscation should be provided for where proceeds are no longer available. The Albanian authorities indicated that the issue of the reversal of the burden of proof in establishing (post conviction) what are unlawful proceeds was being considered. The examiners welcome this.

20. It is necessary to ensure that Albania can grant and receive effective and timely international co-operation in all areas and especially in relation to the tracing, seizing, freezing and confiscation of the proceeds of crime. At the time of ratification of the Strasbourg Convention it would assist if legislation clearly sets out how international co-operation can be provided in the execution of provisional measures on behalf of a requesting state and which procedure should be adopted for enforcing foreign confiscation orders. The Albanian authorities frankly admitted that they need close, simple and fast international co-operation. The setting up of the Responsible Authority, as the FIU, will be critical to achieving this aim. It would be helpful if it is explicitly empowered to co-operate with other FIUs. The FIU should be capable of meeting the criteria for membership of the Egmont Group in due course.
21. The greater emphasis which needs to be placed on law enforcement generally in the fight against money laundering firstly needs to be reflected in quick decisions on the location of the "Responsible Authority" and its proper resourcing, in terms both of personnel and IT. It needs sufficient powers to require supplementary information from all relevant subjects of the law. Its powers to freeze bank accounts need much further clarification, and articulation.
22. On the law enforcement side, at present, the Department for Economic and Financial Crime in the Criminal Police appears to be at the core of the fight against money laundering. It was responsible for 2 money laundering investigations which are before the courts. It had not itself received any orders from the Public Prosecutor to commence money laundering investigations. Nonetheless the Public Prosecutors referred to around 27 other money laundering investigations, with which they had been involved.
23. The examiners concluded, notwithstanding the hard work of the Department for Economic and Financial Crime, that the present law enforcement response is fragmented, that available police powers are weak, that real co-ordination appears to be lacking and resources are spread thinly.
24. The examiners consider that further work needs to be done to ensure that financial investigation of criminal proceeds generally can be efficiently pursued by properly trained investigators in the whole range of proceeds generating offences. More joint working between police and prosecutors on cases and the development of a shared understanding between them of what is required evidentially in money laundering cases is also necessary. Prosecutors and investigators and other relevant parties need to give consideration together to the level of proof that is required for money laundering prosecutions. The development of joint guidance (or charging standards) would assist. A joint seminar primarily between prosecutors and investigators might assist this process.

25. Police powers need revisiting. The Albanian authorities should urgently consider legislating to enable investigators to have available to them a broad range of special investigative techniques, including controlled delivery of cash or other criminal proceeds. Once these techniques are available on a formal legal basis they need to be used proactively in the detection of money laundering. Law enforcement concerns on banking secrecy at the investigation stage should be identified precisely, examined systematically and unnecessary obstacles should be removed.
26. The need for Customs to detect cash money laundering is crucial. They need to become wholly engaged with and effective in the anti-money laundering fight. In order to play a leading role their officers need to be properly trained in money laundering techniques and investigation. They need to make regular reports of their suspicions of money laundering. If all the Customs are obliged to do under Law N°8610 is to report evidence of money laundering, this is quite inadequate.
27. Responsibility for co-ordinating the anti-money laundering fight was planned, at the time of the on-site visit, to be vested in the Ministry of Finance. The FIU will no doubt take a leadership role on this at a day-to-day working level. However a permanent co-ordination body needs creating at the strategic level, chaired at a suitably senior level, including all the main players in the anti-money laundering regime. Urgent tasks for such a body include the development of a common understanding of the money laundering problem in Albania, agreement on how money laundering is undertaken and how it needs tackling. Thereafter an interagency action plan should be created and monitored.
28. By building on what has been started, and addressing these issues urgently, Albania can make progress towards creating an anti-money laundering system which will meet international standards. However the size of the task should not be underestimated.

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