



Strasbourg, 14 May 2004

**MONEYVAL (2004)6 Summ.**

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

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

***SECOND ROUND EVALUATION REPORT ON***  
***ALBANIA***

***SUMMARY***

1. A MONEYVAL team of evaluators, accompanied by a colleague from the Financial Action Task Force (FATF), visited Albania between 14 and 17 October 2003, in the context of the second round of MONEYVAL evaluations.
2. As for the general money laundering situation, at the time of the second on-site visit, the major sources of criminal proceeds were reported as drug-related crimes, robberies, customs offences, exploitation of prostitution, trafficking in weapons and engines (incl. cars) and theft through abuse of office. Also tax crime, fraud and falsification of currency appear relatively often.
3. Criminal groups operate on a relatively large scale. The evaluation team was given figures suggesting that for the period January 2002 to September 2003, a number of 22 criminal groups with a total of 108 persons have been identified. Of the 108 persons, 76 have been arrested. The groups are involved in a variety of crimes, including counterfeiting of currency, falsification of documents, smuggling of cigarettes and fuel and robberies.
4. As for money laundering typologies the use of the financial system is slowly becoming more frequent. Still, however, the financial system is not very well developed, which is why also trade-related money laundering is frequently reported, including the investing of the proceeds into villas and cars and other goods. Around 80 % of all economic transactions are still carried out in cash, which naturally makes it difficult for the police to conduct money laundering investigations.
5. Recognising the importance of having an effective anti-money laundering regime, the Albanian government has strived to approximate the legislation and anti-money laundering structure of Albania to international standards. This has led to a number of changes in the anti-money laundering situation both from the preventive and repressive angles. First of all, the national FIU has been established in August 2001 as a Directorate of the Ministry of Finance. The general preventive anti-money laundering act, which came into force shortly before the first evaluation visit, has been implemented in practice, and was amended in June 2003. The amendments included into the preventive regime also professions outside of the financial sector, as foreseen by the 2001 EU Directive on Money Laundering. At the same time as the amendments of the preventive law, also the money laundering offence was significantly amended.
6. On the legal side, many of the problems concerning the criminalisation of money laundering that had been identified in the first round evaluation report have been adequately addressed by Albania, and generally there now seems to be a robust criminalisation of money laundering. Thus, a specific money laundering offence has been drafted in article 287 of the Criminal Code, and the definition of money laundering is replicated in the Law on the Prevention of Money Laundering. The offence is of an all-crime nature. However, from the letter of article 287 it is not totally clear, whether it covers also indirect proceeds just like there are some uncertainties as to whether own-proceeds laundering is covered.
7. Of a very serious nature are the problems concerning the nature of the evidence and the degree of proof required to prove the predicate offence not only in trial

proceedings but possibly also for the purposes of the investigative measures requiring a judicial order. The approach of the prosecutors is disturbing in this respect, since it is clear that they are of the opinion, that a prior or simultaneous conviction for the predicate crime is needed in order to indict for money laundering. This extremely strict interpretation of article 287 jeopardises the entire effort against money laundering.<sup>1</sup>

8. In the first mutual evaluation report of Albania, it was recommended, that careful consideration be given to the introduction in Albania of corporate criminal liability. Since then, Albania has adopted article 45 of the Criminal Code, which is not a provision on corporate criminal liability, but which is nonetheless a step in the right direction.
9. As for attachment (seizure) since the first round evaluation of Albania, a new provision has been introduced as article 274, paragraph 2, of the Criminal Procedure Code. Article 274 concerns preventive attachment (seizure), and paragraph 2, states explicitly, that proceeds from crime and any other property which can be subject to confiscation, can be seized. In spite of the positive development of the legal framework, it would seem that no seizure and/or freezing orders have been issued in the field of acquisitive offences.
10. As for confiscation, the two most relevant provisions are articles 30 and article 36 of the Criminal Code. Article 30 concerns the use of confiscation as a supplementary penalty, whereas article 36 is a broader provision setting out the general framework for confiscation. Article 36 has been amended since the first round evaluation, and provides now for a more comprehensive framework than was the case before. As one example, it is now clear, that also the confiscation of indirect proceeds is provided for. Against the relatively positive background with respect to the amended provisions concerning confiscation, it is highly disappointing to note, that apparently still the confiscation regime is being used to a very limited degree.
11. In the field of international co-operation, since the first round evaluation Albania has signed and ratified several of the key international conventions in the area of co-operation in criminal matters. The Albanian authorities informed the evaluation team, that all requests received in the area of mutual legal assistance have been successfully executed. However, none of the requests related to seizure and confiscation, and the evaluation team had some concerns about whether article 517 of the Criminal Procedure Code would provide the necessary legal basis for executing a foreign request for seizure.
12. On the preventive issues, the Law on the Prevention of Money Laundering as amended in 2003 designates a large number of financial and non-financial institutions as subjects of the Law. It will be beneficial for the future development of the system that such a wide range of institutions has been included into the anti-money laundering regime. Nevertheless, given the underdeveloped nature of the financial sector a number of the subjects are of low significance in the Albanian anti-money laundering

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<sup>1</sup> At the time of the adoption of the report, the Albanian authorities advised that a prosecution for money laundering was permitted in the absence of a conviction for the underlying predicate offence, but it is understood that this has not been tested.

strategy currently. In the light of this the evaluators questioned to what extent the Law had been created as a result of a real analysis of the current situation in Albania.

13. When it comes to customer identification requirements, it was found during the first round evaluation of Albania that there is no legal obligation to identify customers prior to establishing business relations, e.g. account opening. This is still the situation. Article 4, paragraph 1, of the Law on the Prevention of Money Laundering stipulates that clients have to be identified prior to conducting any financial transaction exceeding two million leke as set forth in article 5 of the Law (and not prior to the establishment of a business relationship) and when there is a suspicion of money laundering. The evaluators were advised by the Albanian Bankers' Club that in practice every bank according to its internal rules has to identify customers prior to establishing business relationships. Nevertheless, the Law does not reflect this situation. This is neither in accordance with the EU Directives nor FATF Recommendation 10.
14. On the registration and reporting obligations, article 5 of the Law on the Prevention of Money Laundering sets out the requirements to register and report suspicious transactions and certain cash and non-cash transactions to the FIU. The reporting obligations, in English translation at least, are quite complex, and may require further guidance. According to article 5, the subjects of the Law are obliged to:
  - Register cash and non-cash transactions exceeding 2 million leke.
  - Register and report to the FIU cash and non-cash transactions regardless of the size of the transaction when there is a suspicion of money laundering. Indicators to establish a suspicion are set out in article 5, paragraph 3 of the Law.
  - Register and report to the FIU cash and non-cash transactions exceeding 20 million leke.
15. Article 11 of the Law on the Prevention of Money Laundering seems to limit the reporting obligation of the banks to situations where the suspicion relates to banking activities of a certain nature, and not banking activities in general. If this understanding of article 11 is correct, it is a serious impediment to an efficient effort to fight money laundering in the banking area.
16. On record keeping requirements the Law of the Prevention of Money Laundering provides that all subjects of the Law must retain the data, information and reports of transactions performed on behalf of the customers for a period of not less than 5 years a) from the date the customer terminates civil and juridical relations with the subject or b) after the transaction has taken place. However, as already found in the first round evaluation there is no provision regarding the period of record keeping after account closing. The wording mentioned under a) is not sufficiently clear in that respect, because the termination date is not necessarily the same date as the account is closed.
17. During the first round evaluation neither the supervisory authorities nor the financial institutions had put in place staff training programmes. The situation seems to have ameliorated. The FIU as well as at least banks and insurance companies have put staff training programmes in place. Nevertheless, this is not the case for all the subjects of the Law.

18. As regards the foreign exchange operations the evaluators found that the situation since the first round evaluation has not changed very much. The Central Bank advised again that it had no powers to eliminate the illegal foreign exchange operations. For the Central Bank it was not clear who would be responsible for the elimination, the tax authorities or the police. The evaluators learned finally that the police are generally competent and have taken some action. In addition the police advised that the situation today is much better than a couple of years ago. Nevertheless, the evaluators could observe that there is still much exchange activity going on in public places, obviously to a certain degree tolerated by the police. The Albanian authorities should therefore ensure that there are effective means for the elimination of illegal foreign exchange operations and that action in practice is taken against persons offering this kind of illegal exchange.
19. When it comes to the operational issues, the overall results produced by the law enforcement and judicial system in terms of criminal investigations, prosecutions and particularly convictions for money laundering are very poor. Since the first evaluation only one conviction for money laundering has been reached. Under the current reporting regime the FIU has received a total of 265 reports, 68 STR's and 197 CTR's. Of the 265 reports, 36 reports were passed to the police and 8 reports directly to the prosecutors office. Thus, of the total number of reports received by the FIU, a relatively low percentage is passed on for further investigation. Given the relatively high number of cases concerning drug trafficking, fraud and offences against property, more cases concerning money laundering should be initiated. Following the proceeds of crime in major proceeds-generating offences should be a priority for law enforcement. Further training needs in modern financial investigation techniques should be reviewed and addressed. The specialised prosecutors should also be provided with further training. It is also vital that the police starts generating money laundering cases outside of the reporting system.
20. Generally, however, the FIU seems to have found its place in the law enforcement system, and it co-operates relatively smoothly with the traditional law enforcement institutions, even though it is an administrative unit. Much credit should also be given to the staff of the FIU, who appear very dedicated to their tasks. Furthermore, the FIU has gained membership of the Egmont Group, which is positive. The powers of the FIU, which were anticipated in the Law on the Prevention of Money Laundering already before the creation of the FIU, have also been extended significantly since the first evaluation. Today, the FIU claims to have access to any kind of financial information without a prior approval from the courts or from the prosecutors office. On the less positive side, it was unclear to the evaluators what kind of analysis is conducted by the FIU for the sake of improving the management of the reports of suspicious transaction and large cash transactions.
21. In the first round evaluation report it was expressed that the Customs was not sufficiently involved in the national anti-money laundering effort. This concern has received little attention. Undoubtedly, the Customs is involved in the general anti-money laundering co-ordination scheme in Albania, however, it seems that it is still facing lack of training and expertise. Therefore, the Customs authorities should take a more proactive and dedicated role in money laundering investigations, e.g. more systematically expanding their own investigations into the economic dimension of

crimes within their competence and by detecting illegal proceeds in relation to money laundering. A priority for the Customs should be the prevention of the importation of stolen cars into Albania.

22. The position concerning the special investigative techniques such as interception of telephone communications, undercover operations, bugging, controlled delivery and use of agents provocateurs remains almost unchanged since the first mutual evaluation report. While a few of them – for example interception and recording of communication – are brought into legislation, others such as controlled deliveries are still not regulated<sup>2</sup>, and it is still unclear whether these techniques have ever been used in money laundering cases. Furthermore, the police still does not have a central police database. It goes without saying, that a central database would be extremely helpful in the daily police work, and it could be beneficial also in cases concerning financial crime and money laundering.
23. To conclude it should be emphasised that Albania has progressed significantly since the first evaluation. The main components of a generally sound preventive system are in place, although deficiencies noted in supervision and customer identification are significantly impairing its effectiveness. In general the law enforcement sector looks more focused and makes more efforts to create results than was the case some years ago. However, this is very much thanks to the FIU. In addition, the effectiveness of a system must eventually be considered against the results it produces, and Albania has produced very few results. The evaluation team believes that the amendments and adjustments proposed would contribute to making Albania's anti-laundering regime produce the results it deserves and thus become a more effective system.

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<sup>2</sup> Subsequent to the evaluation visit, the Albanian authorities informed that in February 2004 a law was passed regulating the said investigative techniques.