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EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND THE
FINANCING OF TERRORISM
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Report on Fourth Assessment Visit - *Addendum*

Anti-Money Laundering and Combating the
Financing of Terrorism

ALBANIA

13 April 2011

Albania is a member of MONEYVAL. This is the fourth report in MONEYVAL's fourth round assessment visits, following up on the recommendations made in the third round. This evaluation was conducted by the International Monetary Fund (IMF). A representative of MONEYVAL joined the IMF team for part of the evaluation exercise to examine compliance with the European Union anti-money laundering Directives where these differ from the FATF Recommendations and therefore fall within the remit of the MONEYVAL examinations. The report on the 4th Assessment Visit was adopted by MONEYVAL at its 35th Plenary (Strasbourg, 11 - 14 April 2011).

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COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Albania is not a member country of the European Union. It is not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: “the Directive”) and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.**

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	Corporate Liability
<i>Art. 39 of the Directive</i>	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
<i>FATF R. 2 and 17</i>	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
<i>Key elements</i>	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
<i>Description and Analysis</i>	<p>Natural and legal persons can be held liable for infringements of the national legislation. The sanctions defined by Art. 287 of the Criminal Code are applied to natural persons and legal persons.</p> <p>According to Art. 45 of the Criminal Code, criminal liability of the legal persons is without prejudice to the criminal liability of natural persons who committed or collaborated in the commission of the same criminal offences.</p> <p>According to the Art. 8 of Law no. 9754 “On the criminal liability of legal persons” legal persons committing criminal offences are subjected to principal/main sanctions which comprise fine and termination of the legal person, and supplementary sanctions.</p> <p>According to the Art. 26 of Law 9917 “On The Prevention Of Money Laundering And Financing of Terrorism” (AML/CFT Law) the responsible authority (FIU) may request the licensing/supervisory authority to restrict, suspend or revoke the license of an entity violating the AML/CFT Law. By the Art 27 of AML/CFT Law natural persons and legal persons are subjected to applicable sanctions.</p>
<i>Conclusion</i>	Criminal liability for money laundering extends to legal persons.
<i>Recommendations and Comments</i>	

2.	Anonymous accounts
<i>Art. 6 of the Directive</i>	Member States shall prohibit their credit and financial institutions

	from keeping anonymous accounts or anonymous passbooks.
<i>FATF R. 5</i>	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
<i>Key elements</i>	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
<i>Description and Analysis</i>	<p>According to the Art. 4 of the AML/CFT Law the entities should identify their clients and verify their identities by means of identification documents before establishing a business relation.</p> <p>According to the Art. 11 point 2 of the AML/CFT Law 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.</p> <p>Based on the Art. 6 of the Regulation of Bank of Albania No. 44 all entities subjected of the AML/CFT Law must identify and verify the identity of their customers for the purposes of prevention of money laundering and terrorist financing. These subjects must identify completely and correctly their customers and beneficiaries and require additional information in case they deem it necessary.</p>
<i>Conclusion</i>	Albanian legislation does not permit the opening and maintaining of anonymous account or accounts in obviously fictitious names. There is indirect prohibition of keeping anonymous passbooks (“start or maintain business relations with anonymous clients”).
<i>Recommendations and Comments</i>	

3.	Threshold (CDD)
<i>Art. 7 b) of the Directive</i>	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions <u>amounting</u> to EUR 15 000 or more.
<i>FATF R. 5</i>	Financial institutions should undertake CDD measures when carrying out occasional transactions <u>above</u> the applicable designated threshold.
<i>Key elements</i>	Are transactions and linked transactions of EUR 15 000 covered?
<i>Description and Analysis</i>	<p>In Albania according the Art. 4 of AML/CFT Law CDD measures have to be applied when executing transaction orders in all cases of carrying out a direct transfer inside or outside the country, and carrying out transaction amounting to ALL 1,500,000 (EUR 12.000) or its equivalent in foreign currency in the case of a sole transaction or several linked transactions.</p> <p>According to the Para.3 of Art.12 of the AML/CFT Law the reporting entities obliged to report to the responsible authority all cash transactions amounting ALL 1,500,000 (EUR 12.000) or its equivalent in other currencies, and all non-cash transactions, equal to or greater than ALL 6,000,000 (EUR 45,000) or its equivalent in other currencies executed as a single transaction or as series of linked transactions.</p>
<i>Conclusion</i>	Transactions and linked transactions of EUR 15,000 are covered
<i>Recommendations and Comments</i>	

4.	Beneficial Owner
<i>Art. 3(6) of the Directive (see Annex)</i>	The definition of ‘Beneficial Owner’ establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
<i>FATF R. 5 (Glossary)</i>	‘Beneficial Owner’ refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
<i>Key elements</i>	Which approach does your country follow in its definition of “beneficial owner”? Please specify whether the criteria in the EU definition of “beneficial owner” are covered in your legislation.
<i>Description and Analysis</i>	<p>Article 4 Para 2 of the AML/CFT Law stipulates provisions for identification of the beneficial owner when establishing a business relationship or carrying out a transaction.</p> <p>According to the Art. 2 Para 12 of the AML/CFT Law the “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. The beneficial owner is directly or indirectly a member or a shareholder of a legal entity or legal arrangement, has sole disposal rights over more than 50 % of votes on the basis of an agreement with other members or shareholders, has a decision making control on the legal entity, in any way controls the selection, appointment or dismissal of the majority of administrators of the legal person.</p> <p>According to the Instruction 12 of the Minister of Finance a beneficial owner is a natural or legal person on whose behalf the transaction is being carried out. Here are also included those persons that exercise the final effective control on the natural person, owns directly or indirectly the majority of shares, voting rights of a legal person or possesses over 25% of the shares.</p> <p>The interviewed banks and insurance undertakings applies 20 or 25 % identification threshold regarding the beneficial owner.</p>
<i>Conclusion</i>	<p>The definition of beneficial owner given in the AML/CFT Law and Instruction 12 of the Minister of Finance - legal entity as a possible beneficial owner – is inconsistent with the definition of the Directive and the FATF Recommendations.</p> <p>The definition of majority in the AML/CFT Law is different than the threshold determined by the Instruction 12 of the Minister of Finance.</p> <p>The applicable 50% of percentage shareholding threshold according the AML/CFT Law corresponds to the FATF definition but not comply with the requirements on 25% plus one share threshold set in the Directive.</p> <p>There is no specific provision in the AML/CFT Law requiring reasonable measures to verify the identity of beneficial owner.</p>
<i>Recommendations and Comments</i>	The authorities need to consider implementing all requirements set out in Art. 3(6) of the Directive.

	<p>The authorities need to set a clear definition of beneficial owner according to the Directive and FATF recommendations and clarify the inconsistency between the AML/CFT Law and Instruction 12 regarding the the threshold in determining beneficial ownership.</p> <p>The authorities need to include a requirement in legislation to verify the identity of beneficial owner.</p>
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5.	Financial activity on occasional or very limited basis
<i>Art. 2 (2) of the Directive</i>	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
<i>FATF R. concerning financial institutions</i>	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology Para 23; Glossary to the FATF 40 plus 9 Special Recs.).
<i>Key elements</i>	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
<i>Description and Analysis</i>	Albania has not made use of the option given the Directive. Therefore the Albanian AML/CFT Law does not provide exemptions for persons and entities who engage in a financial activity on an occasional or a very limited basis and where there is a little risk of ML or FT.
<i>Conclusion</i>	Albania does not implement Art. 4 of Commission Directive.
<i>Recommendations and Comments</i>	

6.	Simplified Customer Due Diligence (CDD)
<i>Art. 11 of the Directive</i>	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
<i>FATF R. 5</i>	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
<i>Key elements</i>	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
<i>Description and Analysis</i>	According to the Art. 4 of the AML/CFT Law CDD measures apply in all cases of establishing a business relationship, currently no simplified or

	<p>reduced measures have been established.</p> <p>Art. 13 of the AML/CFT Law exempts</p> <ul style="list-style-type: none"> • interbank transactions, except the ones performed on behalf of their customers; • transactions between subjects of this law and the Bank of Albania; • transactions performed on behalf of public institutions and entities; <p>from reporting obligations.</p>
<i>Conclusion</i>	Albania does not implement Art. 11 of the EC Directive.
<i>Recommendations and Comments</i>	

7.	Politically Exposed Persons (PEPs)
<i>Art. 3 (8), 13 (4) of the Directive (see Annex)</i>	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
<i>FATF R. 6 and Glossary</i>	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
<i>Key elements</i>	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
<i>Description and Analysis</i>	<p>According to the AML/CFT Law “Politically Exposed Persons” are domestic PEPs designated in Art. 3 of Law Nr. 9049 On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials. They are categorized as of a higher risk level and subjected to enhanced due diligence. Regarding PEPs the reporting entities are obliged to obtain a declaration on the source of the client’s wealth, ongoing monitoring of the business relationship and get approval from management before establishing a business relationship.</p> <p>The definition of PEPs does not cover immediate family members, important party officials and persons known to be close associates, of such persons.</p> <p>Para 2 Art. 28 of AML/CFT Law provides for a mechanism to issue a list of PEPs carried out by the High Inspectorate for the Declaration and Audit of Assets which in turn does make this list available to the Albanian FIU, twice per year. The PEP list is provided in electronic format to financial institutions.</p> <p>The subsidiaries and branches in Albania owned by foreign banks or insurance companies use international PEP lists provided by data providers indirectly through mother companies.</p>
<i>Conclusion</i>	The PEP definition does not extend to foreign natural persons, all the obligations set forth in article 13(4) of the Directive apply in case of

	<p>domestic PEPs.</p> <p>Albania does not implement the one year rule stipulated in Art. 2(4) of Commission Directive 2006/70 EC.</p> <p>Art. 3(8) of Directive is not fully implemented.</p>
<i>Recommendations and Comments</i>	The authorities need to consider implementing all requirements set out in Art. 3 (8), 13 (4) of the Directive.

8.	Correspondent banking
<i>Art. 13 (3) of the Directive</i>	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
<i>FATF R. 7</i>	Recommendation 7 includes all jurisdictions.
<i>Key elements</i>	Does your country apply Art. 13(3) of the Directive?
<i>Description and Analysis</i>	<p>The banks obliged to apply measures pursuant to Recommendation 7 defined in Para. 1 Art. 9 of the AML/CFT Law in case of all jurisdictions.</p> <p>The current correspondent banks that provide their cross border services to banks operating in Albania do operate only in countries that are FATF members (United States, France, Italy, Germany and Austria).</p> <p>The AML/CFT Law does not include all the requirements of the Directive. There are no indications for an obligation to document the respective responsibilities of each institution as well as for obligations concerning payable-through accounts.</p>
<i>Conclusion</i>	Albania does not apply Art. 13(3) of the Directive.
<i>Recommendations and Comments</i>	The authorities need to consider implementing additional requirements with respect to payable-through accounts.

9.	Enhanced Customer Due Diligence (ECDD) and anonymity
<i>Art. 13 (6) of the Directive</i>	The Directive requires ECDD in case of ML or TF threats that may arise from <u>products</u> or <u>transactions</u> that might favour anonymity.
<i>FATF R. 8</i>	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing <u>technologies</u> that might favour anonymity [...].
<i>Key elements</i>	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
<i>Description and Analysis</i>	<p>The mitigation and the prevention of misuse of technological developments encouraging anonymity is explicitly addressed in Article 9 (<i>Categories of transactions subject to enhanced due diligence</i>) of the AML/CFT Law. According to Para. 8 the obligors 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.</p> <p>According to the Art. 5 of Regulation No. 28 On Supervision of</p>

	<p>Electronic Banking Transactions issued by the Bank of Albania banks are not allowed to open e-banking account without the physical presence of the client at the bank.</p> <p>According to the Para.3 Art.12 of the AML/CFT Law the reporting entities obliged to report to the responsible authority all non-cash transactions, equal to or greater than ALL 6,000,000 (EUR 45,000) or its equivalent in other currencies executed as a single transaction or as series of linked transactions.</p> <p>These obligations do not explicitly cover products and transaction.</p> <p>In Albania there are a limited number of banks providing e-banking services and only some of them accept orders without physical presence of the client at the bank.</p>
<i>Conclusion</i>	The Albanian AML/CFT legislation does not contain a provision that requires financial institutions to pay special attention to any ML or TF threats that may arise from products or transactions that might favour anonymity and to take measures, if needed, to prevent their use for ML and TF purposes.
<i>Recommendations and Comments</i>	The authorities need to consider implementing such a requirement for financial institutions.

10.	Third Party Reliance
<i>Art. 15 of the Directive</i>	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
<i>FATF R. 9</i>	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
<i>Key elements</i>	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
<i>Description and Analysis</i>	Reliance on professional, qualified third parties concerning CDD measures is not allowed by the Albanian AML/CFT Law. All the reporting entities are required to carry out full CDD measures.
<i>Conclusion</i>	Albanian AML/CFT legislation does not address Art.15 of the EC Directive.
<i>Recommendations and Comments</i>	

11.	Auditors, accountants and tax advisors
<i>Art. 2 (1)(3)(a) of the Directive</i>	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
<i>FATF R. 12</i>	CDD and record keeping obligations <ol style="list-style-type: none"> 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: <ul style="list-style-type: none"> • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
<i>Key elements</i>	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
<i>Description and Analysis</i>	<p>The scope of AML/CFT Law covers accountants, auditors and tax advisors (Art. 3 k) and m)). They are required to identify their customers when entering into business relationship, when they ask to execute a transaction for an amount equal or greater than 1,5 million ALL (12,000 EUR) or its equivalent in foreign currency, when there are doubts about the veracity or adequacy of previously obtained customer identification data and in all cases when there is reasonable doubt for money laundering or terrorism financing.</p> <p>According to the Para.3 of Art.12 of the AML/CFT Law the reporting entities are obliged to report to the FIU all cash transactions amounting ALL 1,500,000 (EUR 12.000) or its equivalent in other currencies, and all non-cash transactions, equal to or greater than ALL 6,000,000 (EUR 45,000) or its equivalent in other currencies executed as a single transaction or as series of linked transactions.</p>
<i>Conclusion</i>	In line with the Directive the AML/CFT Act covers accountants, auditors and tax advisors. CDD and reporting obligations are the same as for all obliged entities under the scope of the AML/CFT Law.
<i>Recommendations and Comments</i>	

12.	High Value Dealers
<i>Art. 2(1)(3)e) of the Directive</i>	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
<i>FATF R. 12</i>	The application is limited to those dealing in precious metals and precious stones.
<i>Key elements</i>	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
<i>Description and</i>	The scope of the AML/CFT Law covers real estate agents, dealers in

<i>Analysis</i>	<p>precious metals and stones, entities involved in auctioning as well as car dealers categorized as high value dealers. They are required to identify their customers when they engage in any cash transaction with a customer equal to or above 1.5 million ALL (EUR 12,000).</p> <p>According to the Para 3 Art. 12 the entities are obliged to report to the FIU all cash transactions amounting ALL 1,500,000 (EUR 12.000) or its equivalent in other currencies.</p>
<i>Conclusion</i>	The AML/CFT Law adopted the broader approach of the Directive.
<i>Recommendations and Comments</i>	

13.	Casinos
<i>Art. 10 of the Directive</i>	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
<i>FATF R. 16</i>	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
<i>Key elements</i>	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
<i>Description and Analysis</i>	According to the Para 1 i) Art 4 of the AML/CFT Law casinos and games of chance are required to perform customer identification when they ask to execute a transaction for an amount equal or greater than 200,000 ALL (EUR 1,500) or its equivalent in foreign currency for buying or selling of gambling coins or their electronic equivalent.
<i>Conclusion</i>	The Albanian AML/CFT Law requires client identification in case of purchase or exchange gambling chips over threshold.
<i>Recommendations and Comments</i>	

14.	Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU
<i>Art. 23 (1) of the Directive</i>	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
<i>FATF Recommendations</i>	The FATF Recommendations do not provide for such an option.
<i>Key elements</i>	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
<i>Description and Analysis</i>	According to the AML/CFT Law accountants, auditors, tax advisors, notaries and other independent legal professionals are required to report suspicious transactions as well as transactions over threshold directly to the Albanian FIU.
<i>Conclusion</i>	The option provided by Art. 23(1) of the Directive does not apply.
<i>Recommendations and Comments</i>	

15.	Reporting obligations
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<i>Arts. 22 and 24 of the Directive</i>	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obligated persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
<i>FATF R. 13</i>	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
<i>Key elements</i>	What triggers a reporting obligation? Does the legal framework address <i>ex ante</i> reporting (Art. 24 of the Directive)?
<i>Description and Analysis</i>	<p>According to the Para. 2 Art. 12 of the AML/CFT Law the obliged entities are required to refrain from carrying out a transaction when they know or suspect it to be related to money laundering or terrorism financing and report it immediately to FIU and ask for instructions as to whether it should execute the transaction or not. The FIU is obliged to provide a response within 48 hours.</p> <p>In addition the current AML/CFT Legislation does allow for reporting of SARs afterwards without affecting any ongoing investigations.</p>
<i>Conclusion</i>	<p>Based on the AML/CFT Law the reporting obligation set forth in Article 24 of the Directive is addressed <i>ex ante</i>.</p> <p>This provision of the AML/CFT Law is partially in accordance with Art.24 of the EC Directive.</p>
<i>Recommendations and Comments</i>	The authorities need to consider implementing all requirements set out in Art. 24 of the Directive.

16.	Tipping off (1)
<i>Art. 27 of the Directive</i>	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
<i>FATF R. 14</i>	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for “tipping off”, which is reflected in Art. 26 of the Directive)
<i>Key elements</i>	Is Art. 27 of the Directive implemented in your jurisdiction?
<i>Description and Analysis</i>	<p>According to the Art. 14 of the AML/CFT Law, the entities or supervising authorities, their managers, officials or employees who report or submit information in good faith according to this law shall be exempted from penal, civil or administrative liability arising from the disclosure of professional or banking secrecy.</p> <p>Pursuant to the Instruction 12 of the Minister of Finance the name or other personal data of the person who initially noticed the suspicious information is kept anonymous.</p>
<i>Conclusion</i>	Albania implemented Art. 27 of the Directive.
<i>Recommendations and Comments</i>	

17.	Tipping off (2)
<i>Art. 28 of the Directive</i>	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
<i>FATF R. 14</i>	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
<i>Key elements</i>	Under what circumstances are the tipping off obligations applied? Are there exceptions?
<i>Description and Analysis</i>	According to the Art. 15 of the AML/CFT Law the employees of obliged entities 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 FIU.
<i>Conclusion</i>	The AML/CFT Law makes no provision for extension of prohibition on tipping off where a money laundering or terrorist financing investigation is being or may be carried out.
<i>Recommendations and Comments</i>	The authorities need to consider implementing the requirements set out in Art. 28 of the Directive.

18.	Branches and subsidiaries (1)
<i>Art. 34 (2) of the Directive</i>	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non-EU) countries.
<i>FATF R. 15 and 22</i>	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
<i>Key elements</i>	Is there an obligation as provided for by Art. 34 (2) of the Directive?
<i>Description and Analysis</i>	According to the Para. g) Art. 11 of the AML/CFT Law the obliged entities should ensure that their branches, sub-branches, as well as their agencies, within or out of the territory of the Republic of Albania, are acting in compliance with this law. If the laws of the country where the branches or agencies are operating foresee impediments to the exercise of these legal obligations, the subject should report about those impediments to the FIU and, according to the circumstances, to its Supervising Authority.
<i>Conclusion</i>	Albania implemented Art. 34 (2) of the Directive applying for all jurisdiction.
<i>Recommendations and Comments</i>	

19.	Branches and subsidiaries (2)
<i>Art. 31(3) of the Directive</i>	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
<i>FATF R. 22 and 21</i>	Requires financial institutions to inform their competent authorities in

	such circumstances.
<i>Key elements</i>	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
<i>Description and Analysis</i>	According to the Para. g) of Art. 11 of the AML/CFT Law, where the legislation of the country where the branches or agencies are operating does not permit application of equivalent AML/CFT measures the entity should inform the FIU and, according to the circumstances, to its Supervising Authority.
<i>Conclusion</i>	In order to effectively handle the risk of ML and TF - except the reporting obligation - the AML/CFT Law does not require additional measures.
<i>Recommendations and Comments</i>	The authorities need to consider implementing the requirements set out in Art. 31 (3) of the Directive.

20.	Supervisory Bodies
<i>Art. 25 (1) of the Directive</i>	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
<i>FATF R.</i>	No corresponding obligation.
<i>Key elements</i>	Is Art. 25(1) of the Directive implemented in your jurisdiction?
<i>Description and Analysis</i>	Pursuant to the AML/CFT Law the supervisory bodies examine the compliance of the activity of the subjects with the AML/CFT requirements through on-site inspections. According to Art. 24 of the AML/CFT Law the supervisory authorities immediately report to the Competent Authority every suspicion, information or data related to money laundering or financing of terrorism for the activities under their jurisdiction.
<i>Conclusion</i>	Art. 25 (1) of the EU Directive has been implemented in Albania.
<i>Recommendations and Comments</i>	

21.	Systems to respond to competent authorities
<i>Art. 32 of the Directive</i>	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
<i>FATF R.</i>	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
<i>Key elements</i>	Are credit and financial institutions required to have such systems in place and effectively applied?
<i>Description and Analysis</i>	According to Art. 16 of the AML/CFT Law the subjects should keep and 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 relationship between the client and the subject.

	<p>The entities must keep data registers, reports and documents related to financial transactions for 5 years from the date of the execution of the financial transaction. With the request of the FIU the information shall be stored longer than 5 years.</p> <p>The entities must make sure that all client and transaction data shall immediately be made available upon the request of the FIU.</p> <p>According to Art. 24 the supervising authorities shall check implementation by the entities of programs against money laundering and terrorism financing and make sure that these programs are appropriate, keep statistics on the actions performed, as well as, on the sanctions imposed in the field of money laundering and financing of terrorism.</p> <p>According to Art. 73 of Law 9662 On Banks on the Republic of Albania a bank, branch of a foreign bank, branch of a bank outside the territory of the Republic of Albania, and any other natural or legal person owning a qualifying holding in the bank shall be subject to inspections by the inspectors of the Bank of Albania and the statutory auditor.</p> <p>The Bank of Albania and the statutory auditor have the right to:</p> <ol style="list-style-type: none"> a) scrutinise and examine accounts, books of the company, documents and any other data situated in their archives; b) request, at any time from the administrators, employees and agents of the bank or the branch of the foreign bank to provide information pertaining to the management, direction and transactions. <p>According to Art. 18 of Law 9572 on the Financial Supervisory Authority the authority has right to request from the supervised subjects and other subjects who have been acting in violation of the provisions of this law or other legislation that regulate the markets of the area, written explanation, documentation, including certified copies of documents, data, information and other data, and verify the documentation and the reporting.</p>
<i>Conclusion</i>	Art. 32 of the EC Directive has been implemented in Albania.
<i>Recommendations and Comments</i>	

22.	Extension to other professions and undertakings
<i>Art. 4 of the Directive</i>	The Directive imposes a <i>mandatory</i> obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
<i>FATF R. 20</i>	Requires countries only to consider such extensions.
<i>Key elements</i>	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
<i>Description and</i>	The provisions of the AML/CFT Law have been extended to following

<i>Analysis</i>	<p>other professionals and categories of undertakings that are not referred to in Article 2 (1) of the Directive:</p> <ul style="list-style-type: none"> • Games of chance and hippodromes, of any kind, • Postal services that perform payment services, • Evaluators of immovable property, • Entities involved in buying and selling of art master pieces, or buying and selling in auctions of objects valued 1,500,000 ALL or more, • Trade of motor vehicles, • Transportation and delivery, • Travel agencies. <p>In addition the following state institutions are also under the scope of the AML/CFT Law with respect to prevention of money laundering and terrorism financing:</p> <ul style="list-style-type: none"> • The Agency for Legalization, Urbanization and Integration of Informal Areas/ Constructions, • The Competent State Authority for Administration and Sale of Public Property and any other public legal person that engages in legal transactions related to the conveyance and utilization of public property or evidencing, transfer or conveyance of public property.
<i>Conclusion</i>	The requirement of Art 4 of the Directive has been implemented.
<i>Recommendations and Comments</i>	

23.	Specific provisions concerning equivalent third countries?
<i>Art. 11, 16(1)(b), 28(4),(5) of the Directive</i>	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
<i>FATF R.</i>	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
<i>Key elements</i>	How, if at all, does your country address the issue of equivalent third countries?
<i>Description and Analysis</i>	There are no specific provisions concerning equivalent third countries in Albania.
<i>Conclusion</i>	The issue of equivalent third countries is not addressed by the AML/CFT legislation in Albania.
<i>Recommendations and Comments</i>	

APPENDIX I

Relevant EU Texts

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60/EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons.

Excerpt from Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

- (b) members of parliaments;
 - (c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
 - (d) members of courts of auditors or of the boards of central banks;
 - (e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
 - (f) members of the administrative, management or supervisory bodies of State-owned enterprises.
- None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
- The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
- (b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.