

HOW DIRTY MONEY GETS CLEAN

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ABSTRACT

Money laundering is a phenomenon used to conceal the source of income from criminal activity. Despite the fact that it can bring liquidity to a country's economy in the short run, money laundering harms the country's economy in the long run and undermines the integrity of the financial system and the rule of law. Preventing this phenomenon would improve the political-legal environment and would be an added value to the business climate in our country. The paper focuses on the challenges faced by legal reporting subjects (mainly banks) and free non-financial professions in the framework of the implementation of the legal and regulatory framework for money laundering prevention. The focus is on the necessary recommendations for legal and regulatory changes that will lead to a relaxation of both the operational activity of financial and non-financial entities and the improvement of the efficiency of efforts to increase the functioning of money laundering prevention in our country. By analyzing issues that concern legal entities and those responsible for developing laws such as the identification of multi-tier corporate benefiting owners, the complexity of the offshore bank secret, the link between money laundering and fiscal evasion, the legal reporting duties to the same as for both financial and non-financial institutions.

Keyword: *Money laundering, criminal activity, financial system, offshore companies, offshore bank secret, financial institutions, fiscal evasion, globalization, panama papers.*

Introduction

The political-legal environment plays a direct role in defining the objectives and strategies of natural and legal persons who exercise lucrative activity and is important both for domestic and international companies. As part of the political-legal environment, the prevention of money laundering directly affects the operational decision-making of financial companies and free financial entities. Financial and non-financial entities consider regulatory requirements regarding the prevention of money laundering before deciding to exercise their activity in our country. Businesses have their primary focus on maximizing profits but if they offer products or services for suspicious clients, they may face administrative and criminal offenses. Reputable risk avoidance, which is the possibility for an entity to incur financial losses caused by the decline of reputation in the entity's activity as a result of the negative public opinion of the entity, becomes an integral part of the decision-making process. Conducting transactions repeatedly can lead to the removal of the operating license from the market and the abolition of the right to carry out the activities.

Review of literature and conceptual aspects

The review of literature includes conceptual aspects of money laundering, its connection to fiscal evasion, the impact of offshore financial dreams, the identification of end-user corporate ownership and the impact of technological developments on money laundering

This paper explains the fundamental concepts of the phenomenon of money laundering, its methods of conducting it, and the socio-economic problems that it brings to society. This paper will serve as an information window about the dynamics of money laundering and the necessity of increasing preventive measures to mitigate the consequences that come from it. An important aspect of money laundering prevention is its analysis, which is its connection to fiscal evasion. Until now, these phenomena have been seen as separate, but the financial crisis and the avoidance of paying taxes have made the situation look different because the methods used by the two processes are similar.

The chapter focuses on offshore fiscal paradises, which are characterized by a relatively large number of financial institutions mainly engaged in non-resident business and exercising a relatively large secret about the identification

of companies beneficial ownership. As a phenomenon of globalization of the market economy, transactions in offshore countries are already present in our country. Consequently, co-ordination of the work of financial and competent institutions at the global level is indispensable.

1. What is Money Laundering?

The phenomenon of money laundering is considered as the Achilles heel of the capitalist system. The fight against this phenomenon has been of particular importance in recent decades due to the negative effects it brings to the global and regional economy, which has led to dynamic legal and regulatory changes both in developed and developing countries.

Money laundering is: Conversion or transfer of property, knowing that this wealth derives from serious crimes, with the purpose of concealing or masking the illicit origin of the property or assistance provided to any person who is involved in the commission of such an offense or acts to avoid its legal consequences, and conceal or disguise the true nature, source, location, disposition, movement, property rights, knowing that this wealth derives from serious crimes.

The cleaning of the proceeds of crime is done through: a) exchange or transformation of the property in order to conceal or cover its illicit origin, knowing that this property is a product of criminal offense or criminal activity. b) concealment or coverage of the true nature, source, location, disposition, relocation, ownership or property rights, knowing that this property is a product of criminal offense or criminal activity, c) the acquisition of ownership, possession or knowing in the delivery note that this asset is a product of criminal offense or criminal activity, d) performing financial activities or fragmented transactions to avoid reporting, according to the law on prevention of money laundering, e) investing in economic or financial activities of money or property, knowing that they are products of criminal offense or criminal activity. Products of criminal offense include any kind of property as well as legal documents or instruments acting as titles or other interests in property that derives or is gained directly or indirectly from the commission of a criminal offense.

Money laundering is the process of illegally generating funds moving into a circle of transformations to create a legal appearance of these funds and concealing their illegal origins. Dirty money comes mainly from drugs, prostitution, organized crime, corruption, etc.

Free Legal Professionals are Lawyers, Notaries and Other Legal Representatives, Independent Authorized Accountants, Independent Accountants, Financial Consultancy Offices and Regulated Professionals that Provide Financial Advisory Services When Preparing or Performing Transactions for Customers such as the transfer of immovable property, money management, securities or other assets, the administration of bank accounts, the administration of the capital shares to be used for the establishment, operation or administration of commercial companies, legal agreements, sale of shares, etc. Also free non-financial professions include: real estate agents, as defined in Albanian legislation for this category, when involved in transactions with their customers related to the purchase or sale of immovable property. The free non-financial professions also have the appropriate authority to oversee them: the National Chamber of Advocates for Lawyers and the Ministry of Justice for notaries etc.



Figure1. Complete Money Laundering Cycle

1.1 Money laundering and fiscal evasion

A very important aspect of money laundering prevention, which has sparked a lot of debates recently to lawmakers and business, is its connection to fiscal evasion. So far, these phenomena have been seen as separated, but the financial crisis and avoiding tax payments have made the situation look very critical. The relationship between money laundering and fiscal evasion is a complex topic. The methods used by both processes are very similar and should be analyzed in more detail.

From the definition, money laundering can only be done when there is a fundamental crime that increases the illegal income that is laundered later, entering into the legitimate economy.

Concealment of tax liabilities through the submission of false documents, false statements or unrealistic information, the assessment of which leads to incorrect preparation of the amount of tax, tax or contribution,

constitutes fiscal evasion and is punishable by a fine equal to 100% of the difference in the amount calculated from what it should actually be.

Fiscal evasion leads to the laundering of offense products and constitutes a crime. Seeing similarities between them, there are many voices about a new approach to addressing the phenomenon of money laundering and tax evasion that would lead to the involvement of transactions with fiscal evasion nature in the PPP regulatory framework requirements. Money generated by evasion is considered dirty and stays such up to the moment when attempted to be cleaned. People who engage in money laundering and fiscal evasion have a tendency to corrupt the entire economic, legal, and social system of a country.

1.2 Offshore Financial Center

Offshore financial centers are considered one of the most controversial points of identification of the beneficial owner and consequently of money laundering. Offshore financial centers are characterized by several distinct elements as follows:

- * jurisdictions that have a relatively large number of financial institutions mainly engaged in non-resident.
- * financial systems that have external assets and liabilities not in propagation with domestic financial assets.
- * provide some or all of the following services: low or zero taxes, moderate or mitigating regulatory requirements, banking secrecy and high corporate ownership anonymity.

Offshore corporations are already a present phenomenon in Albanian financial systems as corporations with offshore residence have opened their branches in our country. Also, Albanian clients or citizens send their funds to offshore centers. Financial subjects should take measures to address offshore corporations with enhanced vigilance that aims to create enough security to verify and evaluate the identity of the outsider; to understand and test his / her profile, business and account activity to identify important information and to assess the potential risk of money laundering / terrorism financing, supporting decisions aimed at protecting financial, regulatory or reputable risks, and adapting to legal requirements (Law 9917 on PPP / FT) Responsible Compliance Officers in Banks dealing with Issues of money laundering prevention and all bank staff in general, should be well-trained in dealing with offshore customers.

UK	5178.5
GERMANY	2794.0
USA	2305.1
FRANCE	2196.1
JAPAN	1898.5
SWITZERLAND	1122.0
NETHERLANDS	1041.5
BELGIUM	891.6

Table 1. The largest banking centers, listed by assets in billions of dollars.

Fiscal Paradise	Population 2010 in Thousand	Characteristics	Deficiencies
Cayman Islands	56	The main concentrations Globally	Soft regulation essentially written by its customers
Mauritius	1299	Close ties with india. Attracts businesses from the European fiscal paradises that are under pressure.	Allows the Indians to hide investments in their country under the tax advantage for foreign capital.
Jersey	93	Close link to London	Claims is revising the legislation.
Luxembourg	507	Great Resistance against European Efforts to Promote Transparency	Considered Death Star of financial secret in EU Heart

Switzerland	7664	Protection of tax evasion as a legitimate response	Concessions being offered under international pressure to end banking secrecy are largely superficial.
Singapore	5086	Pulls Businesses From Western Fiscal Paradises	Information exchange agreements with other countries are conditioned by legally enforceable safeguards.

Table 2. A guide to the world's six most popular tax havens.

1.3 Politically Exposed People (PEP)

Another important point in the prevention of money laundering is the full identification of politically exposed persons (PEP) and transactions conducted by them. PEPs are considered individuals who have held or hold high state positions.

PEPs are persons who are required to make declarations of their property in accordance with the relevant law. This category also includes individuals who have or have important functions in a government or a foreign country. PEPs are individuals who are or have been charged with prominent public functions in another country as well as family members or close associates that have PEP business connections.

In the PEP category are included heads of state, prime ministers, ministers, deputy ministers, members of parliament, senior officers of the armed forces, members of administrative boards or supervisors of state enterprises, state judges, etc.

PEP corruption occurs at high levels of the political system. Political corruption is any transaction between private and public sector actors through which collective goods are illegally converted into private benefits. Greater corruption occurs at high levels of the political system, where politicians and state agents are entitled to make and enforce laws in the name of the people.

Political parties	79%
Public function / civil employee	62%
Parliament	60%
Police	58%
Private Business Sector	51%
Judiciary	43%
NGOs	30%
Army	30%

Table 3. Sector Assessment

2. Methodology

For the realization of this study, a combination of primary and secondary data was used. Among the secondary data, an important place is occupied by the vast contemporary literature on money laundering. The study uses a wide range of other secondary sources, in the form of academic literature, reports of important international organizations or other publications that serve to the first chapter. More updated sources of information such as the Internet and electronic libraries have been used.

Special assistance is provided by the reports of the responsible authority of GDPML and Supervisory Authority, Bank of Albania, and reports of international institutions such as FATF, IMF, World Bank, etc. The study is based mainly on on-line articles and publications dealing with the phenomenon of "Money Laundering Prevention". A significant portion of secondary data is provided through the use of internet resources such as the official web site of "Reuters", "The Guardian", "BBC" and the prestigious "The Economist".

After the examination of concepts, theories, the most important variations, the conceptual and problem definitions was created the possibility of implementing the desired search in the Albanian environment. Regarding the primary study, the philosophy of research was chosen "phenomenology". The basic idea behind the "phenomenologist" philosophy is that the world and reality are not objective as they are socially constructed by people who give different situations a different meaning. Phenomenology is the basic philosophy of quality research. Qualitative treatment is characterized by a free orientation of the objectives.

For this study, the "phenomenological" philosophy was the most appropriate, as the research project was not based on objectivity. The goal is to examine the objective of the main actors in the area of money laundering prevention. We had to investigate different opinions, thoughts, feelings, and behaviors using the qualitative approach where the scholar is part of the process and uses communication and observation.

Regarding the approach of the study, Inductivity was used. Inductive treatment introduces the "phenomenological" paradigm. Usually the qualitative analysis follows the inductive process that begins with the research of specific elements and ends with generalization. Questions in the study are what and why? In the case of the inductive method, we start from special observations to reach the general aspects, to ask if there is a principle or a rule for what we observe (Holger 2011).

Qualitative methods have been used in this research as data was collected from a relatively small group of respondents and would not be analyzed by statistical techniques as is the case with quantitative research methods. The search strategy is that of quality analysis based on "in-depth", "double-interview" and "focus groups". In-depth interviews and double interviews have been seen as the best methods for a penetration of personal opinion, belief, and values. This research method, which is flexible, provides the searcher with a very deep insight into the search field. Only in this way the applicant is in a position to recognize the main views of key players in the area of money laundering prevention and to be able to cooperate more than the forecast if necessary. Findings are comprehensible but not measurable, which is a characteristic of qualitative study.

Interviews were conducted one by one and based on open or semi-structured questions. For this purpose, a semi-structured questionnaire was prepared during the primary research phase, which collects the perceptions and attitudes of the responsible persons about the vulnerability of the sector where they work and the challenges faced by their institutions from the money laundering element. The questions were addressed to experts with a good knowledge of financial and business sectors in the country, such as managers, compliance officers of financial institutions, law enforcement officials, and free trade representatives. The approach is flexible and naturally oriented as the case may be.

The research questions addressed to respondents consist essentially on the assessment of physical cash transactions, due diligence measures based on the level of risk, customer identity before or during the establishment of a business relationship or performing a transaction for clients, identification of the beneficial owner of primary and casual clients, constant monitoring of customer data, and the difficulties encountered in this regard, the identification of PEP, the risk of "offshore" and "non-residents" from fiscal havens "off shore" etc.

In the case of banks, 13 persons responsible for preventing the cleaning of banks of different sizes are interviewed by principals of Compliance, General Directors and the Secretary General of the Association of Banks. From the state institutions were interviewed 5 representatives from the State Registration Center, GDPML and Bank of Albania. In the case of free non-financial professions, 7 representatives from the National Chamber of Notaries, IEKA, audit firms, independent authorized accounting experts, approved independent auditors and real estate appraisers were interviewed.

3. Causes of money laundering

Pure money, untouched by criminal enterprise, is worth more than dirty money because they can be invested in lucrative activities or spent without the risk of incrimination. While dirty money is invested with less profit in general is spent in less visible ways, and most importantly they carry the ongoing risk of confiscation and use as evidence of initial crime. Almost all criminal activities have to be masked so that the proceeds earned can be used. Any financial transaction can be an act through which illegally acquired money can be cleansed.

Among the most important goals of the money laundering process are:

- The concealment of origin and trace of source of earnings obtained in criminal way and their legalization.
- Hiding people, that initiate the process of laundering or extracting benefit from this process.
- Avoidance of fiscal obligations (taxes and duties)
- Facilitate and create opportunities for a smooth, comprehensive use and secure and guaranteed investment in legitimate criminal earnings.

3.1 Globalization and Money Laundering

Globalization is an economic, social, political and cultural process that transcends the boundaries of states. The term globalism, in its own meaning, means "developing relationships between people, ideas and information, economic-financial and commercial activities, political and cultural ones on a planetary scale." It is present in the fast and unlimited flow of economic and financial transactions, capital and unrestricted property movement. Through

electronic transfers, credit card and countless other tools we are able to move large sums of money within a few seconds from one country to another. Globalization processes are also seen in the unrestricted circulation of financial and financial transactions in scholarships.

Globalization of the economy has favored organized crime and money laundering, large amounts of capital can easily be transferred without being controlled by national control procedures.

Money laundering is an international phenomenon, and as such any adverts must basically be based on international cooperation. Every state should be aware that money laundering is the continuation of other economic - criminal activities that could happen anywhere in the world. Therefore, it is of utmost importance to increase international co-operation to successfully address the globalization challenges of money laundering.

Financial globalization has greatly improved the efficiency of financial capital through transfers throughout the world. The globalization process has favored money laundering, as the world has turned into a global financial trump.

3.2 International Dimensions of Money Laundering

Major events have changed world co-operation, economic developments and technological achievements, have brought with it the globalization of the economy, the international financial movement. Money laundering is a phenomenon of international dimension, which is enlivened by the conditions of opening and integrating markets. The international character of money laundering clearly emerges from the green-ice operation

3.2.1 Quantity and dynamics of money laundering

"Nobody knows how much money is being cleaned every year in the world through banks, this figure could reach \$ 700 billion. According to a recent assessment (2008-2016), money laundering activity worldwide amounts to approximately \$ 1 trillion per year. The estimated amount of money purified globally per year is 2-5% of the global GDP, \$ 800,000,000 - \$ 2 trillion US current. The International Monetary Fund estimates that the annual money laundering amount ranges from 2-5% of gross domestic product of each country, in particular about \$ 600 billion to \$ 1.5 trillion.

4. Panama papers



Fig 3. Panama Papers

4.1 The company Mossack Fonseca

In 2013-2016 this company was fined for violating money laundering on several occasions, including significant people. Panamanian President Juan Carlos Varela recently announced the establishment of an international panel aimed at improving transparency in the offshore industry open money laundering.

Panama has more than 35,000 international business companies. Monack Fonseca manages everything related to keeping the money of great people in the state.

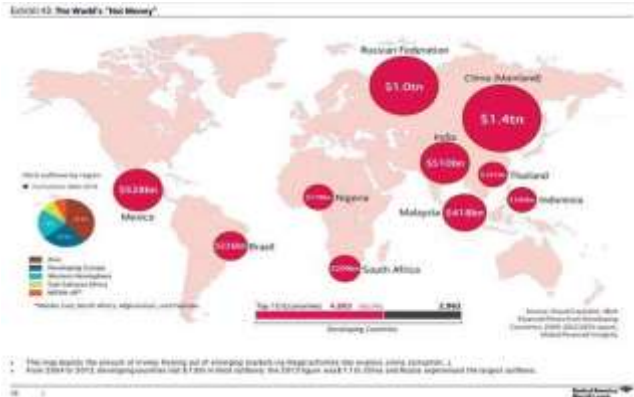


Fig. 4. The passage is pounding around the world

In 2016, this company was clearly disclosed and denounced by state organs after dealing with money laundering. Panama Papers is an editorial title related to studios that encounter documents with fiscal paradises. This company hides the origins of shareholders. The scandal of this company many foreign and domestic media have been rumored. In this scandal, two Albanians were involved, and in this case the ministry of economy launched investigations into transparency.

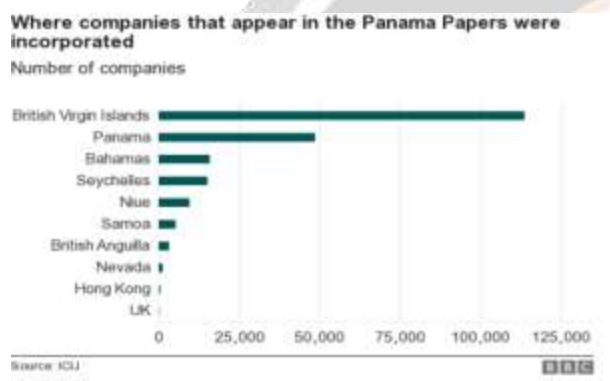


Chart 5. Companies operating in panama papers

4.2 Financial Transparency

After launching investigations by the General Prosecutor's Office to provide information about Albanians who may have been involved in the revenue scandal, the government will force all companies to make their shares transparent. The prosecution has stated that this investigation will not be subject only to domestic companies but also to foreign companies that have won public and private partnerships with the Albanian government.



Fig 5. Situations related to panama papers

5. Study conducted in DURRES town



Chart. 6 Business Evasion.

Individuals surveyed result in 9-year, middle, high school education. Most of the respondents are employed (self-employed) in their private business.

Hypotheses

Ho: There is money laundering in albania based on fiscal evasion

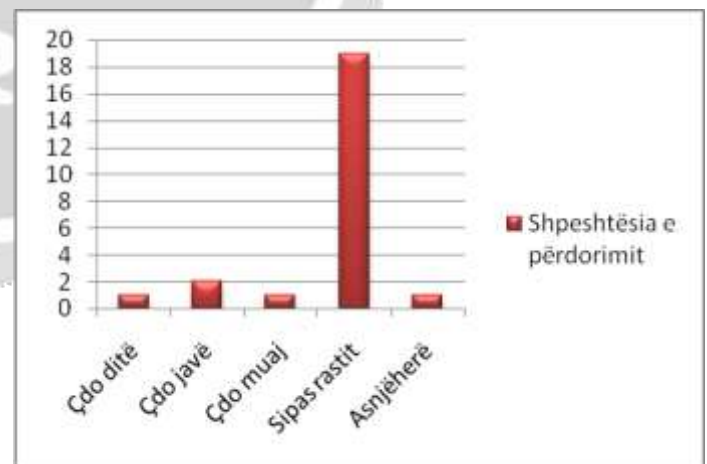
Ha: There is no money laundering in albania based on fiscal evasion.

By encrypting the answers to the form I have tune in the following conclusions. Most of the businesses are not nearly ready to declare the real income in the financial system that goes as information in the state budget. Many of the clients, one of them and I did not get a tax coupon. My insistence on the tax coupon in this business turned out to be quite violent after applying offensive words, as the fiscal stake in that business was not set. Cit. State resources as well as NRC has established since 2015 that all businesses are exceptionally provided with a fiscal cashier and its customers with a tax coupon, otherwise the client is fined as well as the business is fined but with different amounts of fine .

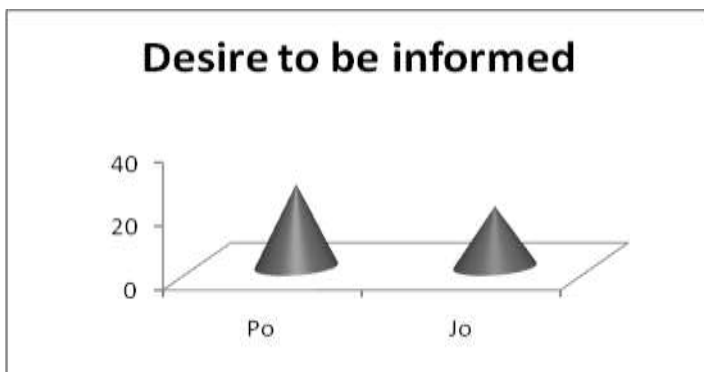
In another business I presented a letter stamped by the NRC where I was speechless that there were no pills in this case and a tax coupon and this was a certificate that allows businesses to work for a deadline from NRC without a fiscal receipt, but this certificate was in 2013, which led to a violation of the law and tax evasion where we are in 2016. In this long process of interviewing, I also insisted on employee security; they say we have our business, I do not need to make sure and neglect the law.

The climax of all the work was that many small businesses did not apply to the customer the tax coupon but the client did not require it, so the fight against informality was still there.

In some other businesses, the value of 1200 Lek was declared in a cash box of less than 800 leks, so in these businesses tax evasion is quite large as businesses do not declare their real income to record taxes. Statistically for small businesses around 85% do tax evasion, 15% do not tax evasion, so stealing towards the state is quite large as the state budget is filled with revenue collected from taxes, taxes and many other operations.



Graph.8 Desire to be informed about the service.



6. CONCLUSIONS

Given the above discussion and analysis, we conclude that the Penal Code of the Republic of Albania in the definition of the offense of money laundering is a legal element of it, it is contemporary and in line with the international conventions and the majority of criminal codes, as far as the subjective side is concerned, the ways in which the offense is committed objectively, qualifying circumstances and criminal responsibility, clearly stipulating that this crime is committed in many forms, including preparatory activities, attempts and even co-operation through promotion, or even within the criminal organization.

With regard to the facility, I think that the lawmaker should determine that the property constituting the object of the criminal offense of purification should be the product of only crimes and not criminal offenses, as some criminal offenses as "concealment of income", "non-payment of taxes and taxes", etc., can not precede the criminal offense of money laundering nor can it compete with them. Determining the product-object of the offense of money laundering only for the crime and not for a criminal offense is necessary to prevent subjective and abusive attitudes in law enforcement.

From the widespread treatment of criminal offense of money laundering or criminal activity it results that the same person subject to the main criminal offense may also be considered to bear criminal responsibility at the same time for the purification of its products as in most of it when this offense the criminal is competing with the main offense. Cleaning involves an additional element that does not exist when the administration of justice is touched, in the case of concealment. Money laundering protects criminal activities of organized premiums and makes them profitable. But if we consider that money laundering is based on concealment, the perpetrator in the criminal offense of concealment can not be punished and for subsequent money laundering. The act of purification affects other social values and in this case criminal conduct is always guided by the purpose and motive that inspires the organization's profit, allowing it to reinvest the proceeds of the offense and generate criminal enterprise.

The Court considers that the purification of the proceeds of the criminal offense does not represent a single act but involves a process which aims at not only deleting the product's own origin but also keeping it under control. In Albania there is no specialized criminal group dealing with money laundering that derives from criminal activity. Money laundering is done by the persons who conduct this criminal activity. It turns out that the methods and schemes used by Albanian organized crime vary from the simplest to the most complex ones, namely the creation of ghost firms, price manipulation, commercial exploitation, bank transfers, smuggling of cash, purchase of assets mortgages, bank loans etc.

Organized crime and money laundering are in constant coexistence, not only because they tend to occur at the same time, but more important is the fact that the presence of one crime promotes the commission of another. Money laundering is vital for organized crime and especially for corruption as they produce huge profits, estimated at about two trillion USD per year, which need to be cleaned in the financial system.

Money laundering produces negative consequences and profound changes in the real development of the economy. It denatures free and fair competition, accompanied by the creation of monopolies in various sectors of the economy. Economic-financial and state institutions may fall into the hands of criminals. It poses a threat to the intellect, credibility and stability of financial and state structures around the world, as well as reduces revenue to the state budget from taxes and fees by weakening the tax system and the rule of law.

Money laundering opportunities in Albania are evident, although it is not a "financial paradise", but as a transit country for trafficking, weapons, smuggling, it remains a constant risk of money laundering. The Bank of Albania, in March 2011 estimates that 20% of the money in circulation is outside the banking system. Despite the expansion of the banking sector, the informal sector remains worrying. Money laundering also takes place in cash transfer abroad.

Based on the conclusions and analysis of the working materials, among the most important I would recommend:

1. The amount of the imprisonment sentence imposed for the criminal offense of money laundering or criminal activity (Article 287 of the Criminal Code) is relatively high, concretely, in the circumstances described ... is sentenced not less than 15 years of imprisonment and a fine from 3 million and 10 million ALL, at a time when the

criminal codes of the states analyzed in the work, in the circumstances of the case, special subjects and with serious consequences, foresee a sentence of no more than 12 years in prison. I highly recommend the above:

- In the case of legislative reforms the measure of imprisonment should be at most 12 years
- The penalty fine should be greater, having as a reference and the value of purified criminal assets.

2. In the protection of constitutional guarantees, especially the principle of "ne bis in idem", a punishment of a punishment implying that the perpetration of the prior act involves the lawfulness of the latter and the subsequent purification in our case, I recommend:

Make a legal interpretation of what we mean by criminal activity that is capable of producing products to undergo the cleaning process. I think that it is not enough operational information that we have "products" of a criminal activity, that there should be criminal offenses.

❖ In the case when a person subject of a criminal offense has criminal responsibility, at the same time, for the cleaning of his products, certain special elements as different legal interests affected by the criminal offense of laundering, which are larger than that of the criminal offense. Money laundering protects organized crime crime activities and makes them profitable.

To determine the legal interest (the affected object) in the case of criminal offense of laundering, the sum of the values of the purified illegal assets should be taken into account.

3. Contrary to the legislation of many other countries that we have analyzed above that provides for products to come from certain categories of criminal offenses or require products to be derived from serious crimes, Albanian legislation does not have any limitations on the type of the basic crime that must be proven to remain the criminal offense of purifying its products. To increase the effectiveness of the fight against this criminal offense and to prevent subjective and abusive attitudes in law enforcement, I recommend that it be determined by law that the origin of assets, the product of the criminal offense of purification, be a certain category of crime, and not any criminal offense, including criminal offense, as well as concealment of income etc ...

4. The results of the fight against money laundering are minimal. Among the reasons are the lack of assessment of the link between money laundering and organized crime, as well as the particular nature of and without direct casualties. The Financial Intelligence Unit (FIU) sees organized crime as well as outside their area of responsibility, as well as the police and prosecution bodies that follow this criminal offense. We should be aware that money laundering is a continuation of other organized criminal activities, as there is a practical link between them, for a policy of secession of war against them. Therefore I recommend that:

The Money Laundering System (AML) to be Integrated Within the Financial Sector Reform and the Strategy against Organized Crime and Terrorism.

Training of war criminals on money laundering and support for detailed economic and financial expertise.

Strengthening judicial and administrative co-operation and banking supervision, as well as international co-operation, are necessary given the ease with which criminal organizations accumulate and transfer large monetary values between interstate boundaries.

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