



Conclusions, Recommendations and Alternatives

Money Laundry in the Context of the Fiscal and Penal Amnesty

Tirana, July 19th, 2022

The following summary contains Conclusions, Recommendations and Alternatives, part of the Policy Position Paper “Money Laundering in the Context of Fiscal and Criminal Amnesty”, which will be presented during an event that will be held on July 19, 2022 in the hall of Europe House Albania.

The Policy Document was drafted by Albanian Institute of Science AIS / Open Data Albania, in implementation of the C1 - EU - NPA project “Improving the Debate on Policies and Accountability for Fulfilled Basic Rights” through the creation of the Negotiation Platform of Cluster1 Albania.

The Document aims to present an analysis of the main aspects related to the recent legal initiative concerning the Fiscal and Criminal Amnesty of Entities that Submit a Voluntary Declaration of Assets, presented as a draft law for public consultation on June 23, 2022.

The Findings, Opinions or Recommendations expressed in this Document represent the approach of experts and AIS and do not necessarily reflect those of our partners or supporters of the C1- EU-NPA Project.

The Policy Position Paper and the Technical Report will be submitted to the Albanian Government, the Parliament of Albania and Stakeholders, as part of the organization's contribution to the Public Consultations, together with the Recommendations and Conclusions on the Draft Law. The Full Document will be published on the website of the Organization www.ais.al.



CONCLUSIONS

The draft law on fiscal and criminal amnesty, in the present form submitted for public consultation, should not pass for approval, as long as the government is not able to establish control over informality, corruption and measures against money laundering and terrorist financing. The amnesty does not guarantee equal treatment of taxpayers and harms the business climate. On the contrary, the law favors subjects exposed to crime and subjects with political exposure. The application of an amnesty will have to respect the protection of the highest public interest; legal safeguards, and the equality of the parties before the law. According to Article 18 of the Constitution, everyone is equal before the law and differential treatment can only be based on legitimate and objective reasons, while such an initiative will create a disparate fiscal and criminal treatment.

The implementation of the law in the form presented for a fiscal and criminal amnesty carries a high risk of laundering money obtained through criminal and corrupt means. The draft law does not provide for control mechanisms to obtain follow-up information or investigation of the voluntary statements. The law allows for the amnesty of criminal money, the repatriation of money that is undeclared in the country of origin, and that of money obtained corruptly by officials or their family members. Another high risk remains the perception that criminal activities will be amnestied, resulting in the promotion of the informal economy and crime. The law does not provide the necessary guarantees that, after the year “zero” the legal and regulatory framework will be strengthened to prevent tax avoidance and evasion, the formalization of the economy, or that future violation will be severely punished.

The amnesty law, as it is being discussed and proposed, carries many risks, not only in the deformation of some principles protected by the Constitution, but also risks related to the financial system of the country, the fight against money laundering, Albania’s assessment by international organizations of which she’s is a part of, up to the violation of elements related to national security. Albania has the obligation to fulfill the recommendations of the FATF and MONEYVAL, in the framework of the fight against money laundering and the financing of terrorism, so this draft law does not go towards their fulfillment. The current draft of the law raises serious concerns for EU member states and will damage the reputation, as well as cooperation with partner countries.

The draft law on fiscal amnesty should be amended by designating as its beneficiaries all declaring entities resident in Albania, including those having tax arrears, to guarantee that the amnesty will not be extended to income obtained through corruption by officials and politicians, as well as their family members; the amnesty’s field of action should be limited in the fiscal area and it should contain mechanisms guaranteeing that the declarations will be screened, in accordance with the law on the fight against money laundering and the financing of terrorism.



Better alternatives in the short term

The initiative for a fiscal and criminal amnesty should be undertaken when it has been assessed that the state is able to establish control over fiscal evasion and avoidance, informality, corruption and the fight against money laundering and terrorist financing to an extent that is deemed acceptable. A possible alternative to the present draft, would be to approve the law with amendments, such as:

- The scope of the amnesty to be only the fiscal amnesty for residents living in Albania;
- The amnesty to also include abolishing or cancellation of obligations for regular taxpayers;
- There is a critical need to settle bad debt, when it is uneconomical to pursue or cannot be legally recovered. The best international practices call for debt cancellation to be the final action, after all reasonable steps taken to collect the debt, have been exhausted. According to an IMF report, a significant part of the tax debt stock in Albania is uncollectible.
- In order to be credible and not to risk losing the trust and compliance of taxpayers, the fiscal amnesty law should be elaborated to increase the enforcement of obligations against taxpayers who do not comply with the law;
- A political consensus is necessary for the adoption of the law in order to guarantee its stability during the implementation phase;
- The law on the fiscal amnesty must have the approval of the partners, and in particular the European Union and the International Monetary Fund, as well as it should be able to honor international agreements.

Potential alternative in the long term

Another, more long-term, alternative, that could include fiscal and penal amnesty would depend on the progress of fiscal administration and fiscal policy reforms, resulting in the reduction of informality, corruption and new measures to prevent money laundering and terrorist financing. In long term, we deem that it would be necessary:

- In the circumstances of high informality, the tax system be based on a relatively small number of taxes with a single or very small tax rate on a broad basis. This would facilitate assessment and administration.
- Albania to complete the reform in line with the Medium-Term Revenue Strategy to improve the quality and efficiency of the fiscal system, to build a comprehensive and neutral fiscal policy, as well as a professional fiscal administration, which would serve to prevent laundering money and corruption.
- The implementation of reforms should have to mark significant progress in reducing informality, corruption, and preventing money laundering and terrorist financing.



Recommendations to be considered during the consultation phase

- Before the implementation of the amnesty, it is important to conduct a preliminary assessment of the state of the fiscal system, to track its shortcomings and assess the need of the tax administration responsible for its implementation, to be properly trained;
- The law should provide a timespan, necessary to inform and sensitize all subjects involved in this process;
- The draft law must be accompanied by an assessment of the potential risks and benefits impacting the economy;

- The draft law must be accompanied by a report assessing the risk of money laundering and financing of terrorism and the potential for disparate treatment of different tax subjects.
- Beneficiaries of this amnesty law should be all subjects for whom criminal proceedings have been initiated for tax and customs evasion as well;
- The law will have to take into consideration Albania's obligations towards foreign partners, deriving from tax agreements, which foresee information exchange and prevention of fiscal evasion;
- The law must reflect and include the recommendations of international partners, such as the International Monetary Fund and the European Commission, who have clearly and specifically expressed concerns regarding the risks its present form presents, especially the legal pockets allowing for fiscal evasion, corruption or money laundering;
- The Fiscal Amnesty Law should have been preceded or accompanied by the creation of legal schemes, which guarantee the protection of the success achieved so far in the fight against corruption, fiscal evasion and money laundering, as well guaranteeing that further measures to be taken, as proposed by MONEYVAL are not compromised.
- Due to the very importance of the fiscal amnesty, the time it will require and in order to guarantee the sustainability in its implementation, the Responsible Unit will have to be subordinated to the Council of Ministers.