

Ardian Fullani: The fight against money laundering

Luncheon speech by Mr Ardian Fullani, Governor of the Bank of Albania, at an Anti Money Laundering workshop, Tirana, 22 June 2005.

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Dear participants,

The subject of today's workshop is, as you well know, a matter of great concern worldwide. The way we fight money laundering (ML) and counter the financing of terrorism (FT), does not have an impact on us only, but also on our neighbours and any other country with which our citizens and companies perform trade and financial relations. In these last years, to this issue has been devoted considerable time and efforts by you, by Albanian authorities and by international organisations.

Besides meeting each other again and exchanging opinions on general issues, I want to use this opportunity to share with you some thoughts about the importance of the existence of a culture against ML in the institutions we represent. I will refer in this case to banks, meaning non-bank financial institutions as well. Following that, any consideration about ML will be valid also for the FT, for which I am convinced that our awareness and that of the public, is complete.

With the term "culture" on anti-money laundering (AML), I refer not only to the existence in the bank of structures responsible for AML and its related procedures. I am aiming at the need for the existence in any bank, of a real concern and of a positive pressure to make sure that those structures and procedures are applied to their real meaning, throughout the institution and down to any single employee. At the same time, I mean the real willingness of the bank for a careful and proactive role in the inter-institutional relationships, with the aim of leaving away the formalism and qualitatively improving the process of AML. I will be focusing in more details on these issues, as I proceed.

Prior to proceeding with more details, allow me to put myself in each of your's position. I feel I can do this, since I was one of you, as the executive director a commercial bank and head of the Association of banks.

We have shared common concerns about the speed and about the quality with which the legal requirements on AML were approved and implemented in practice. I still believe that a law is good when its requirements are applicable in practice and when they represent affordable costs for its subjects. I must say that the existing law on AML, needs to be revised under these considerations.

At the same time, we have often discussed about the concern that the way this process is being implemented is endangering to go in the opposite direction to our major objective of reducing the informal economy and bringing down the cash in circulation. While banks, as regulated, transparent and supervised institutions, play an important role in this objective, they are not the sole institutions. A no less important role play other institutions, especially those of tax collection or other institutions of services. Special attention should be paid to the supervision of market segments out of the banking system but within the scope of law. The terms of executing different payments, on a household or company level, should favour the usage of bank instruments (like electronic cards, wires, etc.) and in some transactions (where involved big amounts) payments in cash should be completely forbidden. There are exactly these transactions that may represent the biggest risk of money that is laundered from illegal activities, including fraud and tax evasion. I believe that the preference of holding cash money is deep in our society's mentality and is also linked to a relatively low level of the average salary in the country. As a result, one can say with an appropriate level of confidence that most of the money that circulates in cash, is in the hands of many people, hence it represents a relatively low level of ML risk.

We have also discussed about costs that are encountered when adopting full compliance with the requirements of the regulatory and the legal framework. An effective system of AML, means advanced systems of information technology, especially on those parts that deal with the database of the clients, the aggregation of the information from any single point in the network, and those that enable the continuous monitoring and filtering of any bank transaction. For our institutions, especially for those that are not branches or subsidiaries of any stronger financial institution, those costs can be substantial and difficult to be absorbed.

Furthermore, we have been witnesses of a somehow difficult dialogue with the institutions that implement the law. I must say though that such a problem exists almost in any jurisdiction, including the most developed countries. But their attitude toward the abidance to the law, of constructive discussion of problems and of quick reactions in implementing changes, facilitates the solution of different problems.

Dear bank directors,

I do like though to consider the issue from what we as bankers, can contribute more in this process, in spite of above-mentioned difficulties. Furthermore, history shows that the cost of dealing with those difficulties, whatever their size in normal times, can be easily exceeded in instances of unusual events that are linked with scandals on ML.

Firstly, I want to say that we must be very careful not to allow such difficulties to distract our focus from the heart of the issue, that of being ensured at any time that our banks are clean and that they do not represent a place where dirty money and its creators or benefitors can not enter. If we do not act like this, the negative consequences can be unimaginable. We put in danger the reputation of single financial institutions and of the entire financial system; unwillingly, we have become instrumental of crime in reaching their goal of using the money generated from illegal activities; we have placed the reputation of our sound clients in a very difficult position; we have lost confidence in front of the honest market players and have darkened our positive image in front of our international partners and partners of our clients; we are going to face in the future a higher cost on doing the bank business, represented not only from the loss of clients (which can prove to be fatal), but also from difficulties in expanding our activities; we can also expect to be subjects of penal actions triggered by the regulatory framework. The damage is multifold and exceeds any quantitative advantage in the volume of business we may have had from "outright" acceptance of any business offer. In the end, through rigorous application of AML requirements, we have protected our institution from a potentially very large damage. This is the key element of our duty, the feature of a good banker. By being active in AML, we are simply doing our job. Any negligence on this means we are not up to the requirements of our job.

We need to emphasize that the key element in the process, is the strong commitment to understand and implement it. It is very important for such commitment to come from the highest management structures of the bank. If such commitment is missing, this will be immediately shown at the structures of the bank that are directly involved in the AML process, whose functioning will be negligible and full of formalism. Within the institution, this commitment should be shown: in the preparation and approval of the internal procedures on AML (including those of knowing the client), in setting up the proper entities and appointing the responsible persons (on monitoring the AML implementation process) with the proper professional and hierarchical qualities, in rightly defining their rights and responsibilities, in giving them moral and material support, in providing qualitative and continuous training for the staff, especially for those that have direct contact with the client and analyse its ML risk profile and in keeping up a positive pressure in the institution for such process to be implemented and be continuously functioning. In one word, the climate that should exist within the institution for such issue (but not only) should favour in any instance the responsible actions being taken from the bank staff on AML.

In an inter-institutional level, the commitment to be active on AML goes beyond full compliance with the regulatory requirements. We must be mindful of the role we have in the mosaic of the institutions that are relevant on implementing the AML program in the society. Furthermore, we should be sensitive and helpful toward such institutions, especially when we know the difficulties they face in performing their functions. More concretely, I do not believe that the banking industry and other non-bank financial institutions, are giving their maximum contribution, if they suffice with fulfilling rigorously some quantitative mandatory requirements of the law, and not focusing also on some non-mandatory but very important requirements. For example, a very low number of suspicious transactions is currently reported at Anti Money Laundering Directorate (FIU), while the number of reports about transactions above the threshold required by law, is huge. In this instance banks are acting in accordance with the law requirements, but are not in compliance with spirit of the law. As we all agree that it is impossible for the banks to totally know and guarantee for the cleanness of each of their clients, then we must accept the fact that the lacking of suspicious transactions reports means that the bank:

- has difficulties in setting up its structures to ensure the real analysis of the risk profile of its client;

- doesn't have a good understanding of the problem and has been adopting formalism in fulfilling the law requirements;
- is not taking a proactive role, to understand other relevant institutions difficulties and to come forward with reasonable and acceptable solutions, in accordance with the spirit of the law.

If a bank has chosen to act in formalism and if this gets a widespread adoption in the entire financial system, I think we really risk that this approach be counterproductive to the financial industry firstly. It would be somehow normal in this instance to think about lowering the minimum threshold required by law, as a possible solution to avoid formalism and to capture potential cases of ML that lie below the current threshold. Hence, we risk imposing on ourselves a development with a much higher cost of compliance and potentially more formalism, when we consider the difficulties that exist in analysing the reported information in AML Directorate.

In this context, I would like to highlight that formalism in terms of law implementation is unacceptable and harmful. In this case formalism is based on task performance and makes the control structures become dormant or inhibits their positive progress. So it is crucial that the law itself and regulations be as clear and implementable as possible in order to establish confidentiality and facilities in their implementation process.

Passing in the definition of the risk profile of the client, is the only way that would permit the compliance with the spirit of the law. This approach is based on a sound "know your client" policy of the bank, which should be a standard requirement nowadays. This approach has several advantages, where one could mention improved capabilities on tightening the system to prevent or detect cases of ML. Furthermore, it allows better distribution and focus of financial and human resources, resulting in a lowering of compliance costs. At the same time, it allows those institutions responsible for implementing the law and analysing the information, to focus on the full investigation of those transactions that represent higher risk of being ML.

Another delicate issue that I would to stress on in my speech is keeping and protecting the confidentiality on giving and managing the information on suspicious transactions. Our practice has shown that problems with this issue are complex. We have had cases of confidential information being public in the press, the next day they were filed. In another case, the employees of a bank that reported a suspicious transaction, were called and probed in the prosecutor office as being those the persons of actually being involved in ML. The reporting subjects and the institutions that implement the law, must define among each other certain procedures that would eliminate the occurrence of such case and that ensure the protection of confidentiality of the persons that have filed the suspicious reports. As long as this element is not totally ensured, any other discussion on the matter risks being a purely theoretical one, without much practical values.

In conclusion, as a Governor, I must say that I would encourage a better cooperation among the institutions that are subject or that implement the law on AML. At the same time, Bank of Albania as the supervisory institution of its licensees will promote a stronger contribution by banks in Anti Money Laundering requirements implementation. In exerting our function, we shall not be limited to the verification of the existence and the functioning of the internal structures and procedures, but will deepen further on assessing the support the management structures of the banks, give to the real implementation of the AML internal policies.

The position of a central bank is, according to the law, very comfortable, but playing the proactive role of a responsible central bank, showing the concrete implementation of this responsibility, we will intensify our efforts together with the other actors of interest to enable a better implementation of the law on money laundering prevention.

Allow me to close this speech, thanking the co-organisers of this workshop, the Tirana office of FSVC and the Albanian Association of Banks. I thank in particular all the specialists of the commercial banks and of the non-bank financial institutions that took part in this seminar, for their valuable contribution on preventing money laundering in their institutions. I thank particularly the foreign experts, Mr. Farrell and Mr. Burnside, that accepted to share with us their valuable experience. I wish this workshop has also been for them an interesting event.

Thank you.