



# **EITI Albania**

***BO Roadmap Albania***



<p><b>Objective 3: Level of detail to be disclosed</b></p>	<p>Consultation with stakeholders with a view to determine the level of detail of the beneficial ownership disclosures (nationality, country of residence, level of ownership, how ownership is exerted, date of birth, residential address, means of contact, etc.), including opportunities and challenges with such disclosures</p> <p>3.1</p> <p>a <i>Consultation with government</i></p> <p>b <i>Consultation with civil society</i></p> <p>c <i>Consultation with companies</i></p> <p>Agree an appropriate definition and ownership thresholds and disclosure in order to operationalize reporting of beneficial ownership?</p> <p>3.2</p> <p>a <i>MSG to meet, discuss and agree on definition of BO.</i></p> <p>Implement legal and regulative changes</p> <p>3.3</p>	<p>EITI Albania lead MF, MJ, ME, Parliamentary comission</p> <p>Moderator /Consensus Building</p> <p>Moderator /Consensus Building</p> <p>MSG, MF, MJ, ME, Parliamentary comission      \$    20,000</p> <p>EITI Albania + MSG</p> <p>Govt. Working group from MF, MJ, ME, Parliamentary comission      \$    30,000</p>	<p>election period</p> <p>elections period</p>			
<p><b>Objective 4: Reporting obligations for Politically Exposed Persons</b></p>	<p><b>Politically exposed persons</b>      see activity 2</p> <p>Investigate existing national and international definitions and reporting requirements for PEPs with a view to identifying national policy objectives on this subject and aligning the beneficial ownership definition accordingly</p> <p>4.1</p>	<p>EITI + Consultancy</p>				
<p><b>Objective 5: Activities aimed at exploring what would be the most appropriate time for data collection of beneficial ownership information</b></p>	<p><b>Data timeliness</b></p> <p>Review what would be the most appropriate time for data collection of beneficial ownership information</p> <p>5.1</p> <p>How to reflect changes in ownership over time, once a baseline has been established</p> <p>5.2</p> <p>Identify an appropriate mechanism for companies to assure the data in the beneficial ownership declarations prior to data collection</p> <p>5.3      see legal review</p>	<p>EITI Albania + MSG</p> <p>EITI + Consultancy</p>				
<p><b>Objective 6:</b></p>	<p><b>Data collection procedures and data accessibility</b></p> <p>Identify the companies that will be required to participate in beneficial ownership reporting</p> <p>6.1</p> <p>Identify the most efficient and sustainable data collection approach, including for example developing a beneficial ownership declaration form, or adaptation of the EITI's model beneficial ownership declaration form as tools for collecting beneficial ownership data</p> <p>6.2</p>	<p>MSG</p> <p>EITI Albania, MSG</p>				

<b>Objective b:</b> <b>Activities aimed at increasing data accessibility</b>	<i>Exercise on voluntary BO disclosure with EITI report based on EITI model</i>	EITI Albania, MSG			
	<i>b Identify perception and readiness from the operators</i>	EITI Albania, MSG + Consultant			
	<i>c Recommend best approach</i>	Consultant			
	Increase data accessibility, for example by publication of data in electronic or other open data 6.3 formats  Consider establishing a public beneficial ownership register, ideally integrated in existing corporate or extractive license holder registers 6.4	<i>Scoping study to test IT systems na do comparative analyses</i>  ?	Consultant		
<b>unforeseen consultant costs</b>		\$ 150,000			
<b>Minimum Total without system provisions</b>		<b>\$ 415,000</b>			

NOTE: The process of implementation of the legislation under which it will establish rules for the dissemination and/or declaration of information about the real owners who benefit or control the company, which exercise their functions in terms of the extractive industry, oil, gas and minerals, requires an extensive analysis in relation to the current legislative framework in force, in order to highlight the legal framework which already regulates certain elements of beneficial ownership and addresses the need to additional frame legislation to regulate the other elements of the BO, already untreated and unregulated.

In this sense, it should be said that to some extent, that Albania has made little progress with respect to the issue of regulation of certain elements of BO. Specifically:

1. Based on Law No. 9917, dated 19.5.2008 "On prevention of money laundering and financing of terrorism", is treated narrowly the concept of BO, the beneficial owner. In fact, the law treats narrowly our issue, however is a good point of reference for further initiatives in this direction.

Specifically, under Article 1 of Law No. 9917, dated 19.5.2008 "On prevention of money laundering and financing of terrorism" "Beneficial owner" is the natural or legal person that owns or controls ultimately a customer and/or the person, on whose behalf a transaction is executed. Here are included also those persons that exercise effective final control over a legal person. Final effective control is the relationship, in which a person:

- a) owns directly or indirectly at least 25 per cent of the shares or voting rights of a legal person;
- b) alone owns at least 25 percent of the votes of a legal person under an agreement with partners or other shareholders;
- c) de facto determines the decisions taken by the legal person;
- c) controls in any way the election, appointment and dismissal of the majority of the administrators of the legal person".

However, if we analyze more in details the provisions of this law, we conclude that in relation to the all inclusive regulation of the BO, presents two problems:

Ø Adjustments that this law makes and the treatment of BO, relates closely to the prevention and supervision of financial operations through which money laundering is realized. Thus the provisions of this Law may regulate specific issues relating money laundering, coming from illegal activities. Meanwhile the concept of BO is all inclusive and has to do with the identification of the factual beneficial owner, even if the company's activity is regular.

Ø Secondly, the entities to which apply the provisions of this law, appear in an exhaustive list and create opportunities for certain categories of entities operating in the extractive industry, to attempt not to be subject of the enforcement of the provisions of this law. In addition to the reporting obligations, are charged entities that involve or facilitate transaction processes as commercial banks, savings and credit society, lawyers, notaries, property registration offices, etc. Thus this law does not impose genuine obligations in relation to companies to disseminate information on the BO.

2. A positive development in terms of the process of BO, should be considered the adoption of the legal framework in terms of judicial reform. In this sense, based on this framework, it becomes possible that within the verification of the figure of certain subjects such as judges and prosecutors and other categories of subjects involved in this process, to verify the data, even for cases when these categories of subjects are actually beneficial owners or factually control companies or their bodies. However, in this case the scope of this legal framework is very narrow, having to do with a certain category of subjects and does not impose general rules concerning BO.

We evaluate that the drafting, adoption and implementation of a legal framework in terms of BO, must be all inclusive by placing liability for the dissemination of data of the BO to companies and not to the subjects that are involved in transactions that these companies realize. Also, it should also be evaluated the way it will be accomplished the imposing of this obligation and the mechanisms that will be used to ensure the effective implementation, since the monitoring mechanism and measures that will be applied in case of failure to comply with this obligation are crucial to the success of law enforcement.

In this sense, the composition, adoption and implementation of a legal framework in terms of BO, requires a deep analysis and interaction with the actual legal framework, specifically with the following laws:

Law No.9901, dated 14.4.2008 "For traders and trading companies";

Law No. 9917, dated 19.5.2008 "On prevention of money laundering and financing of terrorism";

Legal framework for judicial reform:

Law No. .9367, dated 7.4.2005 "On the prevention of conflicts of interest in exercising public functions";

Law No. .9049, dated 10.4.2003 "On the declaration and audit of assets to liabilities of the elected and certain public officials ";

Criminal Code of the Republic of Albania;

Law No. 10,279, dated 20.5.2010 "On administrative offenses";

International conventions to which the Republic of Albania adheres.