

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



Project Objective

To draft amendment proposals of the AML law in line with the EU Third Directive provisions, which will address both banks' concerns for cost-effectiveness of reporting and avoidance of reputational and legal risks, and authorities' concerns for maintaining high standards about AML.

Project Management Team

Project Owner (PO): Petre Bunescu (RBA Vice President)

Project Manager (PM): Doru Bebe Bulata (Director, BCR)

Deputy Project Manager (DPM): Paula Lavric (State Secretary, AML Office)

Alis Avramescu (Deputy Director, NBR)

Minutes

Eighth Meeting

February 28th, 2007 – RBI Premises

Participants: Please amend as appropriate

Doru Bulata, PM

Paula Lavric, DM

Liana Teodorescu, member

Constantin Jumuga, member

Eugen Neidoni, BRD

Sergiu Bogeia, member

Victoria Preoteasa, member

Other banks' representatives members of the RBA Compliance Technical Commission

SPI Secretariat: Ramona Bratu, SPI Director for Bank Products and

Services, Oana Nedelescu, SPI Director for Analytics and Policy

The pros and cons of the AML Office proposal to modify the definition of external transfers

The AML Office proposed the modification of Art. 2 let. d) which defines the external transfers as “*operations of payments and cashing between persons situated on the Romania’s territory and persons situated abroad*”.

The AML Office proposal enlarges the definition of external transfers, by including the operations of payments and cashing between residents and non-residents in Romania, as follows: “*by external transfers in and from accounts it is understood the cross-border transactions, as they are defined in OG 6/2004 approved by Law 119/2004, as well as the operations of payments and cashing between residents and non-residents in Romania*”.

This proposal has not met with the consensus of the project working group. The arguments of the different stakeholders, as well as those of the peer reviewer are presented below.

AML Office Arguments (in favor of enlarging the definition of external transfers)

- align the definition of external transfers provided in the law with the definition stipulated in the NBR norms regarding the statistical reporting for balance of payments;
- increase the efficiency of the AML Office supervision activity by supplying additional information on transactions that can constitute money laundering;
- the IBAN codes could be used for identifying the operations between residents and non-residents.

Banks’ and Ministry of Public Finance Arguments (against enlarging the definition of external transfers)

- the present definition of external transfers is fully compliant with FATF standards;
- the proposal does not reflect the provisions of the Third Directive which does not stipulate a requirement to report transactions other than the suspicious transactions; in this context, the Romanian provisions on reporting external transactions above a certain threshold is already exceeding the provisions of the Third Directive;
- no other European country has a similar provision in the legislation (the only case identified in the world is Nigeria).
- the IBAN codes do not include references regarding the residence, making it thus impossible to determine the resident status of the Romanian bank beneficiary of the domestic transfer (the change of the IBAN codes would be against international relevant standards);
- in applying the current law, banks already undertake all the necessary measures for the identification and the reporting of transactions between residents and non-resident in Romania with ML relevance through suspicious transactions reporting;

- at present, in the legislation, there are different definitions for residents and non-residents, depending on the scope of the various laws and regulations (foreign exchange regulation, fiscal treatment, population statistics, KYC norms);
- the AML Office did not provide evidence that would support the concerns related to money laundering carried out between residents and non-residents in Romania.

NBR Arguments

- the definitions provided in a law / regulation have to be in accordance with the scope of the respective law (i.e. for statistical reports, supervision, etc.); from this point of view, the current definition is fully in line with the FATF recommendations;
- all the recommendations formulated by the banks' and MOPF representatives are shared by the NBR.

Peer Reviewer Arguments

- it is necessary to factor in the AML Office institutional capacity to analyze all the information requested from the reporting units. The other countries' experience demonstrates that the FIUs have a limited capacity to analyze all the information received and in practice they suffer from an overkill of information;
- the enlargement of the definition has to be based on indications that the transactions between residents and non-resident in Romania have been indeed used for money laundering purposes or are likely to be so in the future.

SPI Secretariat Observation

The AML Office request can be understood from the point of view of bringing all non-resident beneficiaries of a bank transfer under the same reporting obligation, whether they have a foreign account or a non-resident account with a Romanian bank.

It is important to bear in mind that the blanket reporting obligation for foreign transfers is itself an important exception to the bank-based risk management principle promoted by the Third Directive. The international benchmarking has shown that many EU countries do not have such a blanket reporting obligation. They require that banks report any suspicious transaction as determined through their in-house risk management systems.

To assure the AML Office that the absence of a reporting obligation provision regarding domestic transfers to non-resident clients does not open an inadvertent regulatory loophole, it may be advisable that the RBA stipulates in its explanatory assistance to members banks that risk management systems have to be designed to place under enhanced surveillance transfers to non-resident beneficiaries. The NBR may wish to reflect a similar guidance in its own regulatory documentation.