

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



TERMS OF REFERENCE

Project: Anti Money Laundering (AML)

Project Owner: Petre Bunescu (on behalf of RBA)

Project Manager: Doru Bulata (Director, BCR)

Deputy Project Manager: Paula Lavric, Secretary of State, AML Office

Project coordinator: Alis Avramescu, NBR

PROJECT WORKING GROUP (PWG)

I- Background

The anti-money laundering is regulated by Law no. 656/2002. The law was amended in 2005 (Law no. 230/2005), when RBA tried unsuccessfully to have some of proposals incorporated.

The RBA proposals were meant to improve the efficiency of the AML mechanism in harmonization with the provisions of the EU Third Directive. The main RBA proposals referred to:

- Better definition of the “linked operations”: by not explaining the meaning of this term, there is room for controversies and interpretations;
- Reporting frequency: currently, the daily reporting to the AML Office is considered by banks too frequent;
- Content of AML Office reporting: currently, the level of detail is considered by banks too high;
- Threshold for AML Office reporting: currently, the threshold is set to EUR 10,000, which is considered by banks too low;
- Exclusion of some transactions from reporting: cash transactions between banks and between banks and NBR (40% of the total reported transactions) are subject to daily reporting, although the risk for suspicious transactions is low;
- Long period to receive the AML Office decision (3 working days) and the courts decision (4 working days) in order to block the execution of a suspicious transaction: these delays generate an operational risk for banks and may lead to situations in which the banks can be sued by their clients for non-executions of their operations;
- AML Office’s feed-back: the AML Office obligation to offer a feed-back on the suspicious transactions reported by the banks is not clear in the law;
- Amount of the penalties: the penalties are expressed in lei, not in RON and can lead to misinterpretation.

The above mentioned issues generate high costs for the banks and impede on the interaction with the AML Office. The RBA intends to reopen these issues and promote law amendments so that the above mentioned issues are resolved.

II - Project Objective

Prepare a draft amendment to the relevant legislation, in line with the EU Third Directive provisions, which will address both banks' concerns for cost-effectiveness of reporting and avoidance of reputation and legal risks, and authorities' concerns for maintaining high standards about AML.

III – Intended Strategy

The project management group (Project Owner, Project Manager, Deputy Project Manager supported by the SPI Secretariat) acts based on the mandate received from the SPI Committee to prepare the AML law amendment proposals, adequately substantiated as to their compliance with the EU Directive and other international standards.

The project management group (PMG) should start building on the existing understanding of the problems generated by the current AML legislation. The PMG will ask the RBA to provide relevant materials regarding the RBA work on the matter in order to get acquainted with the issues previously raised by the RBA.

The project working group (PWG) will analyze costs and risks incurred by banks in applying the current legislation and will outline possible improvements and their implied effects in terms of costs and risks for banks. The PWG will make proposals for amending the current legislation using as a starting point the list of issues identified by RBA. PWG will take into account that the proposed amendments should optimize the trade-off between AML aims and cost of regulation.

The analysis of the PWG will be supported by an economic assessment of the regulatory framework already in place and of the proposed changes provided by SPI Secretariat.

IV- Methodology: from kick off to the accomplishment of the project

Preparation of PWG 1st meeting (PM/DPM and SPI Secretariat) - October (16 - 21)

PM/DPM/SPI Secretariat will gather existing documentation on the matter from the RBA AML Technical Committee. PM/DPM/SPI Secretariat will hold preliminary interviews with representatives of the AML Office and NBR in order to understand the major concerns on AML supervision and will prepare a summary document to be presented at the PWG 1st meeting.

PO/PM will send to the PWG members the SPI Committee Mandate Letter together with the following documents before the PWG 1st meeting:

1. RBA: documents gathering RBA law amendments proposals and any other supporting documentation;

2. PM/DPM/SPI Secretariat: a summary document on the results of the interviews;
3. NBR, AML Office: a package of existing AML legislation.
4. Draft TORs prepared by SPI Secretariat and endorsed by PO and PM/DPM.

PM/DPM will ask the participating banks in the PWG to identify any other issues in addition to the RBA-raised ones, to be discussed at the PWG 1st meeting.

PWG 1st meeting - November (1-3)

1. PWG members take stock of the issues raised by the RBA and any other additional issues identified by banks representatives and discuss the summary document;
2. PWG members agree on TORs prepared by SPI Secretariat and endorsed by PO and PM/DPM;
3. PM/DPM establish **homework** for PWG members:

Banks: a stock taking of the costs and risks incurred by banks in applying the current legislation, outlining necessary improvements and mapping them against the EU Third Directive and relevant international standards;

NBR: a supervisory perspective on the issues raised, outlining potential risks from the NBR point of view and the EU Third Directive perspective;

AML Office: an analysis of the issues raised, outlining potential risks from the AML Office point of view and the EU Third Directive perspective;

PM/DPM/ SPI Secretariat: prepare a draft questionnaire for gathering needed data for RIA, based on the information on costs received from the PWG members, to be discussed at the PWG 2nd meeting.

The individual contributions will be sent to the PM/DPM and SPI Secretariat. SPI Secretariat will centralize the contributions and circulate a paper on the issues identified, costs and risks before the PWG 2nd meeting.

PWG 2nd meeting - November (20-24)

1. PWG members discuss the paper on the issues identified, costs and risks;
2. PWG members agree on a list of issues that can be translated into law amendments;
3. PWG members will identify the law amendments proposals corresponding to the agreed issues in line with the EU Third Directive provisions;
4. PWG members approve the questionnaire;
5. PM/DPM establish **homework** for PWG members:

Each PWG member: draft specific law amendments proposals on several issues as decided by PM/DPM.

The individual contributions will be sent to the PM/DPM and SPI Secretariat. SPI Secretariat will prepare a centralized law amendment proposal and circulate it before the PWG 3rd meeting. PM/DPM will draft a position paper to support the agreed law amendments proposals and circulate it before the PWG 3rd meeting.

PWG 3rd meeting - December (4-8)

1. PWG members discuss and approve the law amendments proposals;
2. PWG members approve the position paper;
3. PWG members validate RIA findings.

V- Output

PWG 1st meeting

- PWG members send individual contributions.

PWG 2nd meeting

- PWG members agree on a list of issues;
- PWG members identify law amendments proposals;
- PWG members approve questionnaire;
- PM/DPM prepare draft position paper.

PWG 3rd meeting

- PWG members approve centralized law amendments proposals;
- PWG members approve position paper.
- SPI Secretariat sends SPI Committee Actionable Paper to Convergence.

VI - Project Team

The team is composed of:

- Banks
 - Liana Teodorescu, Bancpost;
 - Magdalena Calangiu, Finansbak;
 - Victoria Preoteasa, OTP Bank;
 - Sergiu Boga, Unicredit;
 - Constantin Jumuga, BRD – GSG
- National Bank of Romania - Isabelle Chelariu
- Ministry of Public Finance - Simona Butoi, MFP
 - Magdalena Scriciu
- Ministry of Justice
 - 1 expert with background in commercial law.

The team will be chaired by the Project Manager (a bank's manager) and co-chaired by the Deputy Project Manager (an AML Office manager).

PM/DPM have to report to PO at least after each meeting of the PWG.