

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



Note for Discussion between SPI Project Owner and AML Office Management

Prepared by SPI Secretariat
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Objective:

To convince the AML Management to withdraw his last amendment request (on expanding the definition of external transfers by including the transactions between residents and non-residents in Romania).

Context:

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.

AML Office Motivation:

- 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;
- to receive additional information on transactions that can constitute money laundering;
- use of IBAN codes could facilitate the enactment of this proposal since they are able to identify the operations between residents and non-residents.

This proposal causes many problems (underlined by bank, NBR and MoPF PWG members):

a. The proposal is not in line with the relevant AML international standards and practices

- the proposal is not in line with the FATF standards, which are fully reflected in the current definition of external transfers;
- the proposal does not reflect the bank-based risk management principle of the Third Directive. Many EU countries do not have blanket reporting obligation for foreign transactions, requiring instead that banks report any suspicious transaction as determined through their in-house risk management systems.
- no other European country has embraced this expanded definition of external transfers (the only case identified in the world is Nigeria).

b. The enactment of such a proposal would create an unnecessary overload for reporting entities and AML Office

- 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 or by reporting cash/external transactions above designated threshold;
- 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 (change of IBAN codes would be against international relevant standards);

- the AML Office did not provide evidence that the enactment of the proposal is 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;
- 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.

Next Steps:

1) To secure AML PWG member consent for proposed AML law amendment

- AML Office should withdraw its proposal;
- PWG should approve the final law amendment proposals.

➤ 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, the RBA could 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.

2) The PWG should send agreed text of legislative amendments to SPI Committee for further transmission to authorities

Following the PWG endorsement, the legislative amendments should be sent to SPI Committee for its approval and further submission to the competent authorities (Ministry of Justice / Parliament).

SPI Committee Secretariat:

Ms. Oana Nedelescu, SPI Committee Secretary and SPI Director of Analytics and Policy
Ms. Ramona Bratu, SPI Director of Bank Products and Services

Tel: 021- 323.66.10

oana.nedelescu@convergence-see.eu

ramona.bratu@convergence-see.eu