



Organized crime in a borderless Europe –The case of Romania

The EU is a heterogeneous mix of countries that has, since the turn of the century, seen an eastward expansion to include 10 formerly communist states. In 2004, eight Eastern European countries (Lithuania, Estonia, Latvia, Poland, Czech Republic, Slovakia, Hungary, Slovenia) joined the EU and in 2007, the EU accepted two more countries (Romania and Bulgaria) from Southeastern Europe. A great diversity spans the 27 EU member states reflected not only in cultural, political and economic terms, but also in terms of the countries' individual and collective exposure to organized crime and money laundering activities. The relative ease in crossing geographical borders by Schengen member states, including all the Eastern European member states apart from Romania and Bulgaria that have still not met the necessary criteria, creates a

further issue relevant to the expansion of crime and money laundering activities (The Schengen Agreement deals with the abolition of systematic border controls among the participating countries).

As such, isolating the risk of organized crime activities and in particular money laundering activities, to any one particular country could be a risk in itself.

Links to "bad-apple" countries encompass risks for others

KPMG's Global Anti-Money Laundering Survey, published in 2007, highlights the AML risks and vulnerability facing the EU's financial systems in view of the EU's recent enlargement. It underlined that although the new member states are obliged to comply with EU legislation, this will be a slow process given that many of the Eastern and Southeastern European

member states "have not historically had stringent AML processes in place" and that "the regulatory framework in many of these countries is also believed to be less well-developed, meaning the practical application of AML standards may have been inconsistent in the past." In summary therefore, the risk of organized crime and money laundering links not merely to so-called high-risk areas such as Southeastern Europe and Italy to name a few, but also those countries that link in any form either directly or indirectly to activities and transactions from these geographic regions are potentially-exposed to money laundering activities.

Bulgaria and Romania rank low in efforts to battle crime

Corruption is one of the key areas of concern voiced widely in international

media sources when discussing Central and Southeastern Europe. The accession states made significant efforts to combat corruption or at least to convince the European Commission that this was the case in the lead up to accession. However, as has been pointed out following accession, combating crime and corruption is no longer a priority, although it still remains somewhat unclear whether this is a result of inability or mere disinclination, as questioned by the Economist in an article published in May 2008. The EU's new member states, Bulgaria and Romania, have come under severe EU scrutiny this year due to their slow progress in enacting judicial reforms and in combating corruption, and in particular, following the publication of the EU's third progress report in July 2008. The fight against corruption is highly politicized throughout Central and Eastern Europe, and incidents of corruption involving some of the more progressive states such as Slovenia, Slovakia, Latvia and Poland, have been published in the media. However, the EU's newcomers, Bulgaria and Romania (respectively) emerge as those countries ranked lowest amongst the EU member states on Transparency International's Corruption Perception Index. The same Economist article strongly criticized Bulgaria's position at the bottom of the list, claiming that EU officials believed organized crime had infiltrated and established itself within the highest levels of government: "Bulgaria, similarly, prefers talk to action. Multiple new anti-corruption agencies are poorly coordinated or have never got going. No case of high-level official corruption has led to a successful conviction, just as not one of the more than 120 gangland shootings since 2001 has been cleared up."

Limitations of a not-so-free press

A further issue of concern, in particular when undertaking KYC due diligence and other information-gathering exercises, rests in the reliability of the information retrieved from media sources. In April 2008, the Economist presented the debate surrounding concerns voiced by the Open Society Institute (OSI) and Freedom House regarding the increased politicization of public broadcasting in former communist countries. The article highlights the legal constraints imposed on press freedom, quoting Romania's United States Ambassador Nicholas Taubman, who criticized Romanian

legislators for their inclination to "intimidate independent media" or "criminalize journalistic efforts."

The good news...

Although there has been a significant amount of negative media coverage and political discussions surrounding the levels of corruption, crime and fraud in Southeastern Europe, and in particular within the EU in relation to its new member states Romania and Bulgaria, some progressive steps taken must be noted at this stage:

- With regard to the access to information: Transparency International published a report in 2006 entitled, *Using the Right to Information as an Anti-Corruption Tool* claiming: "Bulgaria and Romania show that over 50% of requests filed receive the information sought, which, for countries that relatively recently were closed and repressive communist systems and where maladministration and corruptions are still serious problems, is a very significant level of disclosure." This is an indication that publicly available information can be retrieved for the purpose of KYC or indeed, other information-gathering exercises that might be relevant to analyzing clients and their business environments.
- Furthermore, one promising development was reported in *The Sofia Echo* on September 29, 2008. The article announced the signing of an agreement by the Romanian, Bulgarian and Serbian interior ministers (Christian David, Mihail Mikov and Ivica Dacic) for cooperation against organized crime, including a focus on countering trafficking in drugs and cigarettes, and providing for joint anti-terrorist training.

Romania and the EU

When the European Commission published its final monitoring report in September 2006, announcing its "green light" for Romania and Bulgaria to become EU member states, it noted that this agreement was subject to further reforms in the areas of judicial reform, organized crime and corruption. The report noted that if the requirements were not met, the commission could invoke safeguard measures that could lead to the suspension of funds. This led to the implementation of the Cooperation and Verification Mechanism (CVM) to assist Romania and Bulgaria in assessing outstanding shortcomings.

Media and other reports continue to chastise

Within the context of the CVM, the progress report published July 23, 2008 criticized Romania for not having demonstrated more significant improvements in the area of judicial reforms to combat corruption. Although the report did recognize that Romania's institutional and procedural reforms had started to produce first results, it noted that the achievements were fragile. The report called for a "commitment to reform," consistent and uniform application of the law, and the introduction of a stable legal framework, including the implementation of a new criminal procedural code and progress on the drafted criminal code. The report stated: "The commitment of Romania to eradicate corruption is reflected at pre-trial stage but does not carry through to increased numbers of convictions or deterrent sanctions." Furthermore, the report criticized the "uneven application of the law" and the "excessive use of emergency decrees" that, among other factors, resulted in "legal uncertainty." The report further stated that more administrative resources were required, as well. This criticism relates strongly to Romania's failure, in particular that of its judicial system, to "deliver sentences in high-level corruption cases." Although the report did acknowledge the positive reform efforts by the government, the National Anticorruption Directorate (DNA) and the general prosecutor, stating that Romania had "started to move in the right direction," it underlined that the reforms could only be successful if they were to receive "unequivocal support from all actors at all levels." Following the publication of the report, the leaders of the main political parties agreed that Romania should ensure its removal from the EU's monitoring mechanisms by July 2009. Shortly after this agreement however, it was reported in the *Southeast European Times* on August 13, 2008 that the DNA had failed to win the parliamentary approval required to launch an investigation into former Prime Minister Adrian Nastase and former Transport Minister Miron Mitrea. Furthermore, Justice Minister Catalin Predoiu wished to replace Criminal Prosecutor Daniel Morar, nominating Monica Serbanescu to head the DNA and posting Morar to Brussels as a "liaison" official to the European Commission. But Morar, an iconic figure in the fight against corruption known for his integrity and

independence, allegedly refused the job. As a result, his position at the DNA was prolonged for a further three months. The move is seen by the Romanian press as another attempt by the country's political class to secure itself immunity from prosecution. The Economist strongly criticized the Balkans in this respect in May 2008, when Monica Macovei, a justice minister who had fought strongly against corruption had been fired, and her successor had allegedly tried to fire the anticorruption prosecutor for investigating his political sponsors. The article stated: "Procedural snags have held up all high-level corruption cases. Investigation of former ministers now requires parliamentary approval, sending every case back to square one."

Romania/FATF/Moneyval

With regard more specifically to anti-money laundering legislation and best-practice standards specifically, it should be noted that the EU's new member states, including Romania, are not Financial Action Task Force (FATF) members per se; they are however, members of MONEYVAL, an FATF associate member. MONEYVAL was established in September 1997 by the Committee of Ministers of the Council of Europe to conduct self- and mutual-assessment exercises of the anti-money laundering measures in place in Council of Europe countries that are not members of the FATF. According to the FATF Web site, the current full-time MONEYVAL members are Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Poland, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, The former Yugoslav Republic of Macedonia and Ukraine. MONEYVAL's mandate includes encouraging jurisdictions to improve their anti-money laundering measures in keeping with the FATF 40 Recommendations and to enhance international cooperation. MONEYVAL also engages in a regular typologies exercise focused on the methods and trends of money laundering activity. MONEYVAL is a Council of Europe subcommittee of the European Committee on Crime Problems (CDPC).

AML legislation in Romania

The most recent MONEYVAL assessment report published for Romania is a summary based on site visits undertaken in May 2007 that predates the implementation of the EU's Third Directive into Romanian

national legislation. This summary report criticizes a number of points with regard to Romania's AML legislation. A number of the preventive measures, in particular those noted in relation to customer due diligence, have been addressed in the newly implemented legislation based on the EU's Third Directive, notably those dealing with "beneficial ownership." Some other issues that were criticized in the summary document do not however, appear to have been dealt with in the implementation of the new legislation, namely the requirements in identifying PEPs and in defining their source of wealth. This criticism is in line with the report's wider criticism of Romania's legal system and enforcement of the anti-money laundering regime: "Ineffective implementation resulting in low number of final convictions. There have only been final convictions in five money laundering cases, and tax evasion is still the most common predicate offense." The report does however, recognize that Romania has introduced some "significant developments" since the second assessment by moving to a "full-crime" approach for

predicate offenses. The report adds: "The tipping-off offense has been criminalized and corporate liability has been introduced. Confiscation of proceeds is applied in cases of money laundering and terrorist financing and if the proceeds are not found, their equivalent value shall be confiscated."

Third Directive goes into force

According to an article published by the IBA International Anti-Money Laundering Forum, the EU's Third Directive was fully implemented on April 30, 2008. According to International Financial Law Review, the legislation finally entered the directive into force on July 15, 2008. Romanian anti-money laundering legislation can be viewed at <http://www.onpcsb.ro/html/legislatie.html>

Romanian AML legislative information

The following details are quoted directly from a translation of the Romanian anti-money laundering legislation provided by the Romanian Ministry of Justice and the Romanian Office for the Prevention of Money Laundering. The Romanian AML legislation applies to the following natural and legal persons:

- credit institutions and branches in Romania of the foreign credit institutions;
- financial institutions, as well as branches in Romania of the foreign financial institutions;
- private pension funds administrators, in their own behalf and for the private pension funds they manage, marketing agents authorized for the system of private pensions;
- casinos;
- auditors, natural and legal persons providing tax and accounting consultancy;
- public notaries, lawyers and other persons exercising independent legal professions, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or goodwill elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and for their clients in any financial or real estate transactions;


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- persons, other than those mentioned in the two previous points, providing services for companies or other entities;
- persons with attributions in the privatization process;
- real estate agents;
- associations and foundations;
- other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency whose minimum value represents the equivalent in RON of EUR15000, indifferent if the transaction is performed through one or several linked operations.

Due diligence: Standard, simplified and enhanced

According to the same translated AML legislation document, standard, simplified and enhanced customer due diligence should be undertaken in the following instances (see Figure 1).

Furthermore, according to an article published by the IBA International Anti-Money Laundering Forum, the National Bank of Romania has set the obligatory requirement for credit institutions and non-banking financial institutions to revise, amend, adopt and submit new, internal, customer due diligence rules and procedures consistent with the regulatory acts described above to the National Bank of Romania.

In summary, although Central and Eastern Europe has benefited greatly economically from the openness of borders in the region as well as from EU accession, these new “freedoms” have also inadvertently assisted in the expansion of organized crime networks and activities in the region. Due to the limited progress in judicial reform seen in Romania resulting in a somewhat comfortable state of confusion, Romania and its EU neighbors, some to a greater and others to a lesser extent, have provided an attractive environment for criminal activity due in particular to the low level of detection. As such, although great progress has been seen in the implementation of the third EU directive, key areas of reform, such as enforcement and further legal reforms are essential should effective and long-term results in combating both organized crime and money laundering be the ultimate aim. 

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Figure 1

Standard Due Diligence

Apply standard customer due diligence measures in the following situations.

When establishing a business relationship:

- When carrying out occasional transactions amounting to EUR15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- When there are suspicions that the transaction is intended for money laundering or terrorist financing, regardless of the derogation on the obligation to apply standard customer due diligence measures, provided by the present law, and the amount involved in the transaction;
- When there are doubts about the veracity or adequacy of previously obtained customer identification data;
- When purchasing or exchanging casino chips with a minimum value in equivalent RON of EUR2000.

When the sum is not known in the moment of accepting the transaction, the natural or legal person obliged to establish the identity of the customer shall proceed to their rapid identification when it is informed about the value of the transaction and when it is established that the minimum limit of EUR15,000 was reached.

Institutions subject to the Romanian AML legislation are obliged to ensure the application of the provisions of the present law to external activities or the ones carried about by agents.

Credit institutions and financial institutions must apply customer due diligence and record-keeping measures to all their branches from third countries, and these must be equivalent at least with those provided for in the present law.

Apply standard customer due diligence measures to all new customers and also, as soon as possible, on a risk base, to the existing clients.

Credit institutions and financial institutions shall not open and operate anonymous accounts, respectively, accounts for which the identity of the holder or owner is not known and documented accordingly.

Apply standard customer due diligence measures to all the owners and beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts are used in any way.

Simplified Due Diligence

Institutions subject to Romanian AML legislation shall apply simplified customer due diligence measures for the following situations:

- for life insurance policies if the insurance premium or the annual installments are lower or equal to the equivalent in RON of the sum of EUR1000 or if the single insurance premium paid is up to EUR2500, the equivalent in RON. If the periodic premium installments or the annual sums to pay are to be increased in such a way as to be over the limit of the sum of EUR1000, respectively of EUR2500, the equivalent in RON, standard customer due diligence measures shall be applied;
- for the situation of the subscription to pension funds;
- for the situation of electronic currency defined accordingly with the law, for the situations and conditions provided by the regulations on the present law;
- when a customer is a credit or financial institution, according with Article 8 from a member state of the European Union or of the European Economic Area or as appropriate, a credit or financial institution in a third country that has similar requirements with those laid down by the present law and are supervised for their application;
- for other situations regarding clients, transactions or products that pose a low risk for money laundering and terrorism financing provided by the regulations on the application of the present law.

Enhanced Due Diligence

Enhanced due diligence measures should be applied for the following situations that by their nature may pose a higher risk for money laundering and terrorism financing:

- for the situation of persons that are not physically present when performing the transactions;
- for the situation of correspondent relationships with credit institutions from states that are not European Union member states or do not belong to the European Economic Area;
- for the transactions or business relationships with politically exposed persons who are resident in another European Union member state or European Economic Area member state or a third country.

The persons who are subject to Romanian AML legislation apply enhanced due diligence measures for other cases that by their nature, pose a higher risk of money laundering or terrorism financing.