

Transparency International EU

The global coalition against corruption

Consultancy notice – Assessing compatibility of AML obligations with sector-specific obligations in the accountancy, real estate and legal sectors

Alessandro · Thursday, May 3rd, 2018

Call for tenders

Application deadline: 18 May 2018

Purpose of Assignment

Produce a paper analysing how anti-money laundering (AML) obligations interplay with sector-specific obligations such as client confidentiality or public interest duty (e.g. the NOCLAR standard – Responding to Non-Compliance with Laws and Regulations – in the accountancy profession). The analysis will focus on reporting obligations related to the accountancy, real estate and legal professions. The research aims to provide an overview of country practices and experiences in addressing the tensions and constraints faced by the sectors when facing these obligations and their possible contradictions. It will further look into making high-level recommendations to reconcile these regulatory expectations. The analysis will draw on comparative analysis of national regulations and examples of interpretation of legal privilege. It shall feed into dialogue engaged with the professions and regulatory authorities to foster changes in business practices, policies and behaviours for more effective anti-money laundering policies.

1. Background

Transparency International (TI) is a global civil society organisation leading the fight against corruption and promoting good governance. This consultancy is part of TI's three-year initiative *Toward Better AML Business Practices* (TBABP) aiming to improve the implementation and effectiveness of anti-money laundering standards and practices in selected sectors including the accountancy and real estate sectors. The initiative aims to assess current challenges faced by the sector as well as weaknesses in standards and practices and propose policy solutions to make AML systems more effective.

Effective reporting of suspected money laundering is greatly dependent on professional intermediaries, both in the financial and non-financial sectors. For instance, professions have due diligence and reporting obligations under the Anti-Money Laundering Directive in the EU, the Proceeds of Crime (Money Laundering) Act in Canada and Proceeds of Crime Act 2002 &

Criminal Finances Act in the UK. At the same time, some of these professional sectors have client confidentiality and legal privilege obligations, which in some cases may be in tension with the requirement to disclose of customer information as required by AML obligations.

International anti-money laundering standards do not provide detailed guidance on how to deal with issues of privilege and professional secrecy, leaving the interpretation of the relevant high-level FATF (Financial Action Task Force) Recommendations to each country. The definition of confidentiality is interpreted differently in different jurisdictions and has been invoked by the professions as being in contradiction with anti-money laundering obligations or public interest duties as required by for example OECD or EU rules. Court rulings on the issue have also varied across jurisdictions.

Further research is needed to understand how to reconcile these different injunctions and duties and make them work together. The Supranational Risk Assessment by the European Commission in 2017 identified that the interpretation and application of legal privilege by professionals carrying out activities related to them could be improved. This includes professionals, such as trust and company services providers, tax advisors, auditors, external accountants, notaries and other independent legal professionals.

Confidentiality requirements have little to no harmonisation across jurisdictions. For example, the International Ethics Standards Board for Accountants does mention confidentiality in its Handbook of Code of Ethics, but outside sector standards legal harmonisation is nonexistent.

In the case of lawyers, client privilege is protected by the European Convention of Human Rights, but there is no harmonisation outside competition law.

Setting clear procedures when dealing with client confidentiality and professional privilege would enhance the functioning of anti-money laundering framework in various sectors. As noted by the European Commission, the lack of clear indications on cases, when client confidentiality can be invoked to justify non-reporting, is creating legal insecurity for professionals who would benefit from further clarity.

2. Objectives

The TBABP initiative is engaging with professionals from the accountancy and real estate sectors through a Task Force consisting of key actors from national, European and global levels. Guidance and inputs to the work of the taskforce are provided by an Advisory Group composed of experts from academia, international organisations, civil society and regulators. The ultimate objective of the project is to enhance the role of the sector in the detection, prevention and reporting of money laundering.

The purpose of the research is to identify the conditions and legal framework under which AML reporting obligations and client confidentiality or legal privilege may be reconciled and fit together. It aims to explore the compatibility of AML disclosure requirements and client confidentiality or legal privilege, and the possible contradictions in legislation and practice across various jurisdictions. The focus will be global and cross-sectoral looking at the client privilege in relation to accountancy, legal and real estate professions.

The **key objectives** of the report are to:

- Take stock of country legal definitions, practice and case-law regarding client

confidentiality / legal privilege and other sector-specific obligations such as public interest duties in relation to AML requirements especially in the accountancy, real estate and legal sectors.

- Assess obstacles related to client confidentiality / legal privilege that may affect the disclosure of client information for anti-money laundering purposes.
- Identify and analyse other sector-specific obligations such as the public interest duty that may offer a way to reconcile the different type of obligations professions are subject to.
- Propose draft guidelines that can clarify the definitions of client confidentiality / legal privilege compatibility with AML reporting practices effective.

3. **Expected deliverables and timeline**

The primary tasks of the consultant will be:

- Produce a paper in line with the key objectives stated above – September 2018
- Present the paper and its finding to participants in the TBABP initiative – October/November 2018

All presentations and reports should be submitted in English, in electronic form, in accordance with the deadlines stipulated above. The Consultant is responsible for editing and quality control of language. The TI Secretariat retains the sole rights with respect to all distribution, dissemination and publication of the deliverables.

4. **Selection criteria**

Tenders will be reviewed by TI according to the following criteria:

- Experience and track record of consultant
- Legal expertise
- Experience and expertise on the legal and/or accountancy sectors
- Experience and knowledge of legal privilege / client confidentiality issue
- Independence
- Value for money

5. **Remuneration and costs**

The Consultant should provide a detailed breakdown, before any VAT or other charges, of all their estimated costs, including but not limited to; total fee as a lump sum or standard daily or hourly rates, (if applicable) international travel, local transport, accommodation, work materials.

Transparency International e.V. (Secretariat), (TI-S) is registered as a Business Entity in Germany with VAT identification number DE273612486. In order to determine the Value Added Tax (VAT) implications of this tender, we kindly request that the Consultants fill out

the **VAT Form for Tenders/Vendor Form** (instructions inside the form) and submit the completed and duly signed form along with their email application.

The link to the VAT Form for Tenders/Vendor Form is available below.

6. Contact information

The application should include the following documents in English:

- An overview of the proposed approach to the assignment (not more than 2 pages), along with a recent sample of comparable written work and the CVs of the consultant(s).

Offers up to €8,000 will be considered (inclusive of VAT).

Please indicate “ ” in the subject line of your email application. Applications should be sent in English by email to AMLcompatibility@transparency.org by close of business of 18th May 2018.

Please note that only shortlisted applicants will be contacted.

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