

# AML PACKAGE

## EBA CONSULTATION ON THE AMLD RTS ON THE METHODOLOGY FOR ASSESSING THE RISKS OF OBLIGED ENTITIES (AMLD, ART. 40(2))

### AMAFI's answer

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*AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.*

Article 40, paragraph 2, of the AMLD requires the AMLA to develop a common methodology that all supervisors will use to assess the level of ML/TF risks to which obliged under their supervision are exposed.

This methodology project is based on the assessment of inherent risk, the quality of AML/CFT controls, and the residual risk of the entities subject to supervision. This assessment will be based on a set of indicators that are not included in the draft RTS.

The draft RTS also introduces a unique set of data points that all supervisors would be required to use to establish the above-mentioned indicators. These data are detailed in Annexes 1 and 2 of the draft RTS.

AMAFI thanks the EBA for giving it the opportunity to comment on this draft methodology.

## GENERAL COMMENTS

### 1. Cost of IT developments and mobilisation of human resources

AMAFI draws the EBA's attention to the significant cost of collecting and processing the data referred to in Annex I of the draft RTS.

In France, the entities subject to the draft RTS have recently adapted their tools to comply with new national requirements, including a very detailed questionnaire (approximately 300 questions) designed to assess their AML/CFT arrangements. Therefore, the introduction of these new European requirements, without taking into account the efforts already made at the national level, will inevitably lead to additional costs.

Compliance will require the development of IT tools and the allocation of significant human resources, in particular to reprocess existing clients data. These types of additional burden increase the cost of doing business in Europe, which contributes to undermining the competitiveness of European players, without necessarily improving the effectiveness of the fight against money laundering and terrorist financing.

AMAFI therefore recommends that the EBA rely as much as possible on data collection requirements already in force at national level, in order to avoid duplication of effort and limit compliance costs.

## **2. Need for coordination in the collection of data**

AMAFI expresses its concern about the volume of data required in Annex I of the draft.

It is essential that national authorities coordinate reporting requirements in order to avoid duplication. As it stands, there is a risk of overlap between national requirements and those introduced by the draft RTS.

AMAFI therefore invites the authorities to conduct a gap analysis between the data already collected at national level and those required under this draft, with a view to streamlining reporting requirements.

In order to avoid duplication of effort and limit compliance cost, national authorities responsible for AML supervision should collect the data listed in Annex I from other national authorities, FIUs and bodies so as not to place an additional burden on the entities subject to supervision.

## **3. Adaptation of indicators to the investment services sector**

AMAFI supports the position expressed in Recital 7 of the draft, according to which the risk assessment methodology must be adjusted to the specific characteristics of the activities of the obliged entities. The investment services sector and in particular wholesale capital markets have specific characteristics, particularly in terms of the nature of its activities, types of clients and marketing channels, which influence exposure to the risk of money laundering and terrorist financing.

However, at this stage, the indicators envisaged do not appear to take full account of these specific characteristics (see detailed comment: client typology,...).

As a result, some of the quantitative data required appear to be of little relevance for assessing risk in investment services, particularly when they do not take into account the business model or the complexity of operations.

It is imperative that the proposed methodology incorporate sectoral differences, both in the selection of indicators and in their weighting.

#### **4. Clarification of concepts and methodological transparency**

##### **a) Clarification of concepts**

Assessing the relevance of the data in Annex I is made difficult:

- by the interpretative note accompanying Annex I to the draft RTS, which has not been communicated at this stage, making uncertain the scope of certain concepts (e.g., “high-risk activity,” “professional clients”);
- by some of the concepts that refer to definitions that are provided in the draft RTS on CDD and are still under discussion (e.g., “complex structure”).

This lack of definition could lead to inconsistent interpretations at the national level, thereby compromising the harmonisation and comparability of risk assessments.

##### **b) Transparency in the determination of indicators**

The lack of transparency on how the data collected will be combined to form risk indicators makes it difficult to assess the relevance of the data referred to in Annex I.

AMAFI recommends that the ABE publish an explanatory note detailing the concepts used, the criteria for selecting indicators, and the method for combining and weighting them. Such transparency is essential to ensure the relevance of the assessment framework for supervised entities.

## ANSWERS TO QUESTIONS

**Question 1** Do you have any comments on the approach proposed by the EBA to assess and classify the risk profile of obliged entities?

No comment.

**Question 2** Do you agree with the proposed relationship between inherent risk and residual risk, whereby residual risk can be lower, but never be higher, than inherent risk? Would you favour another approach instead, whereby the obliged entity's residual risk score can be worse than its inherent risk score? If so, please set out your rationale and provide evidence of the impact the EBA's proposal would have.

No comment.

**Question 3** Do you have any comments on the proposed list of data points in Annex I to this Consultation Paper?

Specifically,

- What will be the impact, in terms of cost, for credit and financial institutions to provide this new set of data in the short, medium and long term?
- Among the data points listed in the Annex I to this consultation paper, what are those that are not currently available to most credit and financial institutions?
- To what extent could the data points listed in Annex I to this Consultation Paper be provided by the non-financial sector? Please provide evidence where possible.

AMAFI would like to make the following comments on the data points listed in Annex 1 of the draft RTS:

Category	Data point	Comment
Customers	Number of PEPs related business relationships (including family members and close associates)	Clarification required whether this is for facing customers that are individuals and are PEPs (including family members/close associates), or non-individual customers with related parties that are PEPs (including family members/close associates).
Customers	Number of PEPs related business relationships (including family members and close associates) by country	As above – and clarification on which data point the country assessment should be made – i.e. country of residence, nationality/citizenship or PEP position.
Customers	Number of customers with at least one transaction in the previous year	Clarification/definition of transaction will be helpful (would this data point include transfer of assets across sub-funds within the same umbrella fund or just subscriptions and redemptions).
Customers	Number of NPOs with cross border transactions to/from non-EEA countries	<ul style="list-style-type: none"> <li>• "Non-EEA" is not necessarily an AML/CTF risk factor</li> <li>• Suggest focussing on EU HRTC.</li> <li>• Should this assessment focus on the transactions with the obliged entity, or is the data point general about the customer?</li> <li>• Challenge to extract this data as it would require combining customer and transactional data (manual treatment exposing to potential data errors)</li> </ul>
Customers	Number of legal entities with complex structure	See feedback on definition of complex ownership structure in CDD RTS. For most of the financial institutions, a "complex structure" indicator may not be available nor reportable data in KYC system.
Customers	Number of customers with high-risk activities	Definition of high-risk activities needed.

Category	Data point	Comment
Customers	Number of legal entities with at least 1 UBOs located in non-EEA countries (residence)	Non-EEA" is not necessarily an AML/CTF risk factor. Suggest focussing on EU HRTC. Clarity also on whether this should include SMOs or just "true" UBOs.
Customers	Number of customers with cross border transactions involving non-EEA countries	<ul style="list-style-type: none"> <li>• "Non-EEA" is not an AML/CTF risk criteria.</li> <li>• Suggest focussing on cross border transactions involving EU HRTC.</li> <li>• Should this assessment focus on the transactions with the obliged entity, or is the data point general about the customer?</li> <li>• Challenge to extract this data as it would require combining customer and transactional data (manual treatment exposing to potential data errors)</li> </ul>
Products Services and Transactions > Invest. Services and Activities reception and transmission of orders	Number of retail clients Number of professional clients	<ul style="list-style-type: none"> <li>• Required clarification "retail and professional clients" (i.e. MIF definition)</li> <li>• Add a line for eligible counterparty clients</li> </ul>
Products Services and Transactions > Invest. Services and Activities reception and transmission of orders	% of amounts of orders transmitted involving unlisted financial instruments, other than financial instruments issued by the obliged entity or its group	Required clarification of unlisted financial instruments
Products Services and Transactions > Invest. Services and Activities reception and transmission of orders	Number of AML/CFT regulated customers outside the EEA	"Non-EEA" is not an AML/CTF risk factor. Suggest focussing on EU HRTC.
Products Services and Transactions > Invest. Services	Whole section	Required clarification "custody account keeping"

Category	Data point	Comment
and Activities – custody account keeping		
Products Services and Transactions > Invest. Services and Activities – custody account keeping	Number of retail clients Number of professional clients	<ul style="list-style-type: none"> <li>• Required clarification "retail and professional clients" (i.e. MIF definition)</li> <li>• Add a line for eligible counterparty clients</li> </ul>
Products Services and Transactions > Correspondent services	Whole section	Suggest restricting to Correspondent Banking transactions
Geographies	Number of incoming transactions in the previous year by country	Clarification/definition of transaction will be helpful (would this data point include transfer of assets across sub-funds within the same umbrella fund or just subscriptions and redemptions).
Geographies	Number of institutions established in foreign countries to whom you provide correspondent services (by country)	Suggest adding in the word "banking" to read "correspondent banking services"
Distribution Channels	Number of new customers onboarded remotely in the previous year	For investment management business, if "remotely" refers to non face-to-face, this will mean almost all investors will fall into this group.
Distribution Channels	Number of new customers onboarded in the previous year by 3rd parties	Clarification/definition of 3rd parties will be helpful (i.e., is this referring to Transfer agents (service providers) and/or distributors). If the data point is focused on distributors, it will require outreach to all distributors as we don't maintain access to this info and there will potentially be double counting without obtaining a list of underlying customers from each distributor (and distributors are typically reluctant to provide this).

Category	Data point	Comment
Distribution Channels	Number of agents by country	Clarification/definition of agents will be helpful. In addition, does “country” refer to country of incorporation of the agent or countries where the agent conduct business in?
Distribution channels	Number of distributors by country	As above
AML/CFT governance structures	All questions in section 1D	Clarification if the information is to be provided at group level or individual entity/branch level.
AML/CFT governance structures > 1E: AML/CFT training (employees, officers, agents and distributors)	AML/CFT training (employees, officers, agents and distributors)	Agents and distributors do not / unlikely to share these data points.
AML/CFT governance structures 1E.	Average number of hours of AML training in the last calendar year attended by (per person) a) AML specialist staff b) Non-AML specialist staff (including management, 1st line of defence) c) Board members / non-executive directors	Clarification required: Does this refer to AML training delivered across the organisation by 2nd line e.g. does not include for instance operational training onboarding teams may hold internally for KYC Programs
Risk Assessment > 2B: Customer ML/TF risk assessment and classification (CRA)	Number of customers per ML/TF risk category (low risk, medium-low risk, medium-high risk, high-risk)	Suggest removing the categories of risk – institutions will have their own terminology (e.g. 3 or 4 tier of risk ranks)
AML/CFT Policies and procedures > 3A: Customer Due Diligence	Number of customers that are legal entities/trusts whose beneficial owners have not been identified	Clarification required: are we asked to provide the number of legal entities with no UBO (i.e. with proxy UBO/SMO)? Supervised entities cannot onboard legal entity clients without identifying UBO (except for listed companies which benefit of an UBO ID exemption).

Category	Data point	Comment
AML/CFT Policies and procedures > 3A: Customer Due Diligence	Number of high-risk customers that are legal entities	Shouldn't this be in the Customer section, not the AML/CTF Policies and procedures section?
AML/CFT Policies and procedures > 3A: Customer Due Diligence	Number of high-risk customers that are legal entities/trusts whose beneficial ownership has been identified, but the identity of whom has not been verified	Clarification required: what verification means are referred to here? UBO's VID is a requirement following a RBA.
AML/CFT Policies and procedures > 3A: Customer Due Diligence	Number of customers without identification and verification documentation/ information	Clarification required: In what instances would this be applicable? For example, does this refer to instances where we have applied waivers/dispensations to not obtain ID&V information/requirements? In instances where the above is not applicable and we haven't been able to fulfil our KYC obligations we wouldn't proceed with onboarding.
AML/CFT Policies and procedures > 3A: Customer Due Diligence	Number of customers with incomplete identification and verification documentation/ information	Same as above
AML/CFT Policies and procedures > 3A: Customer Due Diligence	Number of high-risk customers with missing or incomplete CDD data or information	Clarification required: Does this relate to post KYC completion and information has been identified as missing from the KYC file?

**Question 4** Do you have any comments on the proposed frequency at which risk profiles would be reviewed (once per year for the normal frequency and once every three years for the reduced frequency)? What would be the difference in the cost of compliance between the normal and reduced frequency? Please provide evidence.

No comment.

**Question 5** Do you agree with the proposed criteria for the application of the reduced frequency? What alternative criteria would you propose? Please provide evidence.

No comment.

**Question 6** When assessing the geographical risks to which obliged entities are exposed, should cross-border transactions linked with EEA jurisdictions be assessed differently than transactions linked with third countries? Please set out your rationale and provide evidence.

No comment.

