

AML PACKAGE - CRITERIA FOR IDENTIFYING BUSINESS RELATIONSHIPS, OCCASIONAL AND LINKED TRANSACTIONS AND LOWER THRESHOLDS

AMLA'S CONSULTATION ON THE DRAFT RTS

AMAFI's answer

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.

AMAFI thanks AMLA for the opportunity to respond to this consultation on the draft RTS on criteria for identifying business relationships, occasional and linked transactions and lower thresholds.

Question 1: Do you find the criteria listed in Article 2 of the draft RTS effective to identify business relationships properly? If not, could you please indicate why, where possible substantiated by relevant data?

The effectiveness of the European framework for combating money laundering and terrorist financing relies to a great extent on the homogeneous interpretation of the notions of business relationships, occasional transactions, and linked transactions within the European Union (Draft RTS, Recital 4) . Accordingly, a harmonised definition of "business relationships" at the level of the European Union constitutes an indispensable prerequisite for the consistent application of AML/CFT obligations by obliged entities. In the absence of such harmonisation, divergences in interpretation will persist between Member States, thereby weakening the overall effectiveness of the European framework, particularly in a group-wide context, as well as undermining the level playing field among obliged entities established within the EU.

From this perspective, it appears necessary for the draft RTS to specify the criteria defining a business relationship as provided for in the AMLR (*AMLR, Art. 2(19)*), in accordance with the mandate conferred on AMLA (*AMLR, Art. 19(9)*). However, AMAFI considers that the current draft regulatory technical

standards, whilst clarifying certain aspects of the definition of the concept of a business relationship, do not fully achieve the objective of harmonisation.

These criteria should be cumulative and exhaustive to enable such harmonisation. They should also be sufficiently broad to accommodate the diversity of activities carried out by obliged entities.

Accordingly, obliged entities should be able to rely on the following criteria to identify a business relationship:

- As a first step, the entity should assess whether or not it is dealing with a **client**. The AMLR specifies that a business relationship is understood as a professional or commercial relationship between an obliged entity and a client. Thus, the notion of client could be defined as any natural or legal person to whom an obliged entity provides a service or product. This definition implies a relationship in which the obliged entity acts as a service provider, thereby making it possible to exclude situations in which it is itself the beneficiary of a service, particularly in its relationships with suppliers, external service providers, or other business partners;
- Furthermore, the entity should assess whether it **provides a service or a product**, understood as any service falling within the scope of regulated activities or carried out on a professional basis. This criterion presupposes the existence of an identifiable service, distinct from a mere informative or preparatory interaction;
- The third element to be taken into account is whether there is an **engagement** between the parties, which may be evidenced by the existence of an agreement, whether written or not, reflecting a mutual intention to enter into an ongoing relationship.
- As regards the **element of repetition or duration** of the relationship provided for in the AMLR definition, AMAFI considers that the clarifications set out in the draft RTS are appropriate.

The adoption of these criteria would make it possible to define precisely the scope of the business relationship and, consequently, the scope of the due diligence obligations attached thereto. In particular, it would lead to the exclusion from this notion of persons to whom the obliged entity does not provide services or products and of whom it may itself be considered a client. This is notably the case where the financial services provider, as an obliged entity, is in a relationship with:

- a distributor that does not purchase financial products (for resale to end clients) or does not place orders : The manufacturer of financial products and the distributor have entered into a distribution agreement. The distributor carries out all the commercial activities preceding the transaction (advising the end client on the product and obtaining information from the manufacturer regarding the product's characteristics). The execution of the transaction by the end client will be performed by the custodian/TCC holding the end client's account;
- or a distribution platform.

In such situations, it is the distributor or the platform that provides a service to the investment services provider, in return for remuneration. Consequently, although a professional relationship may be considered to exist between the investment services provider and the distributor or the platform, it is not established that the latter can be regarded as clients.

Such clarification appears essential to avoid an excessive extension of obligations, which could dilute the effectiveness of the measures. However, this clarification should not be interpreted as implying that the associated risks are not taken into account and mitigated by appropriate measures by obliged entities. In the context of the entity-wide risk assessment, obliged entities are required to take into account distribution channels (*AMLR, Recital 30 and Article 10*). Accordingly, where financial instrument distributors are used, in order to mitigate the associated risks, where applicable, the entity could implement mitigation measures, which may include conducting checks on the distributor (reputation, geographical locations,...).

