AML PACKAGE – GROUP-WIDE REQUIREMENTS AND MEASURES ON THIRD COUNTRIES LOCATIONS

AMLA'S CONSULTATION ON A 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 the AMLA for the opportunity to respond to this consultation on the draft RTS on group-wide requirements and on additional measures on branches and subsidiaries in third countries.

GENERAL COMMENTS

The harmonisation of group-wide AML/CFT requirements at the European level is key to fostering a consistent application across the European Union and to ensuring the robust and effective management of money laundering and terrorist financing (ML/TF) risks within financial groups, particularly in a cross-border context.

This harmonisation also presents an opportunity to achieve much-needed consistency of requirements applicable within financial groups and to reduce compliance costs, although such reduction may prove limited given the additional burden resulting from the strengthened requirements introduced by the AMLR (minimum requirements regarding group-wide policies, procedures and controls incumbent on a parent undertaking, additional measures for branches and subsidiaries in third countries…).

While combating ML/TF is essential to safeguarding the integrity of the European economy and society, this fight must remain aligned with the European Commission's objectives of reducing

unnecessary burdens and promoting simplification. Harmonisation should not mean defaulting to the most restrictive approaches but rather should involve streamlining requirements and selecting the most relevant and effective.

Against this background, AMAFI considers that the risk-based approach and the principle of proportionality should govern the application of the RTS as a whole and accordingly proposes that this be expressly stated at the outset of the Regulation (*see Question 1 below*). These principles should guide the interpretation of the provisions of the RTS and allow obliged entities to exercise judgement in calibrating their application in line with the nature, scale and ML/TF risks of their activities, as well as the size, complexity and risk profile of the group or structure concerned.

In addition, as part of the objective of harmonisation, several provisions of the draft RTS would benefit from further clarification in order to ensure legal certainty and avoid divergent interpretations across Member States and sectors. In this context, the AMLA has a critical role, in cooperation with national competent authorities, in ensuring supervisory convergence and supporting a consistent, proportionate and risk-based application of the RTS across the Union.

The draft RTS could also further emphasise the need for coordination between competent authorities, in particular as regards:

- the respective roles of the supervisor of the home Member State of the parent undertaking in the Union and the supervisors of the host Member States of the other entities of the group, and
- situations where an entity of the group is established in a third country whose law restricts the sharing of data.

Question 1: Do you have any observations concerning the definitions laid out in article 2?

The risk-based approach and the principle of proportionality are central to the AML-CFT framework established by Regulation (EU) 2024/1624 (AMLR) and this is recognised by AMLA itself, in the impact assessment accompanying the consultation.

AMAFI regrets that these principles are not expressly enshrined in a dedicated provision of the draft RTS allowing for their application across this Regulation as a whole. As noted in the introduction of this document, these principles should guide the proposed provisions of the draft RTS, allowing obliged entities to exercise judgement in calibrating their application in line with the nature, scale and ML/TF risks of their activities, as well as the size, complexity and risk profile of the group or structure concerned.

Although these principles are referred to in several provisions of the draft RTS, this is not sufficient to ensure their application across the Regulation as a whole. AMAFI therefore considers that the introduction of a general provision, or an amendment to Article 1, the title of which should be adapted accordingly, incorporating these principles would ensure that they govern the interpretation of all provisions of the draft RTS, including those that do not expressly refer to them.

Furthermore, clarifications should be provided regarding the definitions of partnerships, franchises and structures, for the reasons set out in AMAFI's responses to Questions 8 and 9 of this Consultation.

AMAFI therefore proposes the following amendment:

Amendment 1

Article 1 – Subject and scope

Text proposed by the AMLA	AMAFI Amendment
Article 1 – Subject and scope This Regulation lays down rules concerning: (a) the group-wide requirements according to Article 16(4) of Regulation (EU) 2024/1624; (b) additional measures and supervisory actions to effectively handle the risk of money laundering and terrorist financing to which branches or subsidiaries of obliged entities in third countries may be exposed to according to Article 17(3) of Regulation (EU) 2024/1624.	Article 1 – Subject**,** ~~**and**~~ scope **and general principles** **1.** This Regulation lays down rules concerning: (a) the group-wide requirements according to Article 16(4) of Regulation (EU) 2024/1624; (b) additional measures and supervisory actions to effectively handle the risk of money laundering and terrorist financing to which branches or subsidiaries of obliged entities in third countries may be exposed to according to Article 17(3) of Regulation (EU) 2024/1624. **2. This Regulation shall be applied in line with the risk-based approach. The extent and nature of the group-wide policies, procedures and controls, the information to be shared and the additional measures to be applied by parent undertakings and obliged entities shall be commensurate with the type and level of money laundering and terrorist financing risk identified, as well as the risk of non-implementation or evasion of targeted financial sanctions, and shall enable them to manage and mitigate that risk appropriately, taking into account the size, complexity and risk profile of the group or structure.**

Question 2: Do you find the minimum requirements listed in article 3 of the draft RTS related to internal policies, procedures and controls sufficient and clear? If not, could you please indicate which other requirements, or further clarification, you think should be added and/or revised?

Article 3 sets out the minimum requirements regarding group-wide policies, procedures and controls that the parent undertaking in the Union must put in place. AMAFI considers that the obligations laid down in Article 3(1) call for further clarification on the following two points:

- "*the parent undertaking in the Union shall ensure that the following minimum requirements are part of the group-wide policies, procedures and controls*" (*Draft RTS, art. 3(1)*).

Further clarification would be helpful on how the obligations imposed on the parent undertaking to "*ensure"* certain outcomes should be interpreted where the parent undertaking (within the meaning of the AMLR) does not exercise control over the other entities of the group.

This would be the case, for instance, of two entities established in the EU, each being a subsidiary of a different intermediate parent belonging to a group whose head office is located in a third country, and between which no capital link exists, neither directly nor through their respective intermediate parents. In such a configuration, the parent undertaking designated under the AMLR has no legal or structural basis to compel the other entities of the group to implement group-wide AML/CFT policies, procedures and controls.

In such a case, and consistently with the risk-based approach and the principle of proportionality (*see Question 1*), a more proportionate, coordination-based approach should be recognised, rather than an expectation of outcome-based responsibility.

- "*the group-wide policies, procedures and controls and the group-wide risk assessments shall be implemented consistently in all the obliged entities that are part of the group and shall be adequately reviewed and reassessed at the level of the parent undertaking in the Union*" (*Draft RTS, art. 3(1)(g)*).

Clarification of the term "reassessed" would also be welcome. AMAFI considers that this provision should allow for a reassessment of the design and adequacy of the control framework at the level of the parent undertaking in the Union, i.e. a review to ensure that the framework remains appropriate to the structure, composition and risk profile of the group. By contrast, it should not be interpreted as requiring the centralisation, at the level of the parent undertaking, of the operational execution of the controls themselves, which should continue to be performed within the relevant entities of the group.

Question 3: Do you foresee any operational or legal challenges, including challenges related to legal privilege, in implementing the provisions related to information sharing within entities of a group? If so, could you please indicate which ones? Do you foresee any operational or legal challenges in ensuring that information sharing from third countries and to third countries within entities of a group is adequate to regulatory standards in the Union? Do you have any suggestion that would make it better suited operationally or legally?

AMAFI has the following comments on information sharing:

- **Article 4 – Information sharing within a group**

Article 4 sets out the information that obliged entities must share within a group, together with the conditions and safeguards applicable to such sharing.

Article 4(1) should be restructured by distinguishing between information required for oversight purposes and information sharing (KYC information sharing, for conducting enhanced due diligence and suspicious transaction reporting).

However, the current drafting of Paragraph 1 ("*shall enable at least the sharing of the following information*"), combined with the granularity of the list, makes it mandatory to share all the listed information, whatever the situation. This would be disproportionate, operationally burdensome and at odds with the proportionality principle. Deleting the words "at least" and clarifying that the list is illustrative and non-exhaustive would allow obliged entities to adapt the scope and level of detail of the information they share in accordance with the principle of proportionality and the risk-based approach.

Paragraph 1 should thus be reworded as follows: "*When information is relevant for the purposes of the prevention of money laundering, terrorist financing and the non-implementation or evasion of targeted financial sanctions, information sharing within a group as referred to in provisions of Article 16(3) of Regulation (EU) 2024/1624 shall enable the sharing of information,* **which may include the following, where relevant and in accordance with the risk-based approach**".

Accordingly, the proportionality principle set out in Paragraph 2 ("*taking into account the size, the complexity and the risks of the group as well as the availability and quality of the information*") should govern the reading of the entire Article 4. Placing it first would make clear from the outset that information sharing is to be calibrated on a risk-sensitive and proportionate basis.

Moreover, amongst the information listed in Article 4, point (1)(e)(iv) refers to "*information held by the obliged entity of the group pursuant to the obligation of data retention*", without clearly specifying which information falling under data retention obligations are intended to be covered, nor the circumstances in which they should be shared. **The scope of the data concerned should be clarified to ensure greater legal certainty and to avoid divergent interpretations across EU Member States.**

Finally, Paragraph 4 provides that information sharing shall not exempt obliged entities within the group from conducting "*adequate own customer due diligence or risk assessments*". **AMAFI would welcome confirmation that this reference preserves ultimate responsibility at entity level without requiring each receiving entity within the group to conduct duplicative due diligence on customers**

already assessed by another group entity (which would defeat the purpose of intra-group information sharing), in line with the proportionality requirement and the reference to outsourcing and reliance arrangements set out in that same provision.

AMAFI therefore proposes the following amendment:

Amendment 2

Article 4 – Information sharing within a group

Text proposed by the AMLA	AMAFI Amendment
1. When information is relevant for the purposes of the prevention of money laundering, terrorist financing and the non-implementation or evasion of targeted financial sanctions, information sharing within a group as referred to in provisions of Article 16(3) of Regulation (EU) 2024/1624 shall enable at least the sharing of the following information: […]	1. When information is relevant for the purposes of the prevention of money laundering, terrorist financing and the non-implementation or evasion of targeted financial sanctions, information sharing within a group as referred to in provisions of Article 16(3) of Regulation (EU) 2024/1624 shall enable ~~**at least**~~ the sharing of ~~**the following**~~ information, **which may include the following, where relevant and in accordance with the risk-based approach**: […]

- **Article 7 – Information sharing for supervisory purposes**

Article 7 sets out requirements applicable to obliged entities where the law of a third country restricts or prohibits the transfer of data to the supervisor of the obliged entity in the Union.

Firstly, further clarification is needed regarding the scope of the term "*transfer of data*". AMAFI considers that, consistently with the scope and legal basis of the AMLR, this term should be limited to AML/CFT-related data and should not extend to any type of data held by the branch or subsidiary.

Moreover, the draft RTS provides that the obliged entity must, at least, determine whether the consent of the customer and, where applicable, of the beneficial owner, or any other means, can be used to legally overcome such restrictions or prohibitions. This requirement would expose obliged entities to excessive legal risk. In particular, reliance on consent raises significant difficulties in practice: managing consent at scale entails considerable operational complexity; the legal effectiveness of consent in overcoming certain third-country restrictions or prohibitions remains uncertain; and obtaining valid consent from beneficial owners raises significant practical and legal challenges, notably because obliged entities generally do not have a direct relationship with such individuals.

In such circumstances, information exchanges should instead take place through the appropriate mechanisms for cooperation between supervisory authorities.

AMAFI therefore recommends deleting the requirement set out in Article 7(2)(b).

Amendment 3

Article 7 – Information sharing for supervisory purposes

Text proposed by the AMLA	*AMAFI Amendment*
2. Where the third country's law restricts or prohibits the transfer of data to the supervisor of the obliged entity in the Union, the obliged entity shall at least: (a) inform the supervisor of the home Member State of such restrictions or prohibitions without undue delay and in any case no later than 28 calendar days after identifying the third country and the restrictions or prohibitions; (b) establish whether consent from the customer and, where applicable, their beneficial owner, or any other means can be used to legally overcome restrictions or prohibitions.	2. Where the third country's law restricts or prohibits the transfer of data to the supervisor of the obliged entity in the Union, the obliged entity shall at least~~:~~ ~~(a)~~ inform the supervisor of the home Member State of such restrictions or prohibitions without undue delay and in any case no later than 28 calendar days after identifying the third country and the restrictions or prohibitions~~;~~ ~~(b) establish whether consent from the customer and, where applicable, their beneficial owner, or any other means can be used to legally overcome restrictions or prohibitions~~.

- **Article 8 – Information sharing in the framework of partnerships for information sharing**

Article 8 concerns the sharing of information received in the context of information-sharing partnerships established pursuant to Article 75 of the AMLR, which already sets out the conditions under which such sharing is permitted, without introducing any additional or distinct conditions.

AMAFI therefore calls for the deletion of Article 8.

Question 7: Do you find the criteria provided in section 5 effective to identify the parent undertaking in the Union in cases where two or more obliged entities not in a parent-subsidiary relationship whose head office is located outside of the Union? Do you find the criterion of annual turnover applicable in your specific sector?

As a preliminary remark, AMAFI wishes to draw AMLA's attention to the risk that the criteria set out in Section 5 may result, for AML/CFT purposes, in the designation of a parent undertaking other than the entity through which the group organises its governance (including risk governance), or even of an entity that has no legal relationship with the other EU-established institutions within the group. Such a situation would lead to the establishment of a parallel governance framework dedicated exclusively to AML/CFT and would separate the management of ML/TF risks from the group's integrated risk management framework (including compliance and liquidity risks). This would risk weakening, rather than strengthening, the effectiveness of group-wide AML/CFT arrangements.

- **Article 17 – Determination of sufficient prominence**

The criteria laid down in Article 17(1)(b)*(i)(ii)* should be reconsidered or, at a minimum, clarified.

Under this provision, sufficient prominence is in practice reduced to a purely quantitative assessment based on numbers of customer and transaction value. Such metrics bear no rational correlation with what the criterion is intended to capture, namely the entity's actual capability to influence and monitor the other obliged entities of the group. An obliged entity may process large transaction volumes (particularly in capital markets, where gross transaction amounts reflect the business model rather than the entity's standing within the group) while having no governance role, and conversely. The designated parent undertaking is the entity best positioned to enforce AML/CFT measures across the group, which a transaction-value metric alone cannot establish.

- **Article 18 – Determination of sufficient understanding of operations**

AMAFI wishes to raise two concerns: the default criterion in Article 18(2), and the precedence rule in Article 18(3).

- *Article 18(2)*

Where the circumstances listed in Article 18(1) are inconclusive, the determination of sufficient understanding of operations shall be based on '*the obliged entity with the highest number of full-time equivalent staff members of the compliance functions*'.

AMAFI considers that this criterion is not relevant. The size of an entity's compliance teams depends on factors unrelated to its understanding of the group's operations, such as local labour costs, the AML/CFT service and outsourcing models in place within the group, or the nature and level of risk of its own activities. A compliance function may be particularly large because the entity's own activities require significant compliance support, without this conferring any greater visibility over the operations of the other obliged entities in the Union. Rather than substituting one quantitative metric for another, AMAFI recommends that, where the circumstances listed in Article 18(1) are inconclusive, groups should be free to designate internally the entity best positioned to fulfil the group-wide AML/CFT requirements, subject to supervisory validation.

- *Article 18(3)*

The AMLR provides that the parent undertaking in the Union is the entity that has both sufficient prominence and sufficient understanding of operations (*AMLR, art. 2(1), point (42)(b)*), these criteria being cumulative. However, Article 18(3) provides that, where the two determinations lead to different entities, sufficient prominence shall prevail.

This interpretation has therefore no legal founding. In addition, such precedence is neither relevant nor suited to the reality of group governance: as noted above, an obliged entity may process very large volumes of transactions without exercising any governance role within the group (*see comment on Article 17 above*).

Therefore, in such a situation, groups should be free to assess internally which entity is the most appropriate to fulfil the group-wide AML/CFT requirements. **Accordingly, Article 18(3) should be deleted**.

- **Article 19 – Determination of whether the entity has the responsibility of implementing group-wide requirements**

Article 19 provides that the entity identified as parent undertaking in the Union under Articles 17 and 18 shall have the responsibility and oversight of implementing group-wide requirements. AMLA should clarify that the role of the parent undertaking is limited to the establishment and oversight of group-wide policies, procedures and controls, while their implementation (and therefore compliance outcomes) remains the responsibility of each individual obliged entity.

This clarification appears particularly necessary where the obliged entities concerned are not in a parent-subsidiary relationship. The entity identified as parent undertaking may have no ownership rights or powers of control over the other obliged entities of the group in the Union. Attributing to it the responsibility for implementation within those entities would create a responsibility without corresponding legal authority and could also conflict with third-country rules governing relationships between affiliates.

Such clarification would also be consistent with Article 4(4) of the draft RTS, which preserves the individual responsibility of each obliged entity.

Question 8: Do you find the conditions listed in article 21 sufficiently clear and effective to identify the structures that shall apply requirements similar to groups? If not, please explain.

Article 21(2) provides that Structures with common ownership, management or compliance control shall fulfil at least one of the listed conditions. This formulation is overly broad and vague, as it would capture ad hoc cooperation arrangements entered into solely in the context of specific transactions, which serve no structural purpose for the entities involved. Such arrangements are common in capital markets and banking (for instance, bank syndication, placement sub-participation, or distribution agreements). The definition of 'Structures' should therefore expressly exclude relationships entered into for the purpose of a specific transaction, as well as relationships between entities that each pursue their own business independently, under their own responsibility, without any intention of establishing a common organisational framework or sharing responsibilities in terms of AML/CFT compliance.

Question 9: Do you foresee any legal or operational challenges in implementing the provisions listed in this RTS and in particular by article 21 for the above-mentioned structures? If so, please describe the challenges and provide practical examples.

Regarding the articulation between Sections 5 and 6, AMAFI notes that Section 5 applies to obliged entities that are part of a group within the meaning of Article 2(1), point (42) of AMLR, while Section 6 applies to obliged entities belonging to structures sharing common ownership, management or compliance control without constituting such a group.

AMAFI would welcome express confirmation that these two Sections are mutually exclusive, i.e. that entities falling within the scope of Section 5 (i.e. groups) are not expected to assess or apply Section 6 (i.e. structures) in parallel. While this reading is supported by the definition of "structure" in Article 2(2), which excludes groups within the meaning of Article 2(1), point (42) of AMLR, an express confirmation would prevent any risk of duplication and uncertainty as to the applicable framework.

Moreover, in the absence of a clear legal basis in the AMLR, and at the risk of exceeding the mandate conferred on AMLA by Articles 16(4) and 17(3), Article 21(3) should be amended so that its scope is limited to obliged entities within the structure. AMLA should therefore expressly clarify that this provision creates no AML/CFT obligations for non-obliged entities.