AML PACKAGE – GUIDELINES ON BUSINESS-WIDE RISK ASSESSMENT

AMLA'S CONSULTATION

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 its consultation on the draft Guidelines on Business-wide risk assessment.

GENERAL COMMENTS

With the entry into force of the AMLR (*Regulation (EU) 2024/1624 of 31 May 2024*) and the transfer of key supervisory mandates from the EBA to the AMLA, the Business-wide risk Assessment (BWRA) is now subject to a harmonised framework applying across all obliged entities (from the financial and non-financial sectors). Given the breadth of their scope and their practical implications for the design of AML/CFT framework, these guidelines received particular attention from AMAFI's members.

AMAFI welcomes the approach taken by the AMLA, in particular its strong emphasis on the principle of proportionality and the recognition that the depth and elaboration of the BWRA should be calibrated to the nature, complexity and risk profile of each obliged entity. AMAFI also welcomes the flexibility afforded to obliged entities, which is consistent with the risk-based approach and avoids the pitfalls of a one-size-fits-all methodology. The recognition that non-complex entities may apply a less elaborate BWRA is particularly valuable in this regard.

AMAFI also notes that the draft guidelines introduce, for their own purposes, the definitions of "inherent risk", "residual risk" and "risk factors" that diverge from the definitions long established by the EBA in its guidelines on risk factors[1]. While AMAFI understands that the AMLA may have sought to adapt these concepts to the specific context of the BWRA, such divergence risks creating inconsistency within the broader AML/CFT framework and may generate uncertainty for obliged entities that are already familiar with the EBA definitions. AMAFI would therefore encourage the AMLA to ensure, in the final guidelines, that the definitions used are fully aligned with those established by the EBA and applied across the AML/CFT framework.

Against this background, AMAFI's comments focus on a limited number of provisions where further clarification or targeted adjustments would strengthen the guidelines and ensure their consistent and proportionate application across all obliged entities.

Question 1: Do you agree that the proposals set out in these draft GLs can be applied across all obliged entities and allow for an effective application of a risk-based and proportionate approach towards compliance with AML/CFT requirements?

- **Paragraph 11**

Paragraph 11 of section 2.1 General Guidelines requires the parent undertaking in the Union of a group to ensure that all branches and subsidiaries conduct their own BWRAs using a coordinated approach and a common methodology.

However, the criteria set out for the designation of the parent undertaking for AML/CFT purposes[2] may result in the designation of an entity other than the one through which the group organises its governance (including its 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 specific to AML/CFT and would separate the management of ML/TF risks from the group's integrated risk management framework (including compliance risks). This would risk weakening, rather than strengthening, the effectiveness of group-wide AML/CFT arrangements.

This concern is particularly acute where the parent undertaking designated under 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.

[1] EBA's Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the ML/TF risk associated with individual business relationships and occasional transaction ('The ML/TF Risk Factors Guidelines') under Articles 17 and 18(4) of Directive (EU) 2015/849 (EBA/GL/2021/02).

[2] AMLR, art. 16 and draft RTS under Articles 16(4) and 17(3) of AMLR on group-wide minimum requirements and additional measures for subsidiaries and branches in third countries.

More broadly, this approach presupposes that the designated parent undertaking has the practical capacity to coordinate the conduct of BWRAs across all entities of the group and to consolidate their results into a coherent group-wide risk assessment. This practical capacity depends on the parent undertaking having a genuine governance role within the group, not only from a hierarchical or functional viewpoint but also from the perspective of having a real understanding of the operations, risk profiles and control environments of the other entities. However, the criteria laid down in the AMLR for the designation of the parent undertaking in the Union do not guarantee that the designated entity fulfils this condition. For example, the criterion of sufficient prominence, which relies on quantitative metrics such as transaction volumes or number of customers, does not presuppose any capacity to influence and coordinate the risk management practices of the other entities of the group.

AMAFI therefore invites the AMLA to clarify, in the final guidelines, the expectations applicable to parent undertakings that do not exercise control over the other entities of the group, and to recognise that, in such configurations, a coordination-based approach constitutes a proportionate and appropriate means of fulfilling the obligation set out in paragraph 11.

- **Paragraph 16**

Paragraph 16 provides that where an obliged entity's risk rating levels diverge from those "expected" in Annexes II and III of the AMLR or in EU or Members States' risk assessments, the rationale for those rating should be clear.

AMAFI considers that the use of the term "expected" in this context may give rise to unintended consequences. Annexes II and III of the AMLR set out a non-exhaustive list of risk factors to be taken into account as part of a holistic, risk-sensitive assessment: they do not establish predefined or "expected" risk ratings against which an obliged entity's own assessment should be benchmarked.

By implying the existence of such reference ratings, the current wording of paragraph 16 may inadvertently encourage obliged entities to calibrate their BWRA to conform to a perceived standard, rather than to conduct a genuine and substantive assessment of the risks to which they are actually exposed.

AMAFI therefore invites the AMLA to clarify that the reference to "expected" risk ratings in paragraph 16 should not be interpreted as establishing a benchmark against which individual BWRAs are to be measured, but rather as an indication that any significant divergence should be duly explained and documented.

Question 2: Do you agree with the proposed minimum requirements for the content of the BWRA set out in these draft GLs?

AMAFI has the following comments on the minimum requirement 2 in section 2.4, which relates to the identification, the assessment and the classification of inherent risks to which obliged entities are exposed.

While the BWRA and the supervisory assessment conducted under Article 40(2) of the AMLD (*Directive (EU) 2024/1640 of 31 May 2024*) may draw on common concepts, they serve fundamentally different purposes: the BWRA is a self-assessment tool designed to enable each obliged entity to identify and manage the ML/TF risks arising from its own specific business model, whereas the supervisory assessment is designed to enable supervisors to classify and compare obliged entities' risk profiles for resource allocation purposes. These two frameworks should not be conflated, and the supervisory assessment methodology should not drive or dictate the content of an obliged entity's own BWRA.

Paragraph 23 requires obliged entities to refer to the data points listed in the regulatory technical standards (RTS) on Article 40(2) of the AMLD when conducting their inherent risk identification and assessment under Minimum Requirement 2. As currently drafted, this obligation is unconditional and applies regardless of the relevance of those data points to the obliged entity's specific business model, risk profile or sector. However, not all data points listed in the RTS will necessarily be relevant to all obliged entities. This would be the case, for instance, for investment firms whose business model does not encompass the full range of activities covered by those data points: an investment firm serving exclusively professional clients would have no retail client data to report; an investment firm that does not offer crypto-asset services or engage in crowdfunding activities would similarly find those data points devoid of relevance to its risk profile.

Such an obligation, as drafted, lacks proportionality and is at odds with the risk-based approach (set out in paragraphs 6 to 9 of the draft guidelines), both of which underpin the draft guidelines as a whole. It also risks encouraging a formalistic approach, rather than a genuine and substantive assessment of the risks to which the obliged entity is actually exposed.

AMAFI therefore proposes to add the words "*where relevant*" in Paragraph 23 after the reference to the RTS, so that obliged entities are required to refer to those data points only to the extent that they are pertinent to their individual circumstances.

AMAFI therefore proposes the following amendment:

2.4 Minimum Requirement 2 – Identification, assessment and classification of the OE's inherent risks – Paragraph 23

Text proposed by the AMLA	*AMAFI Amendment*
OEs should begin their inherent risk identification and assessment by analysing how ML/TF/non-implementation and evasion of TFS risks could materialise within their business, including any emerging risks, by taking a holistic view of all relevant risk factors related to customer, product/service/transaction, delivery channels and geographical exposure. For this purpose, OEs should at least refer to the data points listed in the RTS on Article 40(2) of the AMLD, supplemented by any additional relevant quantitative and qualitative indicators such as strategic plan modifications, mergers or regulatory changes.	OEs should begin their inherent risk identification and assessment by analysing how ML/TF/non-implementation and evasion of TFS risks could materialise within their business, including any emerging risks, by taking a holistic view of all relevant risk factors related to customer, product/service/transaction, delivery channels and geographical exposure. For this purpose, OEs should ~~**at least**~~ refer to the data points listed in the RTS on Article 40(2) of the AMLD, **where relevant,** supplemented by any additional relevant quantitative and qualitative indicators such as strategic plan modifications, mergers or regulatory changes.