AML PACKAGE – ONGOING MONITORING OF A BUSINESS RELATIONSHIP

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 the consultation on draft guidelines on ongoing monitoring of a business relationship mandated by the AMLR.

GENERAL COMMENTS

AMAFI welcomes AMLA's references to the risk-based approach and the principle of proportionality. These principles are essential to ensure that the requirements set out in the Guidelines remain appropriate to the nature, size, risk profile and business model of obliged entities.

However, certain provisions of the draft Guidelines could, in practice, result in insufficient differentiation in the application of customer due diligence and monitoring requirements. AMAFI therefore considers it necessary to strengthen the operational implementation of the risk-based approach and the principle of proportionality in the final Guidelines.

In particular, AMAFI would like to draw AMLA's attention to the following points.

- **As regards periodic reviews**

AMAFI notes that the Guidelines maintain the principle of periodic reviews, while allowing their frequency, scope and intensity to be adjusted according to the level of risk.

Accordingly, the risk-based approach should, in particular, allow obliged entities to use automated recertification mechanisms for low-risk customers and, where justified by the risk assessment, not to subject such customers to a systematic standard periodic review.

In this respect, AMAFI notes that point 3.1 of the general considerations relating to the periodic review of customer information reflects feedback from several obliged entities according to which "a standard periodic review may not always be appropriate for certain business models". AMAFI fully agrees with this observation and considers that it should be concretely reflected in the Guidelines, in particular in paragraphs 19 to 21.

Furthermore, the concepts of "event-driven review" and "triggering events" should be further clarified. Their definition in the first paragraph could indeed be interpreted as allowing an "event-driven review" to be required in the absence of an actual triggering event, notably due to the reference to the occurrence of a "trigger-event or a condition".

In addition, extending the concept of a "triggering event" to any "other risk relevant event or condition", beyond the situations provided for in Article 26(3) of the AMLR, may create uncertainty as to the circumstances in which obliged entities are required to initiate a new review. AMAFI therefore invites AMLA to clearly align this concept with the framework laid down in the Regulation and to harmonise the terminology used throughout the Guidelines.

- **As regards transaction monitoring and the detection of suspicious transactions**

AMAFI would like to draw particular attention to the application of transaction monitoring requirements to market activities. The Guidelines should be sufficiently broad and flexible to take into account the specific characteristics of the activities carried out by obliged entities, and in particular those of market activities.

AMAFI notes that the draft Guidelines broaden the concept of monitoring of "transactions", as defined in Article 26(5) of the AMLR, to include the monitoring of "transactions, activities and also behaviours". This represents a broadening of the scope compared with the explicit wording of the Level 1 text. This development has significant implications, particularly for market-related activities, where "activities" (for example, trading) are distinct from account-related "transactions".

Furthermore, as regards more specifically the detection of suspicious transactions prior to their execution, AMAFI stresses that such detection is not systematically possible in the context of market activities.

The operational constraints inherent in such activities, and in particular the speed at which certain transactions must be executed, may make it practically impossible to identify the suspicious nature of a transaction prior to its execution. An interpretation systematically requiring ex ante detection could therefore create a requirement that could not reasonably be met for certain categories of transactions.

AMLA should therefore clarify that the Guidelines should not be interpreted as requiring obliged entities to detect every suspicious transaction prior to its execution where, having regard to the

nature of the activity, the characteristics of the transaction or the applicable operational constraints, such ex-ante detection is not reasonably possible.

Such clarification would preserve the objective of combating money laundering and terrorist financing while ensuring that the requirements are applied to market activities in a proportionate and operationally feasible manner.

Finally, AMAFI proposes replacing the expression "without undue delay" with "reasonable time frame" in Articles 43, 44, 53, 71, 72, 75 and 76.

RESPONSES TO THE QUESTIONS

***Question 1*: Do you consider that Guideline 1 supports a risk-based approach and clearly sets out the core principles that obliged entities should apply to keep customer information up to date?**

Amendment 1

General Guidelines

Article 3

Text proposed by the AMLA	*AMAFI Amendment*
Unless otherwise specified, terms used and defined in AMLR have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply: a) Event-driven review: means a review and, where relevant, an update of customer information and risk profiles that occurs when a trigger event or condition takes place as stipulated in Article 26(3) points (a), (b) and (c) of AMLR. b) Triggering events: means an event or condition as stipulated in Article 26(3) points (a), (b) and (c) of AMLR or any other risk relevant event or condition	Unless otherwise specified, terms used and defined in AMLR have the same meaning in the guidelines. In addition, for the purposes of these guidelines, the following definitions apply: a) Event-driven review: means a review and, where relevant, an update of customer information and risk profiles that occurs when a trigger event ~~**or condition takes place as stipulated in Article 26(3) points (a), (b) and (c) of AMLR**~~ **take place** b) Triggering events: means an event or condition as stipulated in Article 26(3) ~~points (a), (b) and (c)~~ of AMLR ~~or any other risk relevant event or condition~~

Justification

As AMAFI noticed in the preliminary comments paragraph, the definitions from the first paragraph are slightly changed across the text, for instance in paragraph 16 where the wording "event trigger review" is used instead of "event-driven review" from paragraph 1.
We also require the AMLA to use the same terms across the text for consistency and avoid different interpretations.

AMAFI proposes the above amendment.

Amendment 2

Update of customer documents, data or information and ongoing monitoring

Article 17

Text proposed by the AMLA	*AMAFI Amendment*
To assess whether or not to update an expired identity document, passport or equivalent, obliged entities should consider, amongst other elements, the following: […] c) The length of time that the identity document, passport or equivalent is expired; d) […] e) Whether a newly issued document would provide updated or additional information relevant to verifying the updated customer's identity or customer's risk assessment; and […]	To assess whether or not to update an expired identity document, passport or equivalent, obliged entities should consider, amongst other elements, the following: […] ~~**c) The length of time that the identity document, passport or equivalent is expired;**~~ d) […] e) Whether a newly issued document would provide updated or additional information relevant to verifying the updated customer's identity or customer's risk assessment **where possible**; and […]

Justification

AMAFI notices that the list of elements is overly extensive and operationally complex. Specifically, **point (c) (length of time expired) should be removed**, or a clear reference period (e.g., one year) should be included to avoid arbitrary and varying outcomes across institutions.

Point (e) (assessing if a new document provides updated/additional information) should be removed or qualified with "where possible". It is highly impractical to anticipate this, particularly for foreign nationals where the obliged entity does not have an exhaustive overview of the document structures used by various foreign jurisdictions.

AMAFI proposes the above amendment.

Amendment 3

Periodic customer information reviews

Article 20

Text proposed by the AMLA	*AMAFI Amendment*
One of the considerations in adjusting the depth and intensity of a periodic review is when a business relationship exists but no new activity has occurred since the last customer information update, and no new services or products have been offered to the customer. Where, in a business relationship, the same activity continues without any change, obliged entities may adjust the depth and intensity of periodic reviews, for low-risk customers. For example, such review could mean checking business registries and other reliable and independent sources, conduct PEP and adverse media screening, and review internally whether anything has changed in the nature or purpose of the business relationship. Obliged entities should consider, amongst others, the following non exhaustive list of factors when deciding whether and how to adjust the depth and intensity of a periodic review: a) […] b) Whether new activity or transaction has occurred or new services / products have been offered to the customer. c) […]	One of the considerations in adjusting the depth and intensity of a periodic review is when a business relationship exists but no new activity has occurred since the last customer information update, and no new services or products have been offered to the customer. Where, in a business relationship, the same activity continues without any change, obliged entities may adjust the depth and intensity of periodic reviews~~, for low-risk customers~~ **upon a risk-based approach**. **Where the customer is classified as low-risk and no triggering event within the meaning of Article 26(3) AMLR has occurred, the periodic review may be conducted through an automated recertification process. This approach applies horizontally to all categories of obliged entities referred to in Article 3 of the AMLR, irrespective of sector, and is without prejudice to the obligation to conduct an event-driven review under Article 26(3) of the AMLR where a triggering event occurs. […]** Obliged entities should consider, amongst others, the following non exhaustive list of factors when deciding whether and how to adjust the depth and intensity of a periodic review: a) […]

	b) Whether ~~new activity or transaction has occurred or new services / products have been offered to the customer~~ ***any event listed in the Article 27 of this guidelines has occurred which warrants a review of the customer's information according to the obliged entity's assessment*****.** c) […]

Justification

As AMAFI mentioned above, the text proposed by the AMLA didn't refer to Article 3.1.

There is no prescriptive definition of when such adjustments are appropriate nor how this review should be performed; rather, obliged entities are expected to assess each situation and determine the appropriate approach in line with the risk-based approach, with a view to effectively mitigating ML/TF risks. Explicitly allowing adjustments to the depth and intensity of reviews based on the **absence of new activity or services in order to be able to remove the obligation to conduct reviews.**

As AMAFI mentioned above, Low-risk clients should be exempt from mandatory periodic review under the risk-based approach. AMAFI proposes to explicitly allow perpetual KYC / automated recertification for low-risk customers, provided that no material change has occurred. The objective is to avoid periodic review being interpreted as systematically requiring a full review, even where no relevant change has been identified. It should be supported by concrete examples from obliged entities, especially those dealing with significant volumes of low-risk, inactive or low-activity customers.

AMAFI proposes the above amendment.

Amendment 4

Periodic customer information reviews

Article 21

Text proposed by the AMLA	*AMAFI Amendment*
When determining which documents, data, or information need to be updated as part of a periodic review, obliged entities should assess	When determining which documents, data, or information need to be updated as part of a periodic review, obliged entities should assess

the information collected at customer onboarding and during the most recent customer review. Obliged entities should determine the appropriate scope of updates, taking into account the customer's overall risk profile. The list below sets out a non-exhaustive range of key customer information that needs to be assessed for the purpose of an update:	the information collected at customer onboarding and during the most recent customer review. Obliged entities should determine the appropriate scope of updates **upon a risk-based approach**, ~~**taking into account the customer's overall risk profile**~~. The list below sets out a non-exhaustive range of key customer information that needs to be assessed for the purpose of an update:

Justification

In accordance with the principles laid down by AMLA at the beginning of these draft guidelines, it is appropriate to focus on the risk factors around a business relationship. The customer may have a risk profile different from the relationship with the customer's risk profile. As it is written in Article 25 "*these processes and controls should be based on the obliged entities' business-wide risk assessment and should be proportionate to the nature, risks and complexity of their business.*"

AMAFI proposes the above amendment.

Amendment 5

Events and circumstances that may trigger a customer information review

Article 28

Text proposed by the AMLA	*AMAFI Amendment*
Having regard to the nature, risks and complexity of their business, as well as the size of the obliged entity and overall business-wide risk assessment, obliged entities should assess whether automated or semi-automated systems and processes, including the use of advanced analytical tools, are needed to capture relevant changes in the customer information. Where the nature of the business model is limited in scale, risk and complexity, manual or semi-automated processes and controls may be a proportionate option. The chosen systems and processes should be capable of identifying and escalating	Having regard to the nature, risks and complexity of their business, as well as the size of the obliged entity and overall business-wide risk assessment, obliged entities should assess, **even through automated systems if applicable,** whether automated or semi-automated systems and processes, including the use of advanced analytical tools, are needed to capture relevant changes in the customer information. Where the nature of the business model is limited in scale, risk and complexity, manual or semi-automated processes and controls may be a proportionate option. Decisions should be taken even only

relevant ML/TF risks without undue delay and should be supported by appropriate documentation and controls.	through automated systems The chosen systems and processes should be capable of identifying and escalating relevant ML/TF risks without undue delay and should be supported by appropriate documentation and controls.

Justification

Upon recertification of the customer designated as a low-risk customer, the obliged entities should be able to use automated systems to process the different needs of updates on customer information and should not have to go systematically to human intervention.

AMAFI proposes the above amendment.

Amendment 6

Events and circumstances that may trigger a customer information review

Article 29

Text proposed by the AMLA	*AMAFI Amendment*
To identify events or circumstances that trigger a review and, where relevant, an update to the existing customer information obliged entities may refer to: a) Risk indicators that have internally been developed, and escalation channels for relevant staff performing AML/CFT-related tasks to use and flag material changes they become aware of. b) Alerts or outputs produced by the transaction and activity monitoring framework that indicate unusual or potentially suspicious customer behaviour or adverse media alerts.	To identify events or circumstances that trigger a review and, where relevant, an update to the existing customer information obliged entities may refer to: a) Risk indicators that have internally been developed, and escalation channels for relevant staff performing AML/CFT-related tasks to use and flag material changes they become aware of. b) Alerts or outputs produced by the transaction and activity monitoring framework that indicate unusual or potentially suspicious customer behaviour or adverse media alerts, **only if the client's risk level is increased following the investigation of the transaction and not systematically during the review of a transaction.**

Justification

Turning to the customer to request information during transaction investigations increases the risk of tipping off. In addition, a review of customer information due to alerts on transactions does not fit with the principle of proportionality which is recalled in these guidelines. The periodic review of the client's information should only be triggered if the analysis of the transaction or activity increases the client's risk and leads to enhanced due diligence.

AMAFI proposes the above amendment

Amendment 7

Use of suspension or restriction measures where the obliged entity does not receive updated information from the customer

Article 31

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should take into account that the absence of transactions or activities does not, in itself, eliminate ML/TF risks. Such risks may still arise, in particular where assets are held or safeguarded and changes occur in beneficial ownership or control.	Obliged entities should take into account that the absence of transactions or activities does not, in itself, eliminate ML/TF risks. Such risks may still arise, in particular where assets are held or safeguarded and changes occur in beneficial ownership or control **or where information related to the business relationship are obsoletes**.

Justification

The absence of a transaction does not mean the absence of continuous vigilance, in particular on the elements that should be updated.

AMAFI proposes the above amendment.

Amendment 8

Use of suspension or restriction measures where the obliged entity does not receive updated information from the customer

Article 32

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should take all reasonable measures and make every effort to obtain and update such documents, data, or information as soon as possible. The suspension or restriction of transactions and activities should be understood as a temporary measure, to be applied only where an obliged entity has taken repeated and reasonable steps to request and obtain up-to-date customer documents, data or information, and only until the obliged entity obtains the necessary documents, data or information from the customer. Termination should follow where the obliged entity is ultimately unable to comply with its obligations.	Obliged entities should take all reasonable measures and make every effort to obtain and update such documents, data, or information as soon as possible. The suspension or restriction of transactions and activities should be understood as a temporary measure, to be applied only where an obliged entity has taken repeated and reasonable steps to request and obtain up-to-date customer documents, data or information, and only until the obliged entity obtains the necessary documents, data or information from the customer. **Unless it is in contradiction with the local regulation,** termination should follow where the obliged entity is ultimately unable to comply with its obligations.

Justification

In several EU jurisdictions (e.g., France), unilateral contract termination by a financial institution is strictly restricted or prohibited under local consumer, insurance, or banking laws. AMLA must provide a carve-out to prevent Obliged Entities from being forced into direct legal conflicts with national laws.

AMAFI proposes the above amendment.

Clarification 1

Guideline 1: Updating Customer information

Articles 12-15

The guideline provides detail on *how* to keep information up to date, as required by Art. 26(2) AMLR. The list of sources is consistent with the Draft RTS on CDD (Art. 8).

However, of note*: Information or confirmation provided directly by the customer, either in writing or through digital means, provided that this information is of sufficient quality to enable them to* ***assess the authenticity and accuracy*** *of the information*. To what extent can Obliged Entities assess/be responsible for authenticity or accuracy? And also:

Obliged entities should take necessary steps to ensure that personal data obtained from public and commercial sources is accurate and up to date. It also appears disproportionate to expect obliged entities to "ensure" the accuracy and currency of data obtained from third-party sources over which they have no control. Their responsibility should be limited, where relevant, to taking reasonable steps to assess the reliability of such sources.

Clarification 2

Guideline 1: Periodic Customer information Reviews

Article 19

AMLA observed in point 3.1 in the general considerations of this consultation about periodic customer information review, referring to feedback from several obliged entities indicating that "a standard periodic review may not always be appropriate for certain business models".

However, in the text proposed by the AMLA, it stated the periodic reviews "must always be conducted", though there may be some exceptions to the scope of these **standard** reviews. To illustrate this request of clarification, AMAFI has chosen the following two examples, where obliged entities should be able to consider mechanisms that allow them to assess the level of risk on an ongoing basis to determine the need for a standard periodic review : in private banking, in the case of a business relationship with current account, savings accounts, and subscription to simple products without transactions and without recurring activity, or in market activities, subscription to futures..

<u>Question 4</u>: Do you foresee any challenges in applying Guideline 2? In your view, does the guideline provide sufficient clarity and is applicable across your products and services to support effective, risk-based monitoring of unusual or suspicious transactions and activities?

Amendment 9

Article 34

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should ensure that their monitoring framework, including transaction and activity monitoring processes and controls, is based on their business-wide risk assessment and: a) […] b) […] c) Covers all products and services in order to enable a holistic understanding of the customer's behaviour and support the detection of unusual or suspicious transactions and activities.	Obliged entities should ensure that their monitoring framework, including transaction and activity monitoring processes and controls, is based on their business-wide risk assessment and: a) […] b) […] c) Covers products and services, **provided by the obliged entities,** in order to enable a holistic understanding of the customer's behaviour and support the detection of unusual or suspicious transactions and activities.

<u>Justification</u>

AMAFI identified a point of attention regarding the broad reference to a holistic view of the customer and potential expectations in terms of data sharing and proposes to update the wording to be narrowed to a risk-based approach and proportionate scope. The objective is to avoid creating overly broad expectations in terms of data aggregation or cross-entity data sharing where this is not required by the AMLR and not justified by the customer's risk profile and to ensure that the monitoring framework is proportionate and designed according to the obliged entities' risk-based approach.

AMAFI proposes the above amendment.

Amendment 10

Monitoring framework using manual, automated, or semi-automated processes and controls

Article 43

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should ensure that their monitoring framework is capable of identifying and assessing, without undue delay new ML/TF methods, trends and typologies including those related to the non-implementation or evasion of targeted financial sanctions, identified by, amongst others, supervisory authorities, FIUs and other reliable public sources, as well as relevant risk indicators and red flags. […]	Obliged entities should ensure that their monitoring framework is capable of identifying and assessing, without undue delay new ML/TF methods, trends and typologies including those related to the non-implementation or evasion of targeted financial sanctions, identified by, ~~**amongst others**~~, supervisory authorities, FIUs and other reliable public sources, as well as relevant risk indicators and red flags. […]

Justification

The wording should be revised to clarify that the obligation concerns detecting previously identified ML/TF trends and typologies (i.e., those published by supervisors, FIUs, and public sector actors), rather than expecting obliged entities to independently identify brand new typologies.

AMAFI proposes the above amendment.

Amendment 11

Monitoring framework using manual, automated, or semi-automated processes and controls

Article 45

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should ensure that their monitoring framework operates in a controlled and sufficiently transparent manner, underpinned by clear governance arrangements and proportionate documentation, including dedicated policies and procedures, and, where applicable, defined escalation arrangements. […]	Obliged entities should ensure that their monitoring framework operates in a controlled and sufficiently ~~transparent manner~~ **documented**, underpinned by clear governance arrangements and proportionate documentation, including dedicated policies and procedures, and, where applicable, defined escalation arrangements. […]

Justification

The term "transparent manner" appears to be more relevant in the context of a regulatory audit. The expression "sufficiently documented" would therefore be more appropriate.

For low-and standard-risk customers, obliged entities should be permitted to use fully automated systems to process and approve CDD updates (e.g., via automated public registry feeds) without mandating human intervention.

AMAFI proposes the above amendment.

Amendment 12

Link between customer due diligence and the ongoing monitoring framework

Article 51

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should ensure that their customer due diligence processes including, sanctions screening processes, and their monitoring framework operate in an integrated and coordinated manner and are supported by adequate data and information quality. […]	Obliged entities should ensure that their customer due diligence processes including, sanctions screening processes, and their monitoring framework operate in **a** ~~**n integrated and**~~ coordinated manner and are supported by adequate data and information quality. […]

Justification

AMAFI considers that the Guidelines should remain technology-neutral and define the expected outcomes that integrated Ongoing Monitoring frameworks are expected to deliver.

AMAFI proposes the above amendment.

Amendment 13

Link between customer due diligence and the ongoing monitoring framework

Article 56

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should have mechanisms in place to ensure that customer or customer-group profiles, including expected transaction and activity profiles and the composition of any reference or peer groups, are kept up to date. This should include reviewing, and where necessary, updating these profiles where monitoring outputs or other information indicate a material change in risk, behaviour or use of the service, regardless of whether a periodic customer review is due.	Obliged entities should have mechanisms in place to ensure that customer or customer-group profiles, including expected transaction and activity profiles ~~**and the composition of any reference**~~**, or** peer groups, are kept up to date. This should include reviewing, and where necessary, updating these profiles where monitoring outputs or other information indicate a material change in risk, behaviour or use of the service, regardless of whether a periodic customer review is due. **A material change in risk, behaviour or use of the service identified in relation to one member of a reference or peer group should not, in itself, automatically trigger an individual customer information review for every other member of that group.**

Justification

AMAFI identifies a risk of ambiguous interpretation with respect to the concept of peer groups. It also notes that the term "composition of reference" is not defined.

The current drafting could suggest that the need to update KYC information for one member of a peer group would, by extension, trigger an obligation to update KYC information for all members of that group. Such a reading would place a disproportionate operational burden on obliged entities, as findings made at peer-group level would then systematically trigger individual KYC updates.

AMAFI therefore wishes to:

- **Rule out any automatic effect**: findings made at peer-group level should not systematically result in the individual KYC update of all customers within that group;
- **Reaffirm the principle of proportionality**: it should be clarified that any KYC update must remain proportionate, risk-based, and linked to each customer's own risk profile.

Accordingly, any review or update of information relating to a given customer should remain

proportionate, risk-based, and directly linked to that customer's individual risk profile and behaviour, in accordance with paragraph 54.

With respect to the definition of the customer behavioural profile, AMAFI considers that the requirement to assess changes in customer habits by reference to this definition appears excessively prescriptive. Obliged entities should be able to analyse a customer's previous transactions without necessarily being required to formalise a behavioural profile as such.

AMAFI accordingly proposes the amendment set out above.

Amendment 14

Pre-transaction and pre-activity. monitoring

Article 60

Text proposed by the AMLA	*AMAFI Amendment*
Pre-transaction and pre-activity monitoring enable obliged entities to assess and, where necessary, investigate transactions and activities before they are carried out or completed, in order to identify any unusual or suspicious transactions and activities.	Pre-transaction and pre-activity monitoring enable obliged entities to assess and, where necessary **and relevant**, investigate transactions and activities before they are carried out or completed, in order to identify any unusual or suspicious transactions and activities.

Justification

In private banking, and in certain capital markets activities, it is not always possible to delay or prevent the execution of a transaction, particularly for operational or legal reasons. In some cases, doing so may expose the institution to litigation for failing to comply with its contractual obligations or other applicable regulatory requirements governing the execution of transactions.

Indeed :

- speed of execution is a criterion of paramount importance to the client and is inherent in the decision to execute the transaction itself;
- speed of execution is also one of the relevant factors that investment firms must take into account in their best execution policies.

The client's order must therefore be handled promptly, as required under the applicable regulatory framework (*RD MIF II, art. 67(1)(b)*).

Furthermore, the settlement of a transaction must take place no later than two days after its execution (*CSDR, art. 5*).

Accordingly, AMAFI reiterates that the decision to implement pre-transaction and pre-activity monitoring should remain risk-based, taking into account the nature of the business, the services provided, and the operational characteristics of the activities concerned.

AMAFI proposes the above amendment.

Amendment 15

Pre-transaction and pre-activity monitoring

Article 61

Text proposed by the AMLA	*AMAFI Amendment*
Where, obliged entities, taking into account their role, business model and access to relevant information, have the ability to assess or intervene prior to a transaction or activity being carried out or completed, they should apply pre-transaction and pre-activity monitoring to detect unusual or suspicious transactions and activities.	**According to their risk-based approach, obliged entities should determine which categories of transactions or activities present risks that are more effectively identified and mitigated prior to execution.** Where, obliged entities, taking into account their role, business model and access to relevant information, have the ability to assess or intervene prior to a transaction or activity being carried out or completed, they should apply pre-transaction and pre-activity monitoring ~~**to detect unusual or suspicious transactions and activities**~~ **those categories of transactions or activities**.

Justification

AMAFI requests and proposes this amendment to avoid the introduction of a general or implicit obligation to implement pre-transaction monitoring.
The position is that obliged entities should remain able to determine, which scenarios should be detected ex-ante, and which ones may be addressed ex-post, based on their own risk assessment and taking into account the nature of the business, the services provided, and the operational characteristics of the activities concerned.

AMAFI proposes the above amendment.

Amendment 16

Pre-transaction and pre-activity monitoring

Article 62

Text proposed by the AMLA	*AMAFI Amendment*
Where, within their role, business model and access to relevant information, obliged entities have the ability to assess or intervene at the point of execution, immediately before a transaction or activity is carried out or completed, they should, where relevant, ensure that real-time monitoring forms part of pre-transaction and pre-activity monitoring to detect unusual or suspicious transactions and activities prior to execution.	Where, within their role, business model and access to relevant information, obliged entities have the ability to assess or intervene at the point of execution, immediately before a transaction or activity is carried out or completed, they should, where relevant, ensure that real-time monitoring forms part of pre-transaction and pre-activity monitoring to detect unusual or suspicious transactions and activities prior to execution. **This expectation should not be interpreted as requiring obliged entities to detect all suspicious transactions prior to execution in circumstances where such detection is not reasonably feasible in practice.**

Justification

The proposed wording by AMAFI would clarify that the expectation to detect suspicious transactions prior to execution is not absolute. While real-time monitoring should be implemented where appropriate, the ability to identify suspicious transactions before execution depends on the obliged entity's business model, operational capabilities, access to relevant information and the timing at which such information becomes available. Where pre-execution detection is not reasonably feasible, obliged entities should be able to justify this on the basis of their risk assessment, business model and operational arrangements. This clarification would improve legal certainty and ensure that the Guidelines do not create an unrealistic expectation that all suspicious transactions can always be detected before execution.

This is particularly relevant for certain capital markets activities, where transactions are executed within very short timeframes and obliged entities may have only limited opportunities to carry out a meaningful AML/CFT assessment before execution.

Many suspicions in market activities arise only after execution because their assessment requires additional information that is not available at the time of execution, as well as further analysis. The Position Paper also explains that, in certain market activities, preventing or blocking a transaction before execution may not be operationally feasible and may expose investment firms to regulatory, legal and

financial risks, including potential disputes with clients.

AMAFI proposes the above amendment.

Amendment 17

Pre-transaction and pre-activity monitoring

Article 66

Text proposed by the AMLA	*AMAFI Amendment*
Where, due to the nature of the business model or objective legal or technical constraints beyond the obliged entity's control, effective pre-transaction, pre-activity or real-time monitoring cannot be applied in line with the principles set out above, obliged entities should ensure that such limitations do not create gaps in their ability to identify, assess and escalate ML/TF risks. Such limitations should not arise from, or be reinforced by, the design of products, services or business practices, which should support the effective application of monitoring measures and should not unduly restrict it. Legal or technical constraints should not be used to justify the absence of pre-transaction or pre-activity monitoring where the obliged entity is in a position to assess or intervene prior to a transaction or activity being carried out or completed.	Where, due to the nature of the business model or objective legal or technical constraints beyond the obliged entity's control, effective pre-transaction, pre-activity or real-time monitoring cannot be applied in line with the principles set out above, obliged entities should ensure that such limitations do not create gaps in their ability to identify, assess and escalate ML/TF risks. Such limitations should not arise from, or be reinforced by, the design of products, services or business practices, which should support the effective application of monitoring measures and should not unduly restrict it. **Legal or technical constraints should not be used as the sole justification for the absence of pre-transaction or pre-activity monitoring; however, obliged entities remain free to determine, based on their own business model, risk assessment, which scenarios warrant ex-ante detection, and which may be addressed through effective ex-post monitoring.**

Justification

AMAFI proposes to align the final sentence of paragraph 66 with paragraph 73 in order to avoid the introduction of a general or implicit obligation to implement pre-transaction monitoring.

AMAFI proposes the above amendment.

Amendment 18

Post-transaction and post-activity monitoring

Article 73

Text proposed by the AMLA	*AMAFI Amendment*
Where, due to the nature of the service or objective technical or legal constraints beyond the control of the obliged entity, relevant transaction data becomes available only after they have been carried out, obliged entities should ensure that appropriate post-transaction monitoring measures are applied without undue delay, taking into account the nature, timing and completeness of the information available.	Where, due to the nature of the service or objective technical or legal constraints beyond the control of the obliged entity, relevant transaction data becomes available only after they have been carried out, obliged entities should ensure that appropriate post-transaction monitoring measures are applied ~~**without undue delay**~~ **in a reasonable time frame**, taking into account the nature, timing and completeness of the information available. **Legal or technical constraints should not be used as the sole justification for the absence of pre-transaction or pre-activity monitoring; however, obliged entities remain free to determine, based on their own business model, risk assessment, which scenarios warrant ex-ante detection, and which may be addressed through effective post monitoring.**

Justification

AMAFI proposes to align the final sentence of paragraph 73 with paragraph 66 in order to avoid the introduction of a general or implicit obligation to implement pre-transaction monitoring.

AMAFI proposes the above amendment.

Amendment 19

Handling of monitoring outputs

Article 78

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities that use automated mechanisms to close monitoring outputs should ensure that these mechanisms are only applied to cases which, following automated analysis, do not indicate suspicious or unusual transactions and activities or other material ML/TF risk indicators. Such mechanisms should not be applied where there are indicators of heightened risk, including in relation to higher-risk customers or situations requiring enhanced scrutiny.	~~Obliged entities that use automated mechanisms to close monitoring outputs should ensure that these mechanisms are only applied to cases which, following automated analysis, do not indicate suspicious or unusual transactions and activities or other material ML/TF risk indicators. Such mechanisms should not be applied where there are indicators of heightened risk, including in relation to higher-risk customers or situations requiring enhanced scrutiny.~~ **Obliged entities that use automated or semi-automated mechanisms to support the investigation, assessment or closure of monitoring outputs (including enhanced investigations) should ensure that such mechanisms are underpinned by a documented and explainable decision logic, proportionate safeguards, and effective human oversight, calibrated to the level of risk associated with the case, including cases relating to higher-risk customers or situations requiring enhanced scrutiny. The use of automated or semi-automated mechanisms for such purposes should not, in itself, be excluded on the sole basis of the customer's risk classification, provided that appropriate safeguards are in place, including risk-based sampling, override and escalation capability, and periodic human validation of outcomes.**

Justification

AMAFI is concerned about significant restrictions introduced on automated decision-making processes. The identified concern is that the draft may restrict automation beyond certain levels of alert processing, in particular for escalated investigations or decisions relating to high-risk

customers.

This is a live concern given ongoing automation projects within the European Financial Institutions Industry.
As drafted now, the guidelines state that only the first-level investigations processing could currently be automated, while both the investigation and the decision at second and third-level would be excluded.

This interpretation could directly conflict with ongoing programs, including AI-supported case closure without SAR filing.

AMAFI proposes the above amendment.

Amendment 20

Handling of monitoring outputs

Article 79

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should ensure that the underlying decision logic can be understood and documented. They should also ensure that the effectiveness of automated mechanisms is subject to effective human oversight, including periodic validation through sampling, the review of potential cases where suspicious transactions or activities were not identified, or other appropriate.	Obliged entities should ensure that the underlying decision logic can be understood and documented. They should also ensure that the effectiveness of automated mechanisms is subject to effective human oversight, including periodic validation through sampling, the review of potential cases where suspicious transactions or activities were not identified, or other appropriate. **For the purposes of these Guidelines, effective human oversight means that a natural person retains the ability to review, challenge, override or validate the outputs of automated or semi-automated mechanisms and does not require systematic case-by-case human review of every automated output or decision.**

Justification

AMAFI notices the need to clarify the concept of significant human intervention / meaningful human intervention.

This Paragraph 79 appears to provide a useful clarification of this concept, which is not explicitly defined in the AMLR, but should be aligned with the AMLR principle of technological neutrality, ensuring that human oversight is meaningful without preventing proportionate and well-controlled automation and should not be construed as preventing proportionate and well-controlled automation of monitoring and decision-making processes.
This point is directly linked to the broader discussion on automated decisions and automation of AML/CFT processes.

AMAFI proposes the above amendment.

Amendment 21

Internal controls and ongoing review

Article 82

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should also implement robust data quality controls, data validation processes, and regular data cleansing. Testing or validation of automated or semi-automated monitoring systems should, where appropriate, rely on synthetic or anonymised data, in particular for functional validation. Where the use of real personal data is necessary for such testing […]	Obliged entities should also implement robust data quality controls, data validation processes, and regular data cleansing. ~~**Testing or validation of automated or semi-automated monitoring systems should, where appropriate, rely on synthetic or anonymised data, in particular for functional validation.**~~ Where the use of real personal data is necessary for such testing […]

Justification

AMAFI questions the justification for requesting the use of anonymous data when it is precisely necessary to use personal data in the regulatory requirements for the control of asset freeze lists or lists of politically exposed persons. Anonymous testing is less effective and limited. The subject of anonymity falls under other regulations than the ones on anti-money laundering. "Functional validation", on the other hand, could process anonymous data if these checks are carried out by people different from those who do the tests.

AMAFI proposes the above amendment.

Amendment 22

Internal controls and ongoing review

Article 83

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should define the outcomes of their monitoring framework and periodically reassess whether those outcomes remain appropriate in light of their business-wide risk assessment and, where relevant, publicly available national or Union-level priorities.	Obliged entities should define the outcomes of their monitoring framework and periodically reassess whether those outcomes remain appropriate in light of their ~~**business-wide risk assessment**~~ **risk-based approach** and, where relevant, publicly available national or Union-level priorities.

Justification

AMAFI notes that relying on the notion of "business-wide risk assessment" is more restrictive than the "risk-based approach", the use of which in this article would be more in line with the principles defined in these guidelines.

AMAFI proposes the above amendment.

Amendment 23

Internal controls and ongoing review

Article 84

Text proposed by the AMLA	*AMAFI Amendment*
Obliged entities should consider, in assessing effectiveness, the extent to which their monitoring framework produces outcomes that are relevant, risk-based and capable of supporting the identification and reporting of ML/TF risks. Effectiveness should not be assessed solely by reference to alert, reporting volumes or to the breadth of typology coverage where this does not result in meaningful detection or escalation outcomes. Instead, where relevant, obliged entities should consider the timeliness of escalation, the appropriateness	Obliged entities should consider, in assessing effectiveness, the extent to which their monitoring framework produces outcomes that are relevant, risk-based and capable of supporting the identification and reporting of ML/TF risks. Effectiveness should not be assessed solely by reference to alert, reporting volumes or to the breadth of typology coverage where this does not result in meaningful detection or escalation outcomes. ~~**Instead**~~ **In addition**, where relevant, obliged entities should consider the timeliness of escalation, the

of outcomes, recurring deficiencies, and whether the framework remains capable of addressing the ML/TF risks.	appropriateness of outcomes, recurring deficiencies, and whether the framework remains capable of addressing the ML/TF risks.

Justification

AMAFI notes that the first and second sets of indicators are complementary and should be considered together.
For example, if the number of alerts drops suddenly, this gives essential information about the monitoring system.

AMAFI proposes the above amendment

Clarification 3

Guideline 2: Transaction and activity monitoring framework.

General principles

Article 35

Regarding the access to transaction and activity data by the obliged entities, AMAFI considers that clarifications should be provided by AMLA on the following point.

Obliged entities that structurally have limited or no access to transaction and activity data, or that do not process transactions should ensure their monitoring framework is adjusted accordingly.

AMAFI's understanding of this paragraph is that it is not applicable to market operations and the banking and financial sector. In which case investment services providers would have a business relationship and no access to transaction and activity data on market activities? If not, it would be appropriate to clarify the extent to which this paragraph is applicable to the financial sector. We would need clarification on the FCA model (« Assessing and reducing the risk of money laundering through the markets").

This request of clarification concerns all the relevant articles of this guideline.

Clarification 4

Guideline 2: Transaction and activity monitoring framework.

Link between customer due diligence and the ongoing monitoring framework

Articles 51 and 57

AMAFI considers that while institutions are investing in more integrated monitoring framework, the implementation approaches differ significantly, reflecting variations in business models, technology environments, legacy systems and organizational structures. Achieving such integration is a multi-year transformation program for most institutions with significant costs.

Instead, greater clarity would be beneficial regarding the practical expectations associated with integrated Ongoing Monitoring. In particular, institutions would benefit from a clearer understanding of the expected role and impact of the holistic customer view, the interaction between monitoring systems.

These Guidelines should remain technology-neutral and define the expected outcomes that integrated Ongoing Monitoring frameworks are expected to deliver.

AMAFI encourages AMLA to supplement paragraphs 51–57 with additional guidance describing the expected outcomes of integrated Ongoing Monitoring, while clarifying that institutions may achieve these outcomes through different operating models, governance arrangements and technology solutions.

Clarification 5

Guideline 2: Transaction and activity monitoring framework.

Link between customer due diligence and the ongoing monitoring framework

Articles 53 and 54

AMAFI notices that AMLA's draft Guidelines provide that the risk profile should include the customer's purpose and intended nature of the business relationship, sources and methods of payment, products and services used, geographic profile, volume of transactions, frequency and nature of transactions, and any specific expected customer behaviour. These elements appear overly granular and complex to be objectively integrated into an individualized risk assessment across highly heterogeneous customer bases.

In addition, AMAFI considers that such level of granularity would not improve the relevance of detection and would have a significant impact on the volume of non-relevant alerts. Indeed, deviations between the defined customer profile and the transactions actually carried out by the customer are likely to occur frequently, as any customer may, during the course of a business relationship, carry out transactions outside their usual pattern, such as a real estate purchase, travel-

related transactions or a transfer abroad, without such transactions being suspicious in the absence of other risk indicators.

Requiring the collection and integration of such a broad set of data in monitoring frameworks would be disproportionate to the objective pursued. Simpler rules, capable of being clearly defined and effectively implemented, should therefore be preferred.

Clarification 6

Guideline 2: Transaction and activity monitoring framework.

Internal controls and ongoing review

Article 86

Regarding the internal controls and ongoing review of the obliged entities, AMAFI considers that clarifications should be provided by AMLA on the following point.

Obliged entities should ensure that the responsibility for overseeing the effectiveness of the monitoring framework is clearly assigned and that identified deficiencies are addressed without undue delay.

AMAFI would welcome clarification on the meaning of the term "identified deficiencies". In AMAFI's view, a distinction should be made between routine operational incidents addressed through day-to-day controls and more significant deficiencies requiring escalation and corrective actions at management level. Such a distinction is reflected, for example, in Article R.561-38-4 of the French Monetary and Financial Code, which differentiates between incidents and deficiencies.

Besides, AMLA sets governance expectations for the use of specific technologies. In line with the principles of technological neutrality and efficiency, the guidelines should explicitly permit the use of fully automated systems to process and approve CDD updates for low and standard risk customers (e.g., via automated public registry feeds) without mandating human intervention, provided the automated logic is subject to regular validation and audit.