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CCBE response to

AMLA Consultation on the draft RTS on criteria for identifying business relationships, occasional and linked transactions and lower thresholds

On draft Regulatory Technical Standards under Article 19(9) of Regulation (EU) 2024/1624

<u>Question 1</u>: Do you find the criteria listed in Article 2 of the draft RTS effective to identify business relationships properly? If not, could you please indicate why, where possible substantiated by relevant data?
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The CCBE is not at ease with this definition of the "business relationship": at the core of a lawyer's service lies a fiduciary link with the client, who consults the lawyer to understand the law, defend a right or be assisted in a transactional matter. In all such instances, the key values evolve around independence, duty of loyalty, obligations of confidentiality vis-à-vis the client. Therefore, it is more accurate to refer to a professional, not a "business", service, governed by a variety of ethical and professional rules and standards.

CCBE's comments on the 3rd AML Directive noted that "*the definition of "business relationship" under Article 3 (11) is confusing with regard to the activities of lawyers because the provision regarding the element of duration is not an accurate guide to the establishment of a lawyer client relationship.*"

This definition reads: "*Business relationship" means a business, professional or commercial relationship which is expected, at the time when the contact is established, to have an element of duration".*

The CCBE position was that "*In this regard, it might be useful to make a distinction between the concept of a business relationship - banks and financial institutions (sometimes lawyers) - and the concept of a professional relationship.*

The business relationship could be defined as in Article 3 (11), but for a professional relationship there should be a definition of a client (as opposed to a consumer in a business relationship) as follows:

"Any individual who has a professional relationship under a mandate providing for the provision of services".[1]

Although the context and legal framework evolved, these remarks remain valid as to the inadequacy of the term that does not reflect the nature of lawyers' profession, activities and relationship with clients.

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[1] https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ANTI_MONEY_LAUNDERING/AML_Position_papers/EN_AML_20041104_CCBE_position_on_the_requirements_on_a_lawyer_to_report_suspicions_of_money_laundering_and_on_the_European_Commission_Proposal_for_a_Third_EU_Directive_on.pdf

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Regarding the draft RTS, the criteria in Article 2 are not sufficiently effective to ensure consistent identification of business relationships (BR) in the legal sector across the MS. We hence suggest that the RTS include targeted legal sector criteria. As lawyers are only affected by Art. 2 point 1 and 2, we comment on these.

Point 1 requires obliged entities taking *"into account the use of online services through a registration providing ongoing access as a criterion when considering the element of duration".* This is neither clear nor crucial to the decision.

While "*take into account"* provides for an ample room of appreciation, obliged entities might understand this as a compelling factor. This impression is enforced by the fact that it is the only criterion provided for in point 1.

Online accounts nowadays need to be opened for one-off, i.e. occasional transactions (OT). For example, secure communication between a lawyer and a client requires an account with a communication service usually provided by the lawyer. Opening such an account is not in indication of a BR.

We therefore recommend deleting point 1.

In Point 2, lawyers shall take into account "when considering the element of repetition included in the definition of a BR:

a) the provision of services at different intervals

b) the provision of different services."

1) Provision of several services is not the crucial factor as such, but the provision of services for several transactions (which are not linked transactions). Therefore, the draft should consider transactions, because even an OT requires several services. For example, a real estate transaction includes services like contract drafting, securing transfer via an escrow account, calculating fees and taxes linked to the transaction, obtaining a land transfer approval. Still, it is an OT.

2) As the real estate example shows, neither the interval nor the fact that the services are different does change the quality as OT.

3) The interval is not decisive, but rather if there are several transactions which are not yet clearly defined when entering into a BR. For example, there is a BR if a lawyer is requested to act for a construction company for the purpose of real estate transactions, but without defining at the outset, which real estate transactions must be carried out.

4) Often, clients are inactive (i.e. do not solicit services from their lawyer) for years. Ongoing due diligence obligations in such a case would result in significant costs for lawyers falling short of the reality of their business activities.

5) The wording of paragraph 2(b) on the 'provision of different services' is not useful. It makes no difference if the repetition occurs in relation to services of a different nature.

Given the considerations above, we therefore suggest deleting points (a) and (b) and replacing them by:

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a) the provision of services consists of multiple services, as long as those services are not provided for the purpose of one OT (including linked transactions)

b) the provision of services concerns multiple transactions over a period of time which is not specific at the beginning of the BR.

<u>Question 2</u>: Do you find the criteria listed in Article 3 of the draft RTS effective to identify linked transactions properly? If not, could you please indicate why, where possible substantiated by relevant data?
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These criteria require additional clarification.

Article 3 of the draft RTS provides criteria for identifying "*linked transactions*", which, for the purpose of Article 19, 1. (b) of Regulation 2024/1624, shall be aggregated to determine whether the EUR 10,000 threshold (triggering the obligation to perform customer due diligence) is reached.

The criteria listed in Article 3 are indicators to be assessed case by case and shall not, whether individually or cumulatively, automatically determine the existence of linked transactions. This principle is recalled in Recital (4) of the draft RTS, according to which "*it is crucial to emphasize that the mere fulfilment of any criterion in this Regulation does not automatically indicate that the definition of a business relationship or a linked transaction in Regulation (EU) 2024/1624 is satisfied*". For legal certainty purposes, CCBE would suggest that this principle is enshrined through an Article of the draft, rather than through a mere recital which, as such, is deprived of any legal value.

In legal services, linkage is often best assessed through the context of the underlying legal matter (the file) rather than transaction metadata alone. Lawyer involvement commonly spans multiple related steps and payments that may be individually below thresholds but are connected in purpose and structure.

We support the principle that certain indicators should be applied only on the basis of information already available to the obliged entity. That approach is essential for proportionality and for operational clarity in the legal sector.

Transactions/payments should be treated as potentially linked where, based on information already held on the file, they relate to the same underlying legal matter/transaction, including staged payments and steps that form part of the same overall arrangement.

In addition, some criteria seem to lack clarity, or relevance under all circumstances, which further justify the need to have the aforementioned principle of Recital (4) enshrined through a (legally binding) Article of the RTS.

What we observe is that the issue of related-party transactions associated with the splitting of transactions is of little significance to lawyers, given that the relationship with the client is highly personal, unlike that which exists with financial institutions, where the level of client knowledge cannot be comparable, as they carry out mass transactions that are very different from the

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advice provided by a lawyer. Consequently, there are provisions in Article 3 that are disproportionate from the perspective of the due diligence that lawyers must observe.

(i) For example, the requirement set out in Article 3(b)(v) regarding verification of the use of the same electronic infrastructure can only be imposed on those obliged entities that must necessarily use IT tools to monitor client behaviour, something that does not occur in the provision of professional services.

(ii) Article 3, 1., (b), (iv): "*customers are subsidiaries or beneficial owners of the same parent undertaking*": the fact that subsidiaries have the same parent undertaking does not necessarily imply that they conduct transactions for the same purpose, each of them rather conducting their own business activities and purpose. Similarly, being beneficial owners of the same company does not mean that the transactions performed by such beneficial owners necessarily have the same origin or destination;

(iii) Article 3, 1., (b), (vi): "*use of common intermediaries or service providers facilitating transactions*"; […]

Similarly, the provisions set out in subparagraphs (a) and (d) of that article clearly refer to financial institutions, as they relate primarily to the origin and destination of transactions – concepts specific to financial transactions rather than the provision of professional services.

(i) Article 3, 1., (d), (i): "*based on information available to the obliged entity, transactions share common characteristics*". The notion of "common characteristics" seems rather broad and, to be useful as a criterion, should be further developed in the draft RTS;

(ii) Article 3, 1., (d), (ii): "*transactions with an identical or similar origin and destination according to the definition of linked transactions,* ***performed at different establishments or through a network of agents or distributors***".

In point 3 (e), which provides "when considering the element of a specific period included in the definition of linked transactions, transactions performed within a short timeframe, depending on the nature of the business, including its risks and complexity and the size of the obliged entity" the following wording should be added: "transactions performed within a timeframe specified at the time of establishment of the relationship."

Question 3: Do you consider it necessary to add additional criteria that should at least be taken into account when considering the different elements of the definition of a business relationship to ensure the proper identification of business relationships? If so, could you please indicate which criteria and for which sector(s)? ***5000 character(s) maximum***

The central criterion for defining a client as a regular client, contained in Article 2(1), which is based on 'the use of online services via a registration providing continuous access', is not in practice applicable to the professional services of lawyers, where it is not customary for their services to be provided online by electronic means.

A central concept of regularity that can be extended to all obliged entities can only be based on the continuity of the relationship, that is, on the contractual commitment undertaken by the obliged entity to provide services at the client's request for a specified period and without limitation, or on the repetition of isolated transactions required from time to time by the client which are sufficiently coherent to form a lasting business relationship in duration and quantity of work (eg not for issuing a copy).

<u>Question 4</u>: Do you consider it necessary to add additional criteria that should at least be taken into account when considering the different elements of the definition of linked transactions to ensure the proper identification of linked transactions? If so, could you please indicate which criteria and for which sector(s)?
5000 character(s) maximum

It seems to us that the issue of linked transactions has been limited to the issue of splitting transactions.

However, we see no reference either in the preamble or in the articles to the most relevant aspect arising from the detection of linked transactions, which is the verification of the beneficial owner in cases of interposition, that is, the existence of evidence that the client is not acting on their own behalf but on behalf of a third party.

If the person giving instructions to the professional or paying the fees is a third party, we are dealing with linked transactions indicative of the use of a front man or an intermediary, which is highly relevant for the prevention of money laundering.

This should be described in some way as a purpose of the control of linked transactions beyond the mere splitting of transactions, linking this matter to the identification of the beneficial owner.

<u>Question 5</u>: Do you consider the criteria for identifying business relationships and linked transactions listed in Article 2(3) and Article 3(2) of this draft RTS proportionate? If not, could you please indicate why, where possible substantiated by relevant data, and which alternative criterion you would find more proportionate?

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We do not represent the sectors targeted by Article 2(3) and Article 3(2) (currency exchange, money remittance, and specified crypto-asset services), as they apply only to financial institutions. We therefore do not provide sector-specific operational evidence on those provisions.

However, we note that AMLA has included prescriptive targeted criteria for certain sectors where it considers clarification is required. In our view, it is important that a comparable willingness to provide targeted clarification is applied to the legal sector, where clear operational criteria are also needed to ensure consistent identification of business relationships and linked transactions across Member States.

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Question 6: Do you foresee any operational challenges in implementing this draft RTS? If so, could you please indicate which, where possible substantiated by relevant data? Do you have any suggestions that would make the criteria better suited operationally?

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Yes.

In our view, the definitions contained in the draft are clearly geared towards financial institutions, but do not adequately address non-financial obliged entities.

To expect lawyers to “monitor” their clients to check their connections is disproportionate; it entails incurring technological costs that are not justified and should only be considered for financial institutions.

Without legal-sector specific criteria or guidance, we foresee operational challenges and a high risk of inconsistent implementation across firms and jurisdictions.

Key challenges may include inconsistent classification of in scope legal matters as business relationships versus occasional transactions, particularly where the client perceives a matter as one-off, but the solicitor’s engagement involves duration and repetition in substance.

Mapping linked transactions concepts to legal workflows organised around matters/files, including staged payments and multiple related steps.

Uncertainty about expectations around what information firms must obtain or analyse to determine linkage, particularly across different matters.

Provide legal sector guidance on assessing linked transactions primarily within the same matter, based on information already held on the file, unless linkage is otherwise apparent. We also recommend that AMLA reinforce that the criteria are not exhaustive and should not be applied as a tick-box test; they should be implemented in a proportionate, risk-based manner.

Question 7: Do you see a need for the introduction of an additional lower threshold for a specific obliged entity, sector or transaction? If so, could you please indicate why, where possible substantiated by data, and at which value the threshold should be set?

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No, there is no need for a lower threshold for the legal sector in this RTS.

The thresholds set out in the draft are considered appropriate.

Additional observations: Do you have any additional comments relevant to the draft RTS that have not been covered above? Please ensure that comments refer to a specific article, are precise, and, where possible, supported by evidence. Where necessary, comments should also include a proposed solution.
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We suggest adding a clarification for the term “services”:

“**Services can be provided for a business relationship, as well as for an occasional transaction.**”

Followed by a clarification: “**To ensure a proper application of the concept of occasional and linked transactions by all obliged entities, the provision of services can be a part of an occasional transaction.**”

Illustrative case:

In a real estate deal, the transaction is the **transfer of ownership**; services like tax calculations or land registry filings are **components of that one OT**, not separate OTs and not a BR.

Quantitative criteria for BRs in Article 2(3) RTS can create o**perational burden**s (continuous counting, rolling periods) and a risk of **mechanistic “tick-the-box” behaviour** and deliberate structuring to stay below the threshold. In general, thresholds should be treated as **supporting criteria**, not as rigid triggers for BR qualification.

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