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CCBE Statement: "The need to adjust the direction to achieve an effective AML framework"

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The CCBE is recognised as the voice of the European legal profession representing, through its members, more than 1 million European lawyers.

Through its Anti-Money-Laundering Committee, the CCBE has been closely following the adoption of the AML package and the establishment of the AML Authority (AMLA). Currently, it closely monitors the adoption of level 2 and 3 instruments by AMLA, including by participating in public hearings and providing written responses to the public consultations. The CCBE took note of the final drafts of several Regulatory Technical Standards (RTS) published by AMLA recently.

Although AMLA has taken account of certain comments received during the consultation process, a number of aspects of the proposed approach remain problematic. In particular, their practical implementation risks creating additional administrative and compliance burdens for lawyers and bars, without necessarily delivering a corresponding improvement in the effectiveness of the AML framework or the prevention of money laundering and terrorist financing.

There is a broader concern that the direction taken in the current approach may lead to a compliance framework that is disproportionately complex and costly, potentially diverting resources towards procedural requirements rather than the effective identification and prevention of ML/TF risks.

Therefore, a review of the approach to implementation is needed and AMLA should:

- focus on risks with a true risk-based approach;
- regulate taking into account the sector-specificity;
- make proportionality work in practice; and
- respect professional judgment.

Below, the CCBE reiterates some of the concerns already expressed[1] and highlights additional ones, specific to the legal profession.

[1] In October, the CCBE co-signed a Joint statement with Accountancy Europe, Tax Adviser Europe and European Tax Adviser Federation, in which it explains 6 priorities for effective EU AML implementation.

11 key points needed to adjust the direction:

1. AMLA must ensure simpler and predictable rules and operational feasibility
2. More data does not mean better AML
3. Risk of regulating smaller firms out of the market and increasing the cost of legal services
4. Non-financial professions should not be treated as if they were banks
5. The new framework needs to preserve and harness the potential of professional judgement
6. AMLA must remain within the limits of its Level 1 mandate
7. The limited scope of lawyers' AML obligations must remain explicit
8. The possibility to use pooled client accounts needs to be preserved
9. Regarding supervision: those assessing the oversight of self-regulatory bodies must themselves understand legal practice
10. Self-regulation is the pillar of effective supervision
11. Legal professional privilege and professional secrecy must be clearly preserved

1. AMLA must ensure simpler and predictable rules and operational feasibility.

The effectiveness of the AML framework depends on rules that can be understood and applied consistently. Requirements dispersed across multiple RTSs and Guidelines, combined with layered cross-references and highly detailed prescriptions, risk creating uncertainty rather than convergence.

The operational and legal feasibility of the new requirements remains a key concern. As currently drafted, several AMLA RTSs risk being unnecessarily complex at best, and legally impossible at worst, for non-financial sector entities to implement.

Proportionality should therefore be clearly and unequivocally incorporated into processes specified by the RTS. Requirements should ensure that resources are directed towards measures that contribute to preventing and detecting financial crime, rather than towards administrative complexity without a corresponding risk-reducing effect.

2. More data does not mean better AML.

Collecting information without a clear link to risk can divert the attention of professionals from matters that are of most significance. Where information is required, there should be a clear understanding of how it helps the obliged entity or supervisor identify, assess or address risk, and how that information will be used in practice, rather than becoming a purely formal box-ticking exercise. Data points that are not appropriate for the respective category of obliged entities should not be requested across the board. This requires genuine **data minimisation**. The number of data points, the frequency with which they are collected or reassessed, and the applicable reporting deadlines should be calibrated to the actual level of risk. Data requirements should therefore be limited to what is necessary and proportionate for a clearly defined AML/CFT purpose.

Data requirements must also be designed so as to respect data protection, rather than treating maximum data accumulation as a proxy for effectiveness.

3. Risk of regulating smaller firms out of the market and increasing the cost of legal services.

There is a point at which regulatory complexity becomes a barrier to the effective provision of legal services. Smaller practices and sole practitioners do not have the compliance capacity, technology or systems available to large financial institutions. Requiring them to make continuous investments in compliance infrastructure may undermine their ability to provide accessible and affordable legal advice and representation.

This is also relevant to smaller legal practices, including those with limited transaction volumes and limited numbers of clients. The size of a practice cannot justify less rigorous management of risk. However, the scope and organisation of compliance measures should be proportionate to the practice's actual risk profile, services and transactions. Unnecessarily complex or impracticable requirements undermine the effectiveness of the framework.

Operationally feasible, risk-based and proportionate requirements can strengthen compliance and the fight against financial crime while preserving access to legal services.

4. Non-financial professions should not be treated as if they were banks.

Efficient AML prevention must reflect the realities of the legal sector, where most of the firms are small practices or sole practitioners.

SMEs do not have the compliance departments, technology and systems of large banking institutions and should not be expected to build a comparable compliance infrastructure.

The separation of supervisory roles must work in both directions. Banking-sector controls should not be used to subject lawyers or client-fund arrangements to a second, parallel form of professional supervision by credit institutions. Where competent professional supervisory authorities already review such arrangements, the AML framework should recognise and rely on those safeguards.

5. The new framework needs to preserve and harness the potential of professional judgement.

For lawyers, the framework should focus on the risks arising from the client, the service provided, the purpose and circumstances of the engagement and the professional's knowledge of the client's activities.

That judgement must also reflect the specific scope of lawyers' AML obligations: lawyers are not obliged entities simply by virtue of being lawyers, but only when they participate in the specific activities and transactions covered by the AMLR.

The framework should therefore avoid assumptions or automated indicators that effectively expand that scope.

6. AMLA must remain within the limits of its Level 1 mandate.

The limits of AMLA's mandate are not a secondary drafting issue.

Article 1(2) of Regulation (EU) 2024/1620 requires the Authority to act within the powers conferred on it. Article 49(1) expressly provides that regulatory technical standards must be technical, must not imply strategic decisions or policy choices, and that their content must be delimited by the legislative acts on which they are based.

Accordingly, when AMLA develops draft RTS, it must remain within the mandate defined by the Level 1 legislation: technical standards may specify how the legislative rules are to operate, but **they cannot be used to introduce new substantive policy choices or obligations that the legislature itself did not establish**. More generally, AMLA's Level 2 and Level 3 instruments must remain within the scope of the powers conferred by the AMLR, AMLD and the AMLA Regulation.

Each material requirement should be traceable to a specific enabling provision and remain within its objective, content and scope.

Technical standards or Guidelines should not expand the persons or activities subject to AML obligations, create new disclosure, monitoring or reporting duties without a sufficient Level 1 basis, convert risk-based discretion into a generally mandatory process, or reallocate supervisory responsibilities fixed by the AMLR and AMLD.

In the case of RTS, this assessment should also be made by the Commission before adoption, since the Commission is responsible for adopting the RTS and Article 49 requires their content to remain delimited by the underlying legislative acts.

7. The limited scope of lawyers' AML obligations must remain explicit.

Lawyers are subject to AML obligations only in the circumstances and for the categories of activity specified by the AMLR. This distinction is essential. Rules designed on the assumption that every lawyer, every mandate and every client relationship falls within the AML framework risk expanding the Level 1 scope through implementation measures and generating unnecessary collection, monitoring and reporting duties.

AMLA should therefore ensure that every relevant RTS, Guideline, data request and supervisory methodology distinguishes clearly between legal services within the AMLR scope and legal services outside it, and that supervisory expectations are calibrated accordingly.

8. The possibility to use pooled client accounts needs to be preserved.

Pooled client accounts for third-party funds, operative in various Member States, are indispensable to legal practice because they enable the secure administration of client funds in a wide range of transactions, many of which fall outside the scope of Regulation

(EU) 2024/1624. Information-sharing requirements with financial institutions must respect professional secrecy and legal privilege. AMLA must recognise their generally lower ML/TF risk and permit simplified due diligence where the account holder is appropriately regulated and supervised involving bars and maintains robust AML/CFT controls. Disproportionate requirements leading ultimately, for economic reasons, to the closure of pooled client accounts would be harmful to access to legal services and should be avoided.

Moreover, the preservation of pooled client accounts, a system that exists in certain Member States, must not overlook other systems for the handling of client funds by lawyers that are in force within the European Union. This is the case, for example, of the French CARPA system, the relevance of which has been underlined by the FATF, and which enables lawyers to handle client funds securely while ensuring that such funds are fully accounted for (https://carpa-lbcft.org/en/presentation-1).

9. Regarding supervision: those assessing the oversight of self-regulatory bodies must themselves understand legal practice.

Where a Member State designates a public authority to oversee the self-regulatory bodies responsible for AML/CFT supervision of the legal profession (Article 52 AMLD6), that authority's assessment of whether the self-regulatory body's supervision is adequate cannot be made in the abstract. It requires a genuine understanding of how legal practice operates, how professional secrecy and legal professional privilege shape a lawyer's engagement with a client, and how a bar's own disciplinary and oversight mechanisms function in practice.

The CCBE therefore considers that such oversight should not be entrusted to administrations whose relevant expertise is built primarily around financial-sector supervision.

Rather, Member States should ensure that the assessment is informed by expertise in legal practice — whether through the composition of the supervisory authority itself, the involvement of a dedicated body in which the profession is represented, or a structured consultation mechanism with the bars.

Recital 100 AMLD6 draws an important boundary around the public oversight of self-regulatory bodies. It explains that the public authority overseeing an SRB is not, by that fact alone, intended to supervise individual obliged entities or decide individual cases handled by the SRB. Member States may give that authority additional tasks, but those tasks must respect fundamental rights and, in particular, must not interfere with the rights of the defence or the confidentiality of lawyer-client communications. Article 52(3)(a) gives this safeguard concrete effect by excluding from the authority's compulsory information powers information obtained by lawyers in the course of ascertaining a client's legal position or defending or representing a client in judicial proceedings, subject to the conditions laid down in the AMLR. Oversight of bar supervision must therefore be

structured and exercised in a way that respects these limits; this necessarily requires a proper understanding of legal practice and of the scope of legal professional privilege.

To the extent AMLA will ultimately oversee the proper functioning of such public authorities, the above entails that AMLA takes into account these principles when performing such oversight, and, more fundamentally, is itself sufficiently knowledgeable and respectful of the specificities and overarching principles underpinning the legal profession, including professional secrecy and legal professional privilege.

10. Self-regulation is the pillar of effective supervision.

The independence of the legal profession, including the role of bar associations and law societies in its regulation and supervision, is a fundamental safeguard of the rule of law. While regulatory models may differ across Member States, their common objective is to preserve lawyers' independence and protect professional secrecy and legal professional privilege. Self-regulatory bodies thus are in a position to better supervise AML/CFT compliance, which contributes to efficiency of the supervisory framework. AMLA must fully respect these principles and the existing national regulatory and supervisory frameworks, without undermining the role and independence of bar associations and law societies.

11. Legal professional privilege and professional secrecy must be clearly preserved.

Lawyers have their role to play in the fight against financial crime by fully complying with the AML framework. However, lawyers also contribute to the proper administration of justice. Legal professional privilege and professional secrecy are essential to that role.

The CCBE firmly believes that the legal professional privilege and professional secrecy must be fully respected throughout the AML framework. However, the **CCBE requests to indicate this expressly in the RTS have not been accepted.**

These protections cannot be reduced to, or exhaustively defined by, the specific exemptions contained in the AML legislation. AML requirements, including those concerning customer due diligence, supervision and information sharing, must be interpreted and applied consistently with legal professional privilege and professional secrecy.

What is at stake is a fundamental principle for the legal profession, citizens and the justice systems, protected by the EU supreme law, including the Charter, and the case law of the EU Court of Justice as well as the European Court of Human Rights. Any infringement of LPP/PS constitutes a red line that lawyers will not accept AMLA crossing. Equally, a lawyer cannot accept AMLA determining or redefining the scope of LPP/PS, which is governed by

the applicable legal framework and case law, and, more fundamentally, exceeds the scope of the competence and prerogatives of AMLA. [2]

Conclusion

The CCBE supports an effective European framework for preventing money laundering and terrorist financing. Effectiveness, however, cannot be measured by the volume of data collected, the number of prescribed processes or the complexity of the compliance infrastructure imposed.

The new framework will only achieve its objectives if it remains genuinely risk-based, proportionate and workable across sectors and national systems. For the legal profession, this also requires full respect for professional judgment, professional independence, professional secrecy and legal professional privilege.

The CCBE therefore calls on AMLA and the European institutions to adjust the direction of implementation and to engage meaningfully with the CCBE and national bars before the relevant level 2 and 3 instruments are finalised.

[2] Recent CJEU case law confirms the strong protection afforded to the confidentiality of lawyer-client communications under Article 7 of the Charter. See judgments of 8 December 2022, Orde van Vlaamse Balies and Others, C-694/20; 29 July 2024, Belgian Association of Tax Lawyers and Others, C-623/22; and 26 September 2024, Ordre des avocats du Barreau de Luxembourg, C-432/23. In C-432/23, the Court clarified that this strengthened protection applies irrespective of the area of law in which the advice or representation is provided. See also Article 70(2) AMLR, which exempts lawyers and certain other professionals from the suspicious-transaction reporting obligation in respect of information received or obtained when ascertaining a client's legal position or defending or representing a client in, or concerning, judicial proceedings, subject to the exceptions laid down in that provision.