Insurance Europe's response to the consultation on the draft RTS on group-wide minimum requirements

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Introduction

Insurance Europe welcomes AMLA's decision to consolidate the mandates under Articles 16(4) and 17(3) AMLR into a single set of draft RTS, as this should support a more consistent, proportionate, and harmonised implementation of group-wide AML/CFT requirements across the European Union.

We would also reiterate the industry's concerns regarding the compressed implementation timelines. Undertakings are expected to prepare for compliance with significant new AML/CFT obligations while the related Level 2 and Level 3 measures remain under development by AMLA and have yet to be formally adopted by the European Commission. Sufficient implementation time will be critical to ensuring effective and consistent compliance.

Section 1 - General provisions (articles 1 - 2)

Q1. ***Do you have any observations concerning the definitions laid out in article 2? (5000 characters maximum)***

The term "control function" is neither legally defined nor even mentioned in the AMLR. Therefore, it appears to go beyond the mandate conferred by Article 16(4) AMLR to introduce obligations on such functions. As defined in Article 2(1) of the draft RTS, the term could be interpreted as sector-specific regulatory key functions such as risk management, compliance and internal audit. In practice, this would inadequately suggest that the "control function" encompasses the broader governance system of the group.

In addition, the draft RTS assigns responsibilities for ensuring the adequacy and regular review of group-wide internal policies, procedures and controls not only to the group-wide AML/CFT compliance function under Article 16(2) AMLR, but also to the "control function" (Article 3(1)(f) and (g) of the draft RTS). Such an approach risks creating overlapping obligations for different governance and control functions and may conflict with the established "three lines of defence" model. In particular, the wording could be understood as placing the internal

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audit function, as part of the third line of defence, on the same operational level as the AML/CFT compliance function forming part of the second line of defence.

Furthermore, the definition appears to include also the risk management function. For insurance undertakings, however, the Level 1 framework governing the organisation and responsibilities of the risk management function is laid down in the Solvency II Directive rather than in the AMLR. This raises doubts as to whether the definition of "control function" falls within the mandate under Article 16(4) AMLR.

Against this background, the term "control function" should be deleted from the draft RTS. At a minimum, the RTS should clarify which specific functions are intended to be covered where sector-specific governance frameworks already exist, including Solvency II. The Level 1 legal basis for imposing obligations on additional governance or control functions should likewise be clarified.

If the intention is merely to ensure that the internal audit function periodically reviews the effectiveness of the AML/CFT compliance function within established governance arrangements, this should be expressly clarified. Such a requirement would, however, already follow from existing governance and supervisory frameworks, which further supports deleting the concept of a "control function" from the RTS.

If, however, the concept is retained, it is understood that AMLA may intend to ensure that "a function" is responsible for objectively assessing risks relating to money laundering, terrorist financing and sanctions evasion. In this context, and in line with established governance models (such as the "three lines of defence"), it should be clarified whether such responsibilities can also be assigned to a first-line function, provided that it is sufficiently independent from commercial activities. In such cases, clarification would be preferrable as it would allow second-line functions, such as compliance and risk management, to effectively challenge outcomes and, where necessary, determine that such outcomes are inadequate.

Section 2 - Minimum group-wide requirements (article 3)

Q2. ***Do you find the minimum requirements listed in article 3 of the draft RTS related to internal policies, procedures and controls sufficient and clear? If not, could you please indicate which other requirements, or further clarification, you think should be added and/or revised? (5000 characters maximum)***

■ Structure or body at group level

Article 3(1)(a) of the draft RTS requires setting up, implementing, and maintaining "**an organisation and coordination structure or body at the group level with sufficient decision-making powers**". It further indicates that "**such structure or body shall have a proper allocation of functions, responsibilities and reporting lines and shall be clearly documented**".

The wording does not allow for a clear understanding of the precise nature and role of this structure or body. In particular, the inclusion of the term "body" exhibits inconsistencies and causes confusion. It would therefore be preferable to retain the wording used in the EBA Guidelines on the role of the AML/CFT Compliance Officer (para. 79, p. 31), namely "set up an organisational and operational coordination structure at group level".

Additionally, it is unclear whether the provision merely refers to existing functions or requires the establishment of a new function in addition to those already in place. Level 1 regulation does not provide for the creation of such a new function.

Hence, it would not be appropriate to introduce a new function, as this could create confusion and overlaps with existing functions and governance arrangements, which are already sufficient to manage and mitigate the risks of money laundering and terrorist financing, as well as to prevent the non-application and circumvention of targeted financial sanctions. As such, the text should be clearer and explicitly state that it is not a new function, but a way of organizing existing functions.

Furthermore, it is unclear what the obligation to "have a proper allocation of functions, responsibilities and reporting lines" means in practice. The provision does not provide sufficient details to enable entities to understand how this requirement should be implemented. Clarification is therefore needed as to AMLA's specific expectations in this regard.

■ **Requirements not adapted for a parent undertaking**

Article 3, points b and c, is not suitable for a parent undertaking when it comes:

- "to **address and implement any administrative act** issued by any relevant supervisor for the oversight and management of subsidiaries and branches of the group in Member States and in third countries"

or

- "to **identify and mitigate** conflicts of interests"

These matters relate to the internal organisation and governance of the group. As such, the corresponding tasks are not necessarily carried out by the parent undertaking but may instead be performed at the level of the relevant subsidiary or branch.

Drafting proposal:

"(b) to ensure that the management body and the control functions have the necessary information at group level to be able to carry out their functions under Regulation (EU) 2024/1624, Regulation (EU) 2023/1113 ~~***and to address and implement any administrative act issued by any relevant supervisor***~~ *for the oversight and management of subsidiaries and branches of the group in Member States and in third countries;"*

Section 3 - Information sharing (articles 4 - 9)

Q3. ***Do you foresee any operational or legal challenges including challenges related to legal privilege in implementing the provisions related to information sharing within entities of a group? If so, could you please indicate which ones? Do you foresee any operational or legal challenges in ensuring that information sharing from third countries and to third countries within entities of a group is adequate to regulatory standards in the Union? Do you have any suggestion that would make it better suited operationally or legally? (5000 characters maximum)***

We foresee both operational and legal challenges in implementing Article 4 of the draft RTS. First, Article 16(3) AMLR permits information sharing within a group only where such sharing is relevant for the purposes of customer due diligence and money laundering and terrorist financing risk management. Relevance is therefore the key condition established by the Level 1 text.

■ **Extensive list of information that can be shared and scope of information sharing**

Article 4 of the draft RTS is understood to require the systematic availability and sharing of extensive categories of information across the group. In particular, Article 4(2) provides that information sharing shall cover at least common customers, customers having the same beneficial owners, and customers belonging to the same group or structure. This wording is very broad and does not sufficiently reflect a risk-based approach.

It could be interpreted as requiring groups to systematically identify and monitor such relationships across entities and to establish extensive information-sharing infrastructures to support this objective. Such requirements cannot be derived from Article 16 AMLR, which requires information sharing where relevant in a particular case, but does not require the continuous group-wide availability of information or the systematic identification of common customers or beneficial owners.

Moreover, such an obligation would go beyond the legal basis in Article 16(4) AMLR and would also cut across existing sectoral constraints, including the separation of life and non-life insurance activities under Article 73 of the Solvency II Directive, while raising concerns under Article 16 CFR.

The extensive list of information set out in Article 4 should therefore not be understood as information that must be systematically collected and shared in all circumstances as not all categories of information will be relevant in every case. Information sharing should be limited to situations that are relevant and necessary for the purposes set out in Article 16(3) AMLR. Parent undertakings should be able to determine such situations, taking into account the group's size, complexity and risk profile.

The current approach also raises important operational and data protection concerns. Identifying common customers across a group is already challenging in practice, and this becomes even more complex when customers having the same beneficial owners or belonging to the same group or structure must be identified. The systematic sharing of all information listed in Article 4 would create significant operational, technical and financial burdens and may be difficult to reconcile with the principles of data minimisation and proportionality under data protection legislation.

In addition, Article 4(2) should not be interpreted as imposing specific organizational arrangements for ensuring traceability of information exchanges. In particular, it should not require the establishment of a specific register. The organizational arrangements should remain at the discretion of the groups.

Drafting proposals:

Article 4(1)

"1. When information is relevant for the purposes of the prevention of money laundering, terrorist financing and the non-implementation or evasion of targeted financial sanctions, information sharing within a group as referred to in provisions of Article 16(3) of Regulation (EU) 2024/1624 shall enable ~~***at least***~~ ***where applicable*** *the sharing of the following information: …"*

Article 4(2) second and third paragraph

"The parent undertaking in the Union shall define what situations are relevant for information sharing, considering their size, complexity and risks. ***In these situations,*** *information sharing within the group shall cover at least common customers, customers having the same beneficial owners, customers that belong to the same group or structure,* ***when such sharing is relevant and necessary for the purposes of customer due diligence and money laundering and terrorist financing risk management.***

Information-sharing policies, procedures and controls at group level shall ~~**include appropriate records of information exchanges to ensure traceability and accountability of such information as well as effective supervision**~~ **ensure traceability of information exchanges as well as effective supervision**."

- **Person who receives the information**

Finally, Article 4(3) should clarify that information is shared only with authorized persons, on a strict need-to-know basis, and in compliance with applicable data protection and confidentiality requirements. We therefore recommend clarifying that information sharing within a group should take place only where relevant and necessary for the purposes of customer due diligence and money laundering and terrorist financing risk management and should not be interpreted as requiring the systematic sharing or continuous group-wide availability of information irrespective of its relevance in the individual case.

Drafting proposal:

Article 4(3)

"3. To the extent that it is strictly necessary for the purposes of preventing money laundering, terrorist financing and the non-implementation or evasion of targeted financial sanctions, information shall be up-to-date, provided ***to an authorized person*** *in an adequate and comprehensible form, on a need-to know basis and be shared in line with the requirements stipulated by the applicable data protection legislation and respecting requirements on confidentiality."*

Section 5 - Criteria for identifying the parent undertaking in the Union in cases of two or more obliged entities whose head office is located outside of the Union (articles 17 - 20)

Q7. *Do you find the criteria provided in section 5 effective to identify the parent undertaking in the Union in cases where two or more obliged entities not in a parent-subsidiary relationship whose head office is located outside of the Union? Do you find the criterion of annual turnover applicable in your specific sector? (5000 characters maximum)*

The draft RTS takes a novel approach to the designation of an EU parent undertaking in cases where the head office is located outside of the Union. The industry is concerned that this approach will have significant implications and may prove challenging to implement in practice.

In particular, the requirement to identify an EU parent undertaking could result in a situation where a holding company in the EU is designated as the EU parent undertaking for AML/CFT purposes in respect of entities in which it has no legal participation in, does not have ownership, or control over. This proposed requirement cuts across established corporate structures and governance frameworks, under which responsibilities are generally aligned with ownership and control, and introduces a significant operational and governance burden for the designated EU parent undertaking.

In this context, we have reservations as to whether the criteria set out in Section 5 are effective in identifying the most appropriate EU parent undertaking.

advocates for policies and conditions that support the sector in delivering value to individuals, businesses, and the broader economy.