Public Consultation on draft Regulatory Technical Standards on criteria for business relationships, occasional transactions and linked transactions as well as lower thresholds under Article 19(9) of Regulation (EU) 2024/1624

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Question 1: Do you find the criteria listed in Article 2 of the draft RTS effective to identify business relationships properly?

Respondents generally welcome the objective of clarifying the distinction between business relationships and occasional transactions. However, several stakeholders consider that the criteria set out in Article 2 remain insufficiently precise and operational.

A number of respondents noted that the AMLR definition of "business relationship" is broader than under previous AMLDs, notably because it contemplates relationships existing in the absence of a written contract or where interactions subsequently acquire repetition or duration. Stakeholders considered that the RTS does not sufficiently operationalise these concepts.

Several respondents also expressed concerns regarding the non-exhaustive nature of the criteria and the wording of Recital 4, which may create legal uncertainty and divergent interpretations across Member States and sectors.

Respondents further noted that business relationships and occasional transactions are presented as mutually exclusive concepts, while the RTS does not provide a sufficiently detailed definition of "occasional transaction". Some stakeholders considered that interactions not qualifying as business relationships should not automatically be treated as occasional transactions.

Several respondents stressed that not every interaction with a third party should necessarily trigger AML/CFT obligations, particularly where there is no gatekeeper function, no handling of third-party funds or no relevant AML/CFT risk.

Stakeholders therefore suggested:

- introducing a more detailed definition of "occasional transaction";
- clarifying the notions of duration, repetition and continuity;
- clarifying the notion of "customer"; and
- providing additional guidance for intermediary-based models.

Respondents also suggested including more substantive indicators of a business relationship, such as recurring use of services, recurring advisory engagements, standing instructions, rolling credit facilities or recurring money flows.

Conversely, stakeholders considered that shared intermediaries, shared service providers, generic product similarities, temporary online portals or isolated services provided by separate business lines should not automatically indicate a business relationship in isolation.

Specific comments were also raised regarding online services. Respondents noted that temporary access to e-learning platforms, secure filing interfaces or document-exchange portals should not automatically indicate the existence of a business relationship solely because registration or ongoing access exists.

Additional comments were provided regarding intermediary-based fund distribution models. Respondents welcomed clarification confirming that where intermediaries subscribe in their own name on behalf of underlying investors, the relevant business relationship generally exists with the intermediary rather than with the underlying investor.

Some respondents also suggested further guidance regarding whether:

- the obliged entity derives economic benefit from the interaction;
- directly handles third-party funds;
- interacts directly with the relevant party; and
- the relevant service falls within the scope of Regulation (EU) 2024/1624.

Respondents finally highlighted the importance of clarifying the notions of "transaction", "customer" and "provision of services connected to a transaction".

Question 2: Do you find the criteria listed in Article 3 of the draft RTS effective to identify linked transactions properly?

Respondents expressed concerns regarding the proportionality, operational feasibility and interpretation of certain criteria set out in Article 3 for identifying linked transactions.

Several stakeholders noted that some criteria may be difficult to assess in practice because the relevant information is not always available without additional due diligence measures. Respondents therefore stressed that information relating to the origin, purpose or characteristics of transactions should not automatically constitute conclusive evidence that transactions are linked.

Stakeholders welcomed the wording in Article 3(1)(b) referring to "information available to the obliged entity" and suggested extending this wording consistently across Article 3.

Several respondents also highlighted that references to information available under different regulatory frameworks may create tensions with data protection and purpose limitation principles.

Stakeholders therefore suggested clarifying that assessments should be limited to information available within AML/CFT due diligence processes proportionate to the risk associated with the relationship.

Additional respondents stressed that linked transactions should only be identified where there is a demonstrable economic or operational connection, such as the same underlying assets, the same transaction structure or coordinated activity.

Conversely, stakeholders warned that family relationships, corporate group links or similar factual connections should not automatically result in transactions being treated as linked in the absence of coordination or operational interdependence.

Examples mentioned included:

- family members acting independently through separate structures;
- entities belonging to the same corporate group but acting independently; or
- independent directors acting for unrelated entities.

Additional comments were also made regarding intermediary-based fund distribution models. Respondents reiterated that where intermediaries subscribe in their own name on behalf of underlying investors, the relevant business relationship should generally exist with the intermediary rather than with the underlying investors.

Stakeholders therefore requested clarification that underlying investors' orders processed through intermediaries should not be treated as separate occasional transactions requiring independent CDD.

Several respondents also requested clarification regarding whether Article 3 criteria should be assessed cumulatively.

Finally, some stakeholders suggested clarifying explicitly that obliged entities should not be expected to carry out additional due diligence measures solely for the purpose of identifying linked transactions.

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?

Several respondents considered that additional operational criteria or clarifications would be useful to ensure the proper identification of business relationships.

Stakeholders generally supported the inclusion of indicators focused on the existence of a substantive and ongoing economic connection between the obliged entity and the relevant party.

Suggested indicators included:

- recurring use of products or services;
- recurring advisory engagements;
- recurring cash management services;
- standing instructions;
- rolling credit facilities;
- recurring money flows; or
- continuing obligations between the parties.

Some respondents also suggested clarifying whether:

- the obliged entity derives economic benefit from the interaction;
- directly handles third-party funds;

- interacts directly with the relevant party; or
- provides services falling within the scope of Regulation (EU) 2024/1624.

Additional comments were made regarding intermediary-based structures. Several stakeholders stressed the importance of clarifying that obliged entities are generally not considered to be in a business relationship with their customers' customers.

At the same time, respondents considered that shared intermediaries, shared service providers, generic product features or isolated services provided by separate departments should not automatically indicate a business relationship in the absence of continuity or coordination.

Some stakeholders also reiterated the importance of clarifying the notions of "customer", "transaction" and "provision of services connected to a transaction".

Question 4: 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?

No substantial additional standalone criteria were proposed by most respondents beyond the comments already provided under Question 2.

Some stakeholders nevertheless reiterated that linked transactions should generally only be identified where there is a demonstrable economic or operational connection between transactions.

Question 5: 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?

Several respondents expressed concerns regarding the proportionality of Article 2(3), notably the reference to at least three transactions within a rolling 12-month period for distinguishing business relationships from occasional transactions.

Stakeholders noted that this approach may significantly reduce the scope for occasional transactions, particularly in the absence of any cumulative monetary threshold, which could result in low-value and infrequent transactions being classified as business relationships solely on the basis of transaction count.

Several respondents therefore suggested clarifying whether the existing EUR 10,000 threshold applicable to occasional transactions could be considered as a mitigating or complementary factor.

Additional respondents also expressed concerns regarding criteria based on broadly defined relationships (family relationships, business partnerships, corporate group links) or shared infrastructure and stressed that such elements should not automatically support the identification of linked transactions or business relationships without evidence of coordination or a demonstrable economic link.

Question 6: Do you foresee any operational challenges in implementing this draft RTS?

Several respondents foresee operational challenges in implementing the RTS due to the breadth and ambiguity of certain concepts.

Stakeholders noted that the interaction between the broad definition of business relationship, the absence of sufficiently precise definitions of key concepts and the mutually exclusive approach between business relationships and occasional transactions may create legal uncertainty and overly expansive interpretations of AML/CFT obligations.

Examples mentioned included temporary online portals, temporary e-learning access, information platforms without account relationships and intermediary-based distribution structures.

Several stakeholders therefore encouraged clearer criteria to identify genuine business relationships and clarification regarding the scope of occasional transactions and related concepts.

Question 7: Do you see a need for the introduction of an additional lower threshold for a specific obliged entity, sector or transaction?

No substantial comments or specific proposals regarding additional lower thresholds were received from most respondents.

Additional observations: Do you have any additional comments relevant to the draft RTS that have not been covered above?

Several respondents reiterated concerns regarding the lack of sufficiently precise definitions of key concepts relevant to the scope of AML/CFT obligations, including "occasional transaction", "transaction", "customer" and "provision of services connected to a transaction".

Stakeholders noted that the absence of precise definitions may contribute to divergent interpretations across sectors and Member States.

Some respondents suggested clarifying that a "transaction" should involve an actual transfer or movement of funds, crypto-assets, securities or other value and that "provision of services connected to a transaction" should refer to services directly related to a transaction and falling within the scope of Regulation (EU) 2024/1624.