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DUFAS Response to the consultation of The Guidelines on Business-wide risk assessment under Article 10 (4)

To: AMLA
From: The Dutch Fund and Asset Management Association (DUFAS)
Date: 15 July 2026
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Question 1

Do you agree that the proposals set out in these draft GLs can be applied across all obliged entities and allow for an effective application of a risk-based and proportionate approach towards compliance with AML/CFT requirements?

We generally agree that the proposals set out in the draft Guidelines can be applied across different categories of obliged entities and support the effective application of a risk-based approach to AML/CFT compliance.

We particularly welcome the frequent references to the principle of proportionality throughout the draft Guidelines. Given the diversity of obliged entities in terms of size, complexity, business model and risk exposure, maintaining sufficient flexibility is essential to ensure that the BWRA remains a meaningful and effective risk management tool rather than a 'check the box' compliance exercise.

In this regard, we note that paragraph 5, which requires obliged entities (OEs) to ensure that the BWRA is documented, kept up to date, and reviewed regularly, is consistent with Article 10(2) AMLR. We understand this requirement to be applied in conjunction with Article 10(1) AMLR, which provides that the BWRA should be proportionate to the nature of the OE's business, including its risks and complexity. Accordingly, we understand that OEs may define and document a reasonable, risk-based approach to the frequency of BWRA updates and reviews, provided that this approach is appropriate to their specific risk profile and can be adequately justified.

The same proportionality principle should also apply to the assessment of ML/TF risks when launching new products, services, business practices or entering new customer segments or geographical areas, as required by Article 10(2) AMLR. We consider that existing internal governance processes, such as Product Approval and Review Processes (PARP), can appropriately support these assessments. Where such assessments identify a significant change in the ML/TF risk profile of the obliged entity, the BWRA should be updated accordingly. Conversely, where a new product, service or activity does not materially affect the overall risk profile, it should not automatically trigger an update of the BWRA.

Clarifying this interaction between pre-launch risk assessments and the obligation to update the BWRA would further support a proportionate and operationally workable application of Article 10(2) AMLR.

Additionally, we suggest revising paragraph 8(a) to clarify that the assessment of whether an obliged entity is non-complex should be made at entity level, including where the entity forms part of a group. This would allow entities that individually meet the relevant size and activity criteria to apply a less elaborate BWRA, while remaining appropriately aligned with the group's overall risk assessment. We also encourage AMLA to align paragraph 8(a) with the draft RTS under Article 40(2) AMLD, which frames the relevant criteria as alternative rather than cumulative.

We support the requirement in paragraph 11 that branches and subsidiaries apply a coordinated approach and common methodology while reflecting their specific risks. However, we recommend that the Guidelines allow parent undertakings to determine, on a risk-based basis, whether a branch requires a standalone BWRA or whether its risks can be incorporated into the BWRA of the parent entity, taking into account the branch's size, complexity and activities, including whether it serves clients directly or performs only supporting or back-office functions. This would better reflect the role of BWRAs within an integrated group-wide risk management framework and avoid unnecessary duplication where a standalone BWRA would add limited value.

Finally, we welcome the conclusion under Policy Issue 1 that obliged entities may determine, based on their own risk exposure, whether the risks of non-implementation and evasion of targeted financial sanctions (TFS) are assessed as part of the existing BWRA or through a separate but complementary assessment. However, this flexibility is not consistently reflected throughout the draft Guidelines, which repeatedly refer to "ML/TF/non-implementation and evasion of TFS risk" as if a single, integrated assessment were required. We therefore recommend aligning the drafting throughout the Guidelines with the conclusion reached under Policy Issue 1. In the same vein, we question the added value of Section 12, as the TFS-related requirements are already integrated throughout the draft Guidelines. We therefore recommend removing this section.

Question 2

Do you agree with the proposed minimum requirements for the content of the BWRA set out in these draft GLs?

We generally agree with the proposed minimum requirements for the content of the BWRA.

However, we would welcome clarification regarding the requirement that the BWRA should be “drawn up” by the compliance officer. In our view, this should be understood as meaning that the compliance officer is responsible for the BWRA, is appropriately involved in its preparation and retains ownership of the final assessment.

With regard to paragraph 23, the requirement that OEs should "at least refer to the data points listed in the RTS adopted pursuant to Article 40(2) of the AMLD" appears to sit in tension with paragraph 8, which recognises that the BWRA should be proportionate to the nature, size and complexity of the OE.

Accordingly, we recommend clarifying that:

- OEs should consider, rather than be expected to address, all data points listed in the RTS, applying them on a proportionate and risk-based basis.
- OEs should not be required to apply all data points uniformly across all legal entities where a documented, risk-based rationale supports a differentiated approach.
- OEs should retain flexibility to determine their own sub-risk categories, scoring methodology and use of relevant data, including leveraging outputs from other AML/CFT risk assessments, provided the BWRA remains comprehensive and appropriately documented.

With regard to paragraph 30, we would welcome clarification of the distinction between the residual risk associated with "each inherent risk" and the "overall residual risk exposure". In particular, we recommend clarifying that:

- "each inherent risk" refers to the inherent risks identified under section 2.4, taking into account the relevant risk factors, rather than requiring a separate residual risk assessment for each individual risk factor; and
- the "overall residual risk exposure" is the aggregate residual ML/TF/non-implementation risk after considering the effectiveness of the control framework.

Question 3

Do you agree with the proposals for additional sources of information to be taken into account when carrying out the BWRA set out in these draft GLs?

We support the use of a broad range of relevant information sources when carrying out the BWRA. The additional sources listed in the draft Guidelines can provide valuable input and help obliged entities obtain a more comprehensive understanding of their ML/TF risks.

However, we are concerned that the current drafting could be interpreted as creating an expectation that obliged entities should systematically consider all listed sources or explain why certain sources have not been used. Such an interpretation would not be consistent with the principle of proportionality that is otherwise reflected throughout the Guidelines.

Not all listed sources will be relevant for every obliged entity, business model or risk profile. We therefore recommend clarifying that the sources are intended as illustrative examples and potential sources of information rather than a mandatory checklist. The drafting should make clear that obliged entities may consider these sources where relevant and appropriate, taking into account their specific circumstances and risk exposure.

The use of more permissive language, such as "may consider" rather than "should make use of" (paragraph 20), would help reinforce the risk-based and proportionate nature of the BWRA and avoid creating unnecessary compliance burdens.

We also recommend amending paragraph 17 to avoid creating unnecessary administrative burdens. Rather than requiring OEs to document "the manner in which such sources were used", the Guidelines should require OEs to demonstrate, at an appropriate level, how the relevant sources have informed their assessment of inherent risks.

Finally, we would welcome clarification of the requirement to ensure that sources are "kept up-to-date". Many of the sources referred to in Article 10(1) AMLR consist of external publications or third-party materials that are outside the control of OEs. We therefore recommend clarifying that this requirement means OEs should rely on the latest available versions of such sources at the time of the assessment, or be able to justify reliance on the data used, rather than implying an obligation to actively maintain or update third-party sources

Question 4

Do you foresee any operational challenges in implementing these GLs?

One potential operational challenge relates to Guideline 8 and the reference to sectoral BWRAs prepared by supervisors.

While sectoral risk assessments can provide useful context, there is a risk that supervisors may, directly or indirectly, create expectations regarding the use of specific methodologies, templates or approaches. Over time, such expectations could evolve into de facto requirements or best practices at national level.

This could lead to divergent supervisory approaches across Member States, thereby undermining the objective of achieving harmonisation across the Union. Such divergence may be particularly challenging for cross-border active obliged entities, including asset managers, that seek to implement a consistent risk assessment framework across multiple jurisdictions.

We therefore encourage AMLA to actively promote supervisory convergence and to ensure that sectoral BWRAs and related guidance remain supportive tools rather than becoming prescribed methodologies or templates. AMLA should play an important role in preventing materially different supervisory interpretations of BWRA requirements from emerging across the Union.

Question 5

Within the boundaries of the mandate as defined in Article 10(4) AMLR, do you identify any need to introduce additional provisions? If so, provide concrete drafting proposals.

We do not consider additional provisions necessary.