# Insurance Europe's response to AMLA's consultation on the draft RTS on criteria for identifying business relationships, occasional and linked transactions and lower thresholds

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| Contact person: | Gladiola Lleshi | E-mail: | lleshi@insuranceeurope.eu |
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**Q1.** *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?*

The criterion set out in Article 2(1) appears to lack sufficient clarity. In particular, it is unclear whether the provision intends to establish that a business relationship exists solely on the basis of the use of online services that allow continuous access through registration.

In several markets, a business relationship, that is, the contractual relationship between the insurance undertaking and the customer (policyholder), is generally considered to exist only once the insurance contract has been formally concluded. In certain sales practices, a customer may pay a premium in advance before the contract is formally signed; however, such situations are typically treated as **occasional transactions** rather than as the establishment of a business relationship (see response to Question 3).

Insurance undertakings are particularly affected by the first paragraph of Article 2. The criterion referring to the *"use of online services through a registration providing ongoing access"* as an indicator of duration may require further clarification in the context of the insurance sector. In practice, a customer may create an online account or obtain access to digital services without having concluded an insurance contract. In such cases, the mere existence of an online account should not automatically be interpreted as evidence of a business relationship.

This issue may be particularly relevant in **group structures**, such as bancassurance groups. A customer may register on a digital platform operated by one entity within the group (for example, a bank), while subsequently concluding an insurance contract with a different entity within the same group (for example, an insurance undertaking). Under the current wording, this could potentially lead to an overly broad interpretation of the concept of a business relationship.

Insurance Europe aisbl
Rue du Champ de Mars 23, B-1050 Brussels
Tel: +32 2 894 30 00
E-mail : info@insuranceeurope.eu
www.insuranceeurope.eu

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For these reasons, it would be helpful to clarify that **the mere registration for online access, in itself, should not be considered sufficient to establish the existence of a business relationship**.

**Q2.** *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?*

The insurance industry is particularly affected by Article 3(1)(a) namely the payment of premiums by the customer-policyholder himself, whether a natural or legal person. While the criteria set out in Article 3 of the draft RTS provide a structured basis for identifying linked transactions, they are not fully effective when applied to the insurance sector, particularly with regard to Article 3(1)(a). In practice, premium payments are typically made by the same policyholder on a recurring basis under a single contractual arrangement, which may lead to the systematic classification of routine, low-risk transactions as "linked", thereby generating false positives.

Furthermore, several concepts found in Article 3(1)(b) risk raising practical and operational challenges in their implementation.

- First, the notion of a **"business partner"** may prove difficult for obliged entities to apply in practice. Identifying whether a customer qualifies as a business partner is not always straightforward, particularly in the absence of clear, objective indicators or readily available information.
- Similarly, the concept of customers **"operating in concert"** raises concerns. In many cases, obliged entities may not have access to sufficient information to determine whether customers are acting in coordination. Without clearer guidance on how this criterion should be interpreted and operationalised, its practical application may remain uncertain.
- The reference to the use of the **"same digital infrastructure"** also lacks clarity. It is unclear whether this concept is intended to cover elements such as shared IP addresses, device identifiers, software systems, or other technical components. More specific wording would be beneficial to ensure a consistent and harmonised understanding across obliged entities.
- In addition, the criterion relating to the use of **common intermediaries** appears particularly broad. In practice, obliged entities often have limited visibility over the full transaction chain, which makes it challenging to identify whether intermediaries are shared between customers.
- Finally, the reference to transactions sharing **"other relevant characteristics"** is inherently vague. Determining what constitutes such shared characteristics, and how obliged entities are expected to detect them, may prove very difficult in practice without further clarification.

**Q3.** *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)?*

In several markets, a business relationship is established only upon the formal conclusion of a contract between the insurance undertaking and the customer (policyholder). Any premium payment made by the customer prior to the formal execution of the contract, while it may occur in certain sales practices, does not establish a business relationship and is instead classified as an occasional transaction (see answer to question 1).

**Q4.** *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)?*

See answer to question 2.

**Q5.** *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?*

Recital 2 of the draft RTS introduces a new obligation for obliged entities to have internal policies and procedures in place to identify what constitutes a business relationship, an occasional transaction, and a linked transaction, in accordance with the customer due diligence requirements of Chapter III of the AMLR. Those procedures should be proportionate "*to the nature of the business – including its risks and complexity – and the size of the obliged entity*".

Insurance undertakings are already subject to existing regulatory requirements to maintain and implement policies and procedures that enable the identification and classification of business relationships, occasional transactions, and linked transactions, in accordance with the customer due diligence requirements set out in Chapter III of the AMLR.

**Q6.** *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?*

Recital 4 of the draft RTS emphasises that 'merely meeting one of the criteria set out in this Regulation does not automatically mean that the definition of a business relationship or a related transaction in Regulation (EU) 2024/1624 is satisfied. The criteria set out in this Regulation are neither conditional nor exhaustive in relation to the definitions in Regulation (EU) 2024/1624. Consequently, a business relationship or related transactions may exist even in the absence of one of the criteria specified in this Regulation".

This recital considerably limits the scope of the draft RTS, as it indicates that the presence or absence of the RTS criteria does not mean that a business relationship or a related transaction exists or does not exist. This recital calls into question the legal certainty associated with the use of the RTS criteria. Hence, Insurance Europe proposes removing this recital.
Recital 12 of the draft RTS attempts to define family members as including "*for instance, spouses, parents and children. Other family ties can also be relevant, provided the obliged entity has information on the existence of those ties*". However, family members are already defined in Article 2(35) AMLR as:

"*'family member' means:*

*(a) a spouse, or a person in a registered partnership or civil union or in a similar arrangement;*
*(b) a child and a spouse of, or a person in a registered partnership or civil union or in a similar arrangement with, that child;*
*(c) a parent;*
(d) *for the functions referred to in point (34)(a)(i) and equivalent functions at Union level or in a third country, a sibling*"

The definition provided in the draft RTS is broader than the one in the AMLR. Level 2 measures must be in line with Level 1 measures. Having both definitions would lead to legal uncertainty and operational challenges for obliged entities when it comes to the implementation of the AMLR and the RTS.

**Q7.** *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?*

Insurance Europe does not deem it necessary to establish limits other than those provided for in article 19, par. 1, lett. b), AMLR: "b) when they carry out an occasional transaction whose value is at least EUR 10,000, or its equivalent in national currency, whether executed in a single transaction or through linked transactions, or at a lower value established pursuant to paragraph 9;".

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