DeutscherAnwaltVerein

Position Paper

of the German Bar Association prepared by the Working Group on Anti-Money Laundering and the Forum for Business Law Firms

on the AMLA Consultation on the draft RTS on Customer Due Diligence

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Members of the Working Group on Anti-Money laundering

- Rechtsanwalt Prof. Dr. Thomas Gasteyer, Frankfurt/Main
- Rechtsanwältin und Notarin Susanne Haferkamp, Duisburg
- Rechtsanwältin Julia Heise, LL.M., Frankfurt/Main
- Rechtsanwältin Ute Lorenzen, Frankfurt/Main
- Rechtsanwältin Sonka Mehner, Schwelm
- Rechtsanwalt Dr. Rainer Spatscheck, München
- Rechtsanwalt Prof. Dr. Dirk Uwer, Düsseldorf
- Rechtsanwältin und Notarin Dörte Zimmermann, LL.M, Berlin

In charge in the DAV

- Rechtsanwältin Tanja Brexl, Director, Berlin
- Rechtsanwältin Dorothee Wildt, LL.M., Deputy Head DAV Brussels

Designated Rapporteurs in the Compliance Working Group in the DAV Forum for Business Law Firms

- Rechtsanwältin Dr. Barbara Deilmann, Düsseldorf (Co-chair)
- Rechtsanwalt Dr. Alexander Schwarz, Düsseldorf (Co-chair)
- Rechtsanwältin Dr. Swantje Jacklofsky, Düsseldorf
- Rechtsanwältin Lisa Ottinger, Düsseldorf
- Rechtsanwältin Alina Wiegand, Düsseldorf

Deutscher Anwaltverein
Littenstraße 11, 10179 Berlin
Tel.: +49 30 726152-0
Fax: +49 30 726152-190
E-Mail: dav@anwaltverein.de

Büro Brüssel
Rue Joseph II 40, Boîte 7B
1000 Brüssel, Belgien
Tel.: +32 2 28028-12
Fax: +32 2 28028-13
E-Mail: bruessel@eu.anwaltverein.de
EU-Transparency Register ID number:
87980341522-66

www.anwaltverein.de

In charge in the DAV

- Rechtsanwältin Christine Martin, Director, Berlin

The German Bar Association (Deutscher Anwaltverein – DAV) is the professional body comprising about 60.000 German lawyers and lawyer-notaries in 253 local bar associations in Germany and abroad. Being politically independent the DAV represents and promotes the professional and economic interests of the German legal profession on German, European and international level. The DAV is registered in the Lobby Registry for the representation of special interests vis-à-vis the German Bundestag and the Federal Government under register number R000952.

I. Introduction

The comments submitted with respect to the articles of the draft Regulatory Technical Standards ("RTS") on Customer Due Diligence under Article 28 (1) of Regulation (EU) 2024/1624 (AMLR) identified below are informed by a fundamental and overarching concern: there is an urgent need to meaningfully circumscribe the obligations imposed on legal professionals under the proposed framework. In the articles addressed herein, the RTS repeatedly resort to replacing indeterminate legal concepts with equally — if not more — indeterminate terminology, thereby failing to provide the requisite legal certainty and offering no discernible limitation of the duties imposed.

This approach gives rise to a particularly serious risk: if the obligations incumbent upon lawyers continue to expand in an open-ended manner by way of interpretation of the codification and not by its amendment in a formal, democratic process, the risk of non-compliance with rather unclear rules will cause lawyers to shy away from representing or advising clients. This is particularly relevant for consumers who are not used and, in a position, to contribute to the identification and related processes as smoothly as the rules imply.

It must further be emphasised that lawyers do not dispose of the same investigative means and capacities as financial institutions or public authorities. Lawyers are neither empowered nor equipped to conduct the type of investigative fact-finding that the RTS appear to presuppose. Any obligations derived from the proposed standards must

therefore be calibrated accordingly and must remain within the bounds of what is professionally and practically feasible for legal practitioners.

I. Verification of Identity Documents, Articles 6, 7 RTS

Articles 6 and 7 RTS impose detailed verification obligations regarding the authenticity and integrity of identity documents, presupposing a level of technical expertise and verification capacity comparable to that of financial institutions. In practice, independent legal professionals do not have the means, tools or institutional role to conduct forensic or technical authenticity checks of identity documents, nor to reliably assess sophisticated forgery risks. On the other hand, the client relationship, by its nature, usually offers other means of ascertaining the identity and reliability of a client.

Recommendation:
Clarify that, for lawyers, “reasonable steps” to verify identity documents are limited to plausibility checks based on face validity and consistency, and do not require technical, forensic or investigative verification measures.
We recommend inserting the following proposed wording as a new Article 8.

> *“For independent legal professionals, reasonable steps to verify the authenticity and integrity of identity documents, whether in a face to face or a non-face-to-face situation, shall be limited to plausibility checks based on apparent validity, internal consistency with other information obtained in connection with the mandate.*
> *Independent legal professionals are not required to carry out technical, forensic, or investigative verification measures or to use specialised authentication tools.”*

II. Foreign Language Documents, Article 6 Sec. 4 RTS

Article 6 Sec. 4 RTS requires obliged entities to ensure that they understand the content of foreign-language documents used for identification and verification purposes, without clarifying the acceptable level or method of translation. This creates legal uncertainty and practical burdens for lawyers involved in international matters, where certified translations may be disproportionate to the ML/TF risk and significantly delay access to legal advice.

Recommendation: Clarify that the use of machine translations or non-certified translations is permissible where sufficient to understand the content for ML/TF purposes, unless inaccuracies could materially affect the risk assessment.
We recommend inserting the following wording as a new second sentence in the existing text of Article 6 Sec. 4.

> "*The obligation to ensure understanding of documents drafted in a foreign language shall be satisfied where the independent legal professional obtains a translation sufficient to understand the content for the purposes of ML/TF risk assessment.*
> *Machine translations or non-certified translations may be used where appropriate, taking into account the risk level and the nature of the document."*

III. Risk of role confusion: lawyers as investigators, Articles 11, 12 RTS

Provisions requiring a "*comprehensive understanding*" (Article 11 Sec. 1 RTS) of ownership and control structures and an assessment of their "*economic, legal or other rationale"* (Article 11 Sec. 4 (b) RTS, Article 12 Sec. 1 (d)) risk transforming lawyers into de facto investigators or auditors of their own clients.
This risks undermining:

- the lawyer's role as a legal adviser;
- the boundary between AML obligations and substantive legal analysis.

Recommendation: Clarify that lawyers are not required to independently verify or substantively assess the economic legitimacy of client structures beyond identifying ML/TF risk indicators reasonably apparent in the course of the mandate and relevant within its scope.
We recommend inserting the following proposed wording as a new Article 11 Sec. 5 and a new Article 12 Sec. 4, respectively.

> *"For independent legal professionals, the obligation to obtain a comprehensive understanding of the ownership and control structure shall be limited to identifying and understanding such elements of the structure that are reasonably*

apparent in the course of the legal mandate and relevant for the assessment of ML or TF risk, taking into account the scope of the mandate.
Legal professionals shall not be required to independently investigate, verify or substantively assess the economic rationale, commercial legitimacy or legal effectiveness of ownership or control structures beyond what is necessary to identify ML/TF risk indicators."

IV. Beneficial Ownership and Senior Managing Officials, Articles 11, 12, 13 RTS

1. Identification of Beneficial Owner

Senior Managing Officials (SMOs) may only be identified in place of Bos, if the obliged entity has been unable to identify BOs having "exhausted all possible means of identification" or where "there are doubts that the persons identified are the BOs" (Article 22 Sec. 2 AMLR, Recital 10 RTS). It is not exactly clear, when these conditions are met.

Recommendation: Clarification that lawyers are only required to use reasonable means for identification that are consistent with the client's instructions.
We recommend inserting this proposed wording as a new Article 13.

"For independent legal professionals, the obligation to identify the beneficial owner shall be satisfied where reasonable and proportionate means of identification have been applied, taking into account the scope of the mandate, the ML/TF risk and the information available within the professional relationship. Independent legal professionals are not required to pursue identification measures that go beyond their professional role or the instructions of the client."

2. Senior Managing Officials (SMOs)

While the option to rely on the registered office address instead of private residential addresses (Article 13 (a) RTS) is welcome, the obligation to identify and verify SMOs

remains difficult in practice where such individuals are not clients and have no direct interaction with the law firm and they are regularly not required to be officially registered.

Recommendation: Allow reliance on information provided by the client in low- and standard-risk cases, subject to escalation only where inconsistencies arise.
We recommend inserting the following proposed wording as a new Article 13 Sec. 2.

> *"Where SMOs are identified in accordance with Article 22 Sec. 2 Regulation (EU) 2024/1624, Article 13 RTS, independent legal professionals may, in low-risk and standard-risk cases, rely on information provided by the client, including corporate documentation or written representations, unless inconsistencies, implausibilities or risk indicators are identified."*

V. Identification of the purpose and intended nature, Article 18 RTS

Article 18 RTS requires obliged entities, as part of understanding the purpose and intended nature of the business relationship, to obtain information on the source of funds, including detailed categories such as employment income, business revenue, investments, inheritance or legal settlements. While appropriate in a banking or transactional context, this provision presupposes access to financial information and transactional insight that lawyers typically do not have, particularly where legal services do not involve the handling of client funds or the execution of financial transactions.
In practice, lawyers are often engaged for advisory, drafting or litigation purposes and have neither visibility over nor control of the client's financial flows. Expecting lawyers to meaningfully determine or assess the origin of funds risks imposing bank-like compliance duties that are incompatible with the nature of legal services and may undermine access to legal advice, especially at early stages of a mandate.

Recommendation: Clarify that, for independent legal professionals, Article 18 should be limited to obtaining a general, declaratory understanding of the legal and economic purpose of the mandate. Information on the source of funds should not be required or should be limited to high-level client explanations, unless the legal service involves the

management of client funds or a higher AML/TF risk has been identified under enhanced due diligence requirements.
We recommend inserting the following proposed wording as a new Article 18 Sec. 2.

> *"For independent legal professionals, the obligation to obtain information on the source of funds shall be limited to a general, declaratory understanding of the legal and economic purpose of the mandate.*
> *Detailed information on the origin of funds shall only be required where the legal services involve the management of client funds or enhanced due diligence measures apply due to higher ML/TF risk."*

VI. Problems related to pooled accounts and professional secrecy, Article 22 RTS

1. Pooled Accounts

Pooled accounts are indispensable for lawyers' daily operations. However, Article 22(a) RTS would effectively impose identification and verification obligations even in cases outside the scope of the AMLR or below the threshold of Article 19(1), making the use of pooled accounts extremely difficult.

Typical use cases illustrate their necessity: in debt collection, debtors pay into the lawyer's pooled account, allowing efficient allocation to principal, interest, and costs, especially for instalments. In damages claims, insurers transfer compensation to the lawyer, who settles third-party claims and forwards the balance to the client. In civil litigation, settlements or cost reimbursements are paid into pooled accounts and distributed accordingly, which is particularly practical in multi-party cases. Similarly, taxes or fees may be paid into the lawyer's account and then transferred to authorities while ensuring proper segregation and traceability.

These activities generally fall outside AML/CFT rules under Article 3(3)(b) AMLR. Accordingly, lawyers are not required to carry out full CDD/KYC measures. However, Article 22(a) RTS would extend such obligations to situations not covered by the AMLR or below the EUR 10,000 threshold of Article 19(1).

In practice, this would be disproportionate and difficult to implement, as it would require full identification procedures for nearly all clients. It also lacks a clear rationale, since funds are often paid by third parties rather than clients. Mandatory disclosure may conflict with professional confidentiality, while direct payment alternatives are not viable because clients cannot manage the legal and administrative handling of such transactions.

Pooled accounts are not unique to lawyers; similar structures exist in other sectors such as property management or schools. In addition, the thresholds set out in Article 19 AMLR should be respected when applying Article 22 RTS.

Recommendation:

> Article 22
> [..]
> (a) the credit institution is satisfied that ***(i) either the funds are not related to activities that do not fall within the scope of the obligations of Regulation (EU) 2024/1624, in particular its Article 3 and Article 19 (ii) or that*** the account holder will provide the information and documents required pursuant to Article 20(1)(h) of Regulation (EU) 2024/1624 in relation to clients for whom it administers their funds, immediately after such request has been made by the credit institution;

2. Professional secrecy

Article 22 raises serious concerns regarding professional secrecy, which is protected under Article 8 of the European Convention on Human Rights and Article 7 of the EU Charter. According to established case law of the ECtHR and the CJEU[1], this protection extends beyond litigation to legal advice in general. As a rule, lawyers may not disclose the identity of their clients.

[1] Cf. ECtHR, 6 December 2012, Michaud v. France; ECtHR, 9 April 2019, Altay v. Turkey; CJEU, 8 December 2022, C-694/20; CJEU, 29 July 2024, C-623/22; CJEU, 26 September 2024, C-432/23.

A general obligation to provide client information to credit institutions upon request would therefore constitute a disproportionate interference. It risks undermining trust in legal confidentiality, deterring individuals from seeking legal advice or communicating openly, and thereby affecting the right to a fair trial (Article 47 of the Charter).

Moreover, it interferes with the independence of the legal profession by effectively assigning supervisory functions to financial institutions. Where oversight lies with self-regulatory bodies, banks should not assess lawyers' compliance with due diligence obligations.

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