



# Public consultation RTS Art 53 (10) AMLD

Fields marked with \* are mandatory.

Public Consultation on the draft Regulatory Technical Standards supplementing Article 53(10) of Directive (EU) 2024/1640 on classifying the level of gravity of breaches, setting the level of pecuniary sanctions or applying administrative measures, and the methodology for the imposition of periodic penalty payments.

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## Objective of the consultation

This draft RTS under Art. 53(10) of Directive (EU) 2024/1640 specifies indicators to classify the level of gravity of breaches, establish criteria to be taken into account when setting the level of pecuniary sanctions or applying administrative measures, and develop a methodology for the imposition of periodic penalty payments, including their frequency. It aims to ensure that the same breach is assessed in the same way by all supervisors in all Member States and that the resulting enforcement measures are proportionate, effective and dissuasive.

AML Authority is conducting its own public consultation to ensure that the non-financial sectors' comments are fully captured, and if necessary and duly justified by objective criteria, reflected in the final draft RTS.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- are supported by a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- provide alternative regulatory options for consideration by AML Authority.

Such comments should be sent by **09 March 2026, 23:59 (CET)**.

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The protection of individuals with regard to the processing of personal data by the AMLA is based on Regulation (EU) 2018/1725. Further information on the processing of the personal data is available in the Data Protection Notice.

All legal details can be found in our [Specific Privacy Statement \(SPS\)](#).

### **How to provide feedback**

All the fields marked (\*) are mandatory. In case a question is not relevant for you, please answer with "NA".

We are using a survey format to help us analyse feedback effectively and efficiently. For this reason, document uploads are not enabled for this exercise, and we kindly invite you to share your comments directly within the survey.

Please note that, by submitting your contribution, you acknowledge that it will be published on AMLA's website. Contributions will always be published. The name of organisations submitting their contribution will also always be published. The name of the natural person providing a contribution will be published unless they object to said publication. Please refrain from inserting further personal information beyond of what we ask from you. In particular, refrain providing confidential information or special categories of personal data (that is "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation). Your email address will never be published.

Before publication, the AMLA staff performs a limited screening of all contributions provided for the sole purpose of blocking unauthorised submissions. After this, the replies are made available to the public directly on the AMLA's public consultations' page.

Please note that your contribution may be subject to a request for access to documents under Regulation 2018 /1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Should you encounter issues with submitting your responses, please contact us by email at public.consultations@amla.europa.eu no later than 48 hours before the deadline of the consultation period.

### **Language disclaimer**

*AMLA welcomes submissions in all official EU languages. You can change the displayed language of this public consultation using the language selector in the top right corner of the EU Survey platform. Please note that all language versions other than English have been produced using machine translation and may contain inaccuracies. When in doubt, please refer to the English version.*

## Your details

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\* 1 This contribution is made by:

An organisation

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\* 3 Country / Geographical area

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\* 5 First name

Iryna

\* 6 Surname

de Smedt

\* 7 Organisation name

Accountancy Europe

8 Sector of activity

- Obligated entity in the non-financial sectors
- Obligated entity in the financial sector
- Industry association representing non-financial sectors obliged entities
- Industry association representing financial sector obliged entities
- Civil society organisation/non-governmental organisation
- Other

11 Non-financial sectors

- Auditors, external accountants, tax advisors, other independent professionals that provide assistance or advice
  - on tax matters
- Notaries, lawyers, other independent legal professionals
- Trust or company service providers
- Estate agents, other real estate professionals
- Trading in precious metals and stones
- Trading in high-value goods
- Gambling services

- Crowdfunding service providers and crowdfunding intermediaries
- Trading, intermediary trading or storage in cultural goods
- Credit intermediaries for mortgage and consumer credits (other than credit and financial institutions)
- Investment migration operators
- Non-financial mixed activity holding companies
- Football agents
- Football clubs

\* 12 Publication of your name and surname:

- I agree to the publication of my name and surname (note that your email address will never be published).
- Contribution to be published without my name and surname (note that your email address will never be published).

## Public Consultation Questions

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1 Do you agree that the proposed list of indicators to classify the level of gravity of breaches set out in Article 1 of the proposed draft RTS apply to the non-financial sector? If you do not agree, please explain your reasoning.

### Assessment of indicators

We do not agree that the proposed indicators apply to the non-financial sector. We set out below which indicators require adaptation for the accountancy sector and include related recommendations.

Indicator (c) – Conduct of the natural or legal person: The term ‘conduct’ is overly broad, potentially encompassing negligence, imprudence, bad faith, obstruction, or lack of cooperation. A clear distinction between professional error and intentional wrongdoing i.e. fraud is needed.

Indicator (d) – Impact on the obliged entity: Requires multi-dimensional assessments, including group-level impact, cross-border activities, number of clients affected, impact on products or services, and AML/CFT effectiveness. For small accountancy or tax practices, these criteria are often meaningless:

- In a small practice, any breach may technically affect “100% of clients,” inflating perceived severity.
- Professionals typically operate individually or in simple structures without complex products, services, or cross-border operations. Applying these criteria mechanically could lead to formalistic assessments that do not reflect actual risk or operational realities.

Indicator (e) – Exposure of the obliged entity or group: Assumes structured risk assessment methods that are generally unavailable in small professional settings. Exposure is often linked to individual engagements, making aggregate assessments difficult.

Indicator (g) – Facilitation of criminal activities: Broadly covers all offences in Article 2(1) of Directive 2018/1673. Vigilance failures in our sector may indirectly facilitate tax fraud or misuse of corporate assets. Without safeguards, most procedural breaches could be classified as facilitating criminal activity, triggering category 4.

Indicator (h) – Structural failure: Requires clarification; it is unclear whether isolated procedural shortcomings are included or only persistent organisational deficiencies.

Indicators (i) and (j) – Impact on financial viability and financial stability: Largely irrelevant for non-financial professionals, as breaches rarely affect financial strength or systemic stability.

Indicator (k) – Systemic nature of the breach: Further clarification is needed; it is unclear what constitutes a systematic breach in small practices.

### Classification of infringements

Indicator (f) is essential for assessing breach severity in the accountancy sector but is not included in the criteria for categories 1-4. Most AML breaches in accountancy involve:

- Internal procedure deficiencies

- Shortcomings in CDD
- Incomplete or missing documentation

Excluding indicator (f) risks structural inconsistencies and artificial misclassification, either overestimating or underestimating severity.

Undefined indicators and sectoral relevance

Indicators such as “significant impact,” “significant duration,” “significant repetition,” and “systematic failure” are undefined. In small practices, repeated procedural shortcomings (e.g., incomplete CDD) could be classified as category 3 (“serious, repeated or systematic”). Without clearer definitions, this risks:

- Disproportionate sanctions
- Mandatory publication obligations
- Reputational harm

Recommendations for proportionate application

Introduce sector-specific definitions and thresholds: Calibrate “significant” impact for small practices; define “duration” and “repetition”; distinguish “structural failure” from lack of formalisation.

- Neutralise irrelevant indicators:
  - o Impact on financial stability (j)
  - o Group-level impact (d)(i)
  - o Impact on financial markets (k)
- Distinguish technical and substantive breaches: Ensure minor procedural shortcomings are not classified as serious.
- Embed proportionality in classification: Include a recital clarifying that indicators must consider the size, nature, and complexity of the entity in line with EU AML/CFT principles.
- Clarify cumulative assessment of minor breaches: Paragraph 8 allows combining category 1-2 breaches to classify as 3-4. Minor breaches are minimal, non-repetitive, non-systematic, and do not facilitate crime; these elements should not change solely due to combination. Recommendation: delete paragraph 8 or provide clear guidance to ensure consistent, predictable enforcement.

2 Do you agree that the proposed list of criteria to be taken into account when setting up the level of pecuniary sanctions set out in Article 4 of the proposed draft RTS apply to non-financial sector? If you do not agree, please explain your reasoning.

Criteria to be considered when determining the level of pecuniary sanctions

Articles 4 and 5 of the draft RTS align with the logic of the EU AML Package, including:

- The distinction between aggravating and mitigating circumstances
- Consideration of the conduct of the person responsible for the breach
- Attention to cooperation with the supervisory authority
- Assessment of the financial capacity of the person or entity responsible
- Linkage with the classification of breaches into categories 1-4

However, we do not agree that the proposed criteria in Article 4 of the draft RTS for determining pecuniary sanctions are fully applicable to the non-financial sector. Several aspects, in particular, raise concerns for non-financial professions such as accountancy practices:

Criteria designed for financial markets

Some criteria, such as “losses to third parties” or “loss or risk of loss caused to customers or other market users,” are framed with financial markets in mind. Concepts such as competitive advantage, market users, or broader impacts on competition are generally not relevant to accountancy practices. Applying these criteria risks misaligning the assessment of severity and sanctions with the operational realities of non-financial entities.

Proportionality for small and medium-sized practices

Pecuniary sanctions must be proportionate to the size, business model and financial capacity of the obliged entity, in line with the proportionality principle of the AML framework. Several criteria — for example:

(d) the benefit derived from the breach insofar as it can be determined and whether the natural person or legal person held responsible has benefited or could benefit either financially or competitively from the breach or avoid any loss;

(e) the losses to third parties caused by the breach, insofar as they can be determined, and the loss or risk of loss caused to customers or other market users;

— may be difficult to apply meaningfully in the context of small practices, where such benefits or losses are typically minimal or indirect. Clear guidance on assessing financial capacity would help ensure sanctions are proportionate and operationally realistic.

Treatment of minor breaches and corrective actions

When determining the level of pecuniary sanctions, it is essential to ensure compliance with the principles of proportionality and fairness, particularly where breaches arise from mere negligence or formal or technical errors. In such cases, greater emphasis should be placed on corrective measures and cooperative compliance mechanisms rather than financial penalties.

For breaches classified under categories 1 and 2, it should be clarified that pecuniary sanctions are, in principle, not imposed. Where the obliged entity has taken timely and effective corrective action, and the deficiency has been fully remedied, the procedure should be formally closed with definitive effect.

Furthermore, a breach that has been corrected and resolved should not subsequently be treated as a “previous breach” for the purposes of Article 4(3)(f). Counting minor and remedied breaches as aggravating circumstances would undermine incentives for prompt remediation and voluntary compliance, and would risk disproportionate escalation in future cases.

Conclusion: While the criteria in Articles 4 and 5 provide a useful framework, their practical application to non-financial professions requires clarification, proportionality adjustments, and guidance tailored to the size, structure, and operational context of smaller obliged entities.

3 Do you agree that the applicability of financial strength of the legal or natural person held responsible (Article 4(5) and Article 4(6) of the proposed draft RTS) apply to the non-financial sector? If you do not agree, please explain your reasoning.

#### Applicability of financial strength to the non-financial sector

We do not agree that the proposed approach to assessing the financial strength of the legal or natural person held responsible (Articles 4(5) and 4(6) of the draft RTS) is appropriately suited to the non-financial sector. While the underlying principle of proportionality is relevant, the current formulation raises substantial practical challenges for non-financial entities, particularly small accountancy and tax advisory practices.

##### 1. Legal persons (Article 4(5))

The size, structure, and type of activity of an obliged entity must be taken into account. A large bank with substantial regulatory capital and liquidity differs fundamentally from a sole-practising accountant or small partnership.

Within the non-financial sector, significant variation exists even between similar professions. For example, turnover and profitability differ between accounting and audit services. A firm where accounting represents 90% of turnover could be disproportionately penalised for breaches in audit activities if financial capacity is applied mechanically.

Indicators such as regulatory capital and liquidity, relevant in the financial sector, are not applicable to accountancy practices, which are often partnerships. Further guidance is necessary to clarify the parameters for assessing financial capacity in small, single-practitioner businesses.

For non-financial entities, turnover is a more meaningful measure for calibrating pecuniary sanctions.

##### 2. Natural persons (Article 4(6))

Penalties imposed on individuals must respect the principle of proportionality: sanctions should not exceed what is strictly necessary to achieve deterrence and compliance.

Considering financial capacity for natural persons in small practices is challenging. Income from unrelated activities should not automatically increase penalties, as this may lead to disproportionate outcomes.

Non-financial sanctions remain an important tool for enforcing compliance while limiting undue impact on personal assets. Possible measures include disciplinary sanctions (up to delicensing), fixed fines, and orders to comply.

Conclusion:

The concept of financial capacity is only partially applicable to the non-financial sector. For small and medium-sized accountancy practices, relevant adjustments are needed:

- Use turnover rather than regulatory capital or liquidity to gauge capacity.
- Ensure proportionality between the nature of the breach and the financial circumstances of the entity or individual.
- Allow non-financial sanctions to complement pecuniary measures where appropriate.

This approach would ensure sanctions remain effective, proportionate, and tailored to the realities of non-financial obliged entities.

4 Do you agree with the proposed criteria to be taken into account by a non-financial sector supervisor when applying the administrative measures listed under Article 5 of the proposed draft RTS? If you do not agree, please explain your reasoning.

While we support the objective of establishing clear criteria to guide the application of administrative measures, we have substantive concerns regarding the practical implementation of certain measures in the non-financial sector, particularly the suspension or withdrawal of an authorisation.

In the accountancy and audit profession, authorisations are often intrinsically linked to company law and professional regulatory frameworks. For example, the withdrawal of an audit registration is subject to specific statutory requirements and procedural safeguards under company law. The interaction between AML/CFT supervisory measures and these separate legal regimes may create legal and operational challenges.

In particular, an automatic or rigid application of suspension or withdrawal measures in response to AML/CFT breaches could conflict with legal provisions governing professional authorisations. To ensure legal certainty and avoid unintended conflicts between regulatory frameworks, greater flexibility should be expressly reflected in the RTS. In this context, it is necessary to clarify that such measures are to be applied within the limits of the legal framework governing the relevant authorisation.

Recommendation

We therefore recommend amending the relevant provision as follows:

“When considering whether to withdraw or suspend an authorisation as referred to in Article 56(2), point (f), of Directive (EU) 2024/1640, supervisors shall take into account, to the extent possible in law pertaining to such authorisation, each of the following criteria, to the extent that they apply.”

Such wording would preserve the effectiveness of AML/CFT supervision while recognising the legal constraints applicable to professional authorisations in the non-financial sector, and would ensure that administrative measures remain proportionate, legally sound and operationally feasible.

5 Do you agree that the proposed methodology for imposing periodic penalty payments as listed under Section 3 of the proposed draft RTS applies to the non-financial sector? If you do not agree, please explain your reasoning.

We do not agree that the proposed methodology for imposing periodic penalty payments under Section 3 of the draft RTS is sufficiently suited to the non-financial sector. The proposed approach raises significant concerns for non-financial obliged entities, particularly small and medium-sized accountancy practices:

1. Lack of operational clarity

- It is unclear how periodic penalty payments would operate in practice, including their calculation, accrual (daily or periodic), capping, and the point at which a breach is considered remedied.
- In jurisdictions unfamiliar with such mechanisms, this may lead to inconsistent understanding and application.
- Illustrative examples would help ensure consistent interpretation across sectors and Member States.

2. Relevance of financial metrics

- References to financial capacity, financial viability, or turnover as a basis for penalties are often not meaningful for small professional practices, particularly sole practitioners.
- Where a natural person provides multiple services, only revenue related to AML-regulated activities should be considered. Total income or turnover from unrelated activities should not affect penalty calculation.
- Guidance is needed on distinguishing professional revenue from other income.

3. Proportionality and timing

- Daily or ongoing penalties should only be applied after a reasonable grace period, allowing the obliged entity time to remediate the breach.
- Minor breaches arising from procedural errors or negligence should prioritise corrective measures over financial penalties.

4. Practical implementation challenges

- Assessing group-level impacts or cross-border turnover is often impossible or irrelevant for small practices.
- Supervisors require flexibility to determine when a breach has ended without imposing disproportionate administrative burdens.
- Existing legal frameworks in some Member States (e.g., France) do not currently allow periodic penalty payments, and amendments would be needed for implementation.

5. Recommendations

- Clarify calculation, accrual, capping, and remediation triggers for periodic payments.
- Limit financial metrics to professional revenue only, and provide guidance for small and single-practitioner entities.
- Introduce a grace period before penalties accrue to ensure fairness and proportionality.
- Consider alternative enforcement mechanisms, such as suspension or compliance orders, for breaches in small non-financial practices.

Conclusion: While the concept of periodic penalty payments aligns with AML/CFT objectives, its current drafting is unclear, operationally challenging, and poorly suited to non-financial entities. Greater clarity, sector-specific tailoring, and proportionality safeguards are essential for effective and fair application.

## Contact

[Contact Form](#)

