

ALFI RESPONSE

TO THE AMLA CONSULTATION PAPER ON PROPOSED
REGULATORY TECHNICAL STANDARDS ON PECUNIARY
SANCTIONS, ADMINISTRATIVE MEASURES AND PERIODIC
PENALTY PAYMENTS



association of the
luxembourg fund industry

ALFI response to AMLA Consultation – RTS on pecuniary sanctions, administrative measures and periodic penalty payments

- *Question 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.*

While not speaking for the non-financial sector, ALFI welcomes the insertion of the word “material” in Article 1(h) of the AMLA RTS. However, as stated in our response to the EBA consultation, we consider that additional indicators could usefully be taken into account by supervisors when assessing breach severity, irrespective of sector:

- a) whether the breach is due to a failure by the obliged entity itself, or by a third party or delegate of the obliged entity;
- b) whether the obliged entity took appropriate and reasonable steps to define mitigation measures and controls;
- c) whether the breach constitutes a breach of applicable AML/CFT laws and regulations, as opposed to a breach of the obliged entity’s own internal AML/CFT policies and procedures which did not result in a breach of applicable laws or regulations.

These additional indicators are sector-neutral and would enhance the proportionality of the assessment by distinguishing between different degrees of culpability and different types of non-compliance. The distinction under point (c) is particularly relevant for both financial and non-financial obliged entities, as internal policies may in certain cases exceed legal requirements.

- *Question 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.*

While not speaking for the non-financial sector, we wish, however, to reiterate two cross-sectoral observations submitted to the EBA.

First, with respect to Article 4(2), the level of pecuniary sanctions should decrease in equivalent amount to take into account the amounts already invested by the obliged entity to remedy the identified and sanctioned breach. This principle is relevant to non-financial obliged entities, many

of which are smaller in size and may have devoted proportionally significant resources to remediation.

Second, with respect to Article 4(4), pecuniary sanctions on natural persons who are not themselves obliged entities should be limited to cases where it may be demonstrated that the individual conduct of such natural persons had a direct impact on the identified and sanctioned breach.

We would also like to underline that further requirements lack relevance for the financial industry, in particular for investment funds.

- *Question 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.*

While not speaking for the non-financial sector, ALFI is concerned about the broader implications of the personal liability framework for natural persons across all sectors. In particular, ALFI is concerned about the implication that compliance professionals could be held personally responsible for breaches occurring in the organisation. While the role of compliance functions is undeniably critical, it is important to recognise that responsibility for regulatory breaches does not rest solely with compliance officers. Compliance staff often serve in advisory roles without final decision-making power. Holding second-line functions personally liable – without executive powers – might be disproportionate.

Staff in the second line of defence provide oversight and advice. They do not have executive power over business lines, nor are they the final decision-makers. Holding them personally liable for breaches caused by failures in the first line or senior management is disproportionate. Moreover, there is a risk that institutions could shift blame onto individual compliance officers as a defensive tactic, especially in high-profile cases. Hence the proposed regime might undermine the “three lines of defence model” as internationally recognised and endorsed by the EBA (paragraph 31 EBA GL/2022/05). The second line (compliance, risk) is designed to monitor and advise. Assigning liability to these functions distorts governance principles and weakens accountability in the first line and senior management.

In line with the principles of company law, particularly the principle of collegial responsibility of the management body, accountability for decisions and oversight should be shared among the members of the management body collectively. Under the principles of civil law, and in line with the concept of collegial responsibility of the management body, liability for institutional failings must rest with the collective governing body, not with individual staff members acting within their defined responsibilities and without decision-making authority. It follows that the liability should not rest with individual staff members.

Furthermore, compliance professionals already operate under significant pressure and face substantial personal liability under existing AML frameworks. In several EU jurisdictions, they are subject to administrative, civil, and even criminal sanctions in the event of serious failings – despite often lacking the authority to enforce decisions or allocate resources. The threat of further personal penalties risks undermining the attractiveness of these critical roles and may deter experienced professionals from taking them on.

The attribution of individual liability to compliance professionals for failures that may originate from broader organisational or strategic decisions risks misrepresenting the nature of their role. Furthermore, assigning personal liability to individuals who lack control over final decisions is inappropriate and potentially harmful. The threat of such individual sanctions, in a context where decision-making is collective, could undermine the attractiveness of these positions and weaken the overall effectiveness of the compliance function.

The increased personal risk associated with compliance roles could lead to talent drain, as experienced professionals either leave the sector or avoid such roles altogether. This can lead to a shortage of qualified staff across the EU. As a consequence, this will most likely lead to a weakening of the compliance function and increasing systemic risk rather than reducing it.

Imposing personal liability on compliance staff risks blurring the lines between supervisory oversight and operational management. It would represent a shift from regulating institutions to regulating individuals within specific functions, which might exceed the intended scope of the regulatory framework. A strong compliance culture is better supported by clear institutional accountability, adequate resourcing, and effective governance structures – not by imposing personal penalties on individual staff.

In any case, should AMLA maintain the current approach regarding individual sanctions, we are of the view that individual liability should be limited to cases of gross negligence in a cross-border context, and the financial strength of the natural person, including where applicable the annual income (fixed and variable remuneration), should not be taken into account to set the level of pecuniary sanctions. AML/CFT supervisors do not in fact have the authority to request and obtain such type of personal information.

- *Question 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 not speaking for the non-financial sector, ALFI considers that the administrative measures set out in Article 5, given their severity, should be reserved for breaches with the highest level of gravity, i.e. breaches classified as category four (while the current draft refers to category three or four). This applies in particular to the following measures under Article 56(2) of Directive (EU) 2024/1640:

- a) restricting or limiting the business, operations or network of institutions comprising the obliged entity, or requiring the divestment of activities (Article 56(2)(e));
- b) withdrawal or suspension of an authorisation (Article 56(2)(f));
- c) requiring changes in governance structure (Article 56(2)(g)).

Alternatively, these measures could be extended to category three breaches in the event of a failure by the relevant obliged entity to remedy the breach within a predefined timeframe.

- *Question 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.*

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