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Position Paper

2026 March

Draft RTS on Pecuniary Sanctions, Administrative Measures and Periodic Penalty Payments under Article 53(10) of Directive (EU) 2024/1640

Answers to Consultation Questions

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?

N/A

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?

Article 4(3) considers the level of cooperation of the person held responsible with the supervisor (or the lack thereof) as well as whether this person disclosed the breach, or otherwise failed to engage in self-incriminating behaviour, as an aggravating factor, leading to an increase in pecuniary sanctions.

This provision could easily lead to conflicts with both Article 6(1), (2) of the ECHR and Articles 47 and 48 of the EU Charter of Fundamental Rights, which enshrine the privilege against self-incrimination. A person must not be sanctioned for exercising

their right to remain silent rather than incriminating themselves. If a responsible (natural) person legitimately invokes the nemo tenetur principle, this must not lead to an increase in a pecuniary sanction to the detriment of their employer or the obliged entity. Such a situation would create a serios conflict between the two parties, incentivising the legal entity to exert substantial pressure on the natural person. This outcome would disproportionately restrict the fundamental rights guaranteed by Article 6 of the ECHR and Articles 47 and 48 of the Charter of Fundamental Rights.

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?

Taking into account the entire financial strength of legal persons or their total annual turnover may lead to disproportionate results when determining pecuniary sanctions for the non-financial sector. In the non-financial sector, it is very common for only a small part of an obliged entity's business operations or activities to be subject to AML obligations (under both the current national AML regulations and the EU AML Regulation). The same applies if a parent company falls within the scope of the AML Regulation solely because its subsidiary is an obliged entity (Article 3(2), Article 2(6) (a), (12), (13) and(42) of Regulation (EU) 24/1624).

The level of sanctions should therefore be limited to the value of sales or turnover generated by the activities subject to the AML Regulation.

Regarding natural persons, the RTS do not specify whether their annual income refers to net or gross income or whether other methods of calculation may apply.

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?

N/A

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?

Please refer to the response to Question 3. The considerations set out above are equally relevant in the context of periodic penalty payments.

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