CCBE response to public consultation by Anti-Money Laundering Authority (AMLA)

on

Draft Regulatory Technical Standards (the "Draft RTS") on pecuniary sanctions, administrative measures and periodic penalty payments under Article 53(10) of Directive (EU) 2024/1640 ("AMLD 6")[1]

1. General comments

By way of introduction, the CCBE wishes to invite AMLA to make sure its contact points **effectively and meaningfully consult with relevant bars, acting as national supervisors** (as the case may be, in accordance with Article 37, 3. of AMLD 6) for the non-financial sector.

As a preliminary remark, the CCBE understands that, based on the broad definition of "supervisor" deriving from Article 2,1, 45) of Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("AMLR"), and the explanation provided as background information throughout the consultation paper, the Draft RTS are now designed to apply to both the financial and non-financial sectors (and, relatedly, notes that the question of the current consultation relates exclusively to the applicability of the Draft RTS to the non-financial sector).

First, the CCBE draws attention to the fact that the CCBE understood that these standards were initially drafted for the financial sector and, based on the current Draft RTS, now understands that the Draft RTS are actually meant to cover the non-financial sector as well (including lawyers). As previously noted by the CCBE through its answer dated 6 June 2025 (the "CCBE First Answer")[2] to the EBA consultation paper which addressed, amongst others, the initial version of the Draft RTS[3], the CCBE would like to recall that there is a significant difference in the nature, financial and material means, and the size of the obliged entities (structures) in these sectors. For instance, the scale of automation is much bigger among banks than in law firms, especially in law firms which are SMEs and sole practitioners, which form a significant part of EU law firms. As the Draft RTS has been designed predominantly with financial institutions in mind, it does not always sufficiently addresses aspects that are essential for ensuring a harmonised interpretation of the AMLR in relation to lawyers and other legal professionals – it being noted that this

[1] Consultation on the draft RTS on pecuniary sanctions, administrative measures and periodic penalty payments: https://www.amla.europa.eu/policy/public-consultations/consultation-draft-rts-pecuniary-sanctions-administrative-measures-and-periodic-penalty-payments_en

[2] CCBE response to the EBA consultation on proposed regulatory technical standards in the context of advice on new AML Authority mandates, 06/05/2025), available here: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ANTI_MONEY_LAUNDERING/AML_Position_papers/EN_AML_20250606_CCBE-response-to-the-EBA-consultation-on-proposed-regulatory-technical-standards-in-the-context-of-advice-on-new-AML-Authority-mandates.pdf

[3] EBA consultation paper dated 6 March 2025 on Proposed Regulatory Technical Standards in the context of EBA's response to the European Commission's Call for advice on new AMLA mandates (EBA/CP/2025/04)

general comment applies not only for the Draft RTS, but also for any other RTS to be issued in respect of the non-financial sector. In this context, **the CCBE would advocate for the development of specific RTS, specifically tailored to the legal profession**, within the boundaries of the EU legislative framework which will replace the suggested financial sector-focused provisions. These clarifications would be vital for the consistent application of AML rules across Member States. Ambiguities have led to legal uncertainty under the previous AML Directives, and without further guidance or clarification, such uncertainty is likely to persist under the new framework, thereby undermining the goal of harmonised implementation across the EU.

Second, several provisions in the Draft RTS (as noted in the answers below) **appear to impose more stringent and prescriptive obligations than the corresponding provisions in the AMLD 6**. We strongly recommend that the Draft RTS be revised to reflect more accurately the spirit and wording of the AMLD 6, particularly by strictly limiting the Draft RTS to the scope of the mandate given to AMLA under Article 53(10) of AMLD 6.

Third, and as also noted in the CCBE First Answer, it is important to stress that one of the elements that distinguishes **the legal sector is indeed that it is covered by the AML rules only when performing particular activities**. The CCBE also wishes to underline the importance of legal professional privilege (“**LPP**”)/professional secrecy (“**PS**”), which must be fully preserved when assessing the inherent and residual risk of legal professionals. Supervisory activities must not result in obliged entities being required to disclose information protected by LPP/PS/professional secrecy which is a fundamental right. Furthermore, we stress that any future interpretative guidance or implementation instruments prepared by AMLA should be developed in close cooperation with the legal profession and its self-regulatory bodies. This is essential to ensure that supervisory expectations remain aligned with the ethical and legal obligations of lawyers under national and EU law, as well as with the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the Court of Justice of the European Union (CJEU). Lastly, we recommend that the implementation of the Draft RTS be accompanied by a **structured dialogue between AMLA, national non-financial supervisors and (legal) professional associations**, to ensure a proportionate and practical roll-out.

2. Answers to the questions raised in the AMLA Consultation Paper

2.1. 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.

Through the answer to this question, the CCBE would like to reiterate certain comments raised through the CCBE First Answer which have not been taken into account in the Draft RTS.

As a preliminary comment, the CCBE observes that most of the provisions of the Draft RTS only refer to the "supervisor". In view of the possibility granted by Article 37, par.3 of AMLD 6, the AMLA should check that the term "supervisor" includes self-regulatory bodies, as the latter have, in certain Member States, the power to impose pecuniary sanctions and administrative measures, accompanied by periodic penalty payments where appropriate.

The AMLA should further check whether the Draft RTS sufficiently takes into account the possibility provided to Member States by Article 53, par. 3 of AMLD 6:

"*3. By way of derogation from paragraph 2, where the legal system of a Member State does not provide for administrative sanctions,* ***this Article may be applied in such a manner that the pecuniary sanction is initiated by the supervisor and imposed by a judicial authority****, while ensuring that those legal remedies are effective and have an equivalent effect to the pecuniary sanctions imposed by supervisors. In any event, the pecuniary sanctions imposed shall be effective, proportionate and dissuasive.*"

Articles 2 and 3 of the Draft RTS, which derive from Article 1, cannot be applied to the legal sector. These provisions aim at regulating procedures and create classes of breaches.

The CCBE believes that, more fundamentally, **this lacks legal basis** in the AMLD 6 and cannot be regulated by RTS, for the following reasons.

(i) Classification of breaches into four classes (as provided by Article 2 of the Draft RTS) with consequences attached is against the provisions of Article 53(10), para.1, (a) of the AMLD 6, which only prescribes that the RTS shall set out "*indicators to classify the level of gravity of breaches*". On the contrary, pursuant to same Article 53(10), the involvement of AMLA shall be limited to assisting in defining indicators enabling the national supervisors to assess the level of seriousness of breaches;

(ii) Relatedly, the approach currently upheld in the Draft RTS actually seriously limits the possibility for the national supervisors to apply their own supervisory judgement in the determination of the gravity of a given breach, while the importance of such notion of "*supervisory judgement*" is expressly enshrined in the recitals of the Draft RTS[4] and recalled throughout the AMLA Consultation Paper[5].

[4] See Draft RTS, Recital (2) (emphasis added): "*When determining the level of gravity of breaches by classifying them into the four categories, and when setting the level of pecuniary sanctions and applying administrative measures, supervisors should take into account in their overall assessment all applicable indicators and criteria.* ***Supervisors should use their supervisory judgement to analyse whether and to what extent these indicators and criteria are met.***"

[5] See e.g. Section 2, p.4; Section 3.3, p.7 ("*At the same time, the proposed draft RTS recognises that, for enforcement to be effective, supervisors must consider the context in which the breach has occurred and therefore, apply supervisory judgement. A specific Recital stresses the importance of this step.*"); Section 5.1.D, p.25 ("*By incorporating risk-based, proportionate provisions and by leaving room for supervisory judgement, the draft RTS are*

The classification and attribution of consequences is too rigid and alien to the European tradition of sanctions which are imposed after an individual appreciation of facts and circumstances. From the point of view of legal professional supervision systems, a rigid, predefined classification of breaches — especially one tied to automated consequences — is not suitable for a profession where case-by-case assessment, ethical obligations, and LPP/PS are central to practice. Also, it could have as practical consequence that obliged entities could be less diligent when defining and implementing measures aiming at mitigating the risk of being exposed to breaches which are deemed less serious as per their "category".

Many AML/CFT-related compliance issues in the legal sector arise from complex interactions between the obligation to prevent ML/TF and the duty to respect confidentiality, client rights, and due process. Applying a uniform four-tier system of gravity could result in sanctioning conduct that is not objectively serious, but merely reflects a good-faith error in the interpretation of overlapping obligations and the other way around. Such an approach risks undermining both the proportionality and legitimacy of enforcement measures.

In that sense, the Draft RTS goes also beyond what is the competence of the Union and the procedures should be left to national law.

The search for clarity and certainty is understandable, but if the draft provisions were to be applied to the legal sector, the effect would be the opposite - it would be ticking the box to set sanctions without really looking in the case. In case where judges are competent to impose sanctions, binding them by RTS would not be correct.

(iii) Furthermore, the Draft RTS appears to overlook the reality that in many Member States, legal professionals are supervised by self-regulatory bodies, which have not only robust disciplinary mandates, but also obligations to safeguard constitutional principles, such as access to justice and LPP/PS. Those bodies operate under national legal traditions that require flexibility and deliberation — qualities that a strict, EU-wide classification model may undermine.

Also, if the system has to be risk-based it means one needs to **tailor sanctions to specific circumstances of the case**. The proposed classification system goes against this approach.

With respect to the indicators to classify the gravity of breaches provided under Article 1 of the Draft RTS, they do not allow for just results for all cases because there could be other factors that could shed light on them. A proper assessment of the gravity of breaches needs to take into account all elements of a case and therefore allow a certain discretion in order to reflect the circumstances of a case in a fair manner.

When deciding on the gravity of a breach, it should be allowed to take into account (and leave to the discretion of the relevant supervisor exercising its supervisory judgment on a case by case basis) other

designed to be flexible enough to accommodate differences in risk profiles, operational needs, and business models of a wide range of obliged entities, both in the financial and non-financial sector.").

contributing factors which may not be listed such as for example (and without limitation) repetition of the breach , author of the breach (obliged entity itself vs. delegate implementing AML/CFT tasks on its behalf), appropriateness of the steps taken to mitigate the risk of the breach occurring. The purpose is to account more precisely for the factual circumstances of a given breach.

2.2. 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.

Same as for the answer to question 1 above, through the answer to this question, the CCBE would like to reiterate certain comments raised through the CCBE First Answer.

While, in principle, the list of criteria to be taken into account when setting up the level of pecuniary sanctions set out in Article 4 of the Draft RTS may indeed be relevant to the non-financial sector (subject to a case-by-case assessment of relevant breaches), we would like to raise the following comments:

(i) the list of criteria allowing for the decrease of pecuniary sanctions (Article 4(2) of the Draft RTS) could be expanded, for example in case if the breach was committed by error, including error on the applicable laws and regulations in a complex regulatory environment;

(ii) 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 / sanctioned breach;

(iii) with respect to Article 4(4), pecuniary sanctions on natural persons which are not themselves obliged entities (e.g. board members, compliance officers… of an obliged entity) 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 / sanctioned breach;

(iv) with respect to Articles 4(2)(a) and 4(3)(a), it shall be noted that, for certain non-financial professions (such as lawyers), the level of cooperation with the supervisor may be (validly) limited or hindered by the strict LPP / PS obligations to which they may be subject. Hence, the level of cooperation with supervisors might not be always relevant for such professions.

Proportionality benchmark must reflect actual AML-regulated exposure (not firm-wide or individual earning metrics). For legal professionals and law firms whose AML obligations arise only when performing defined AML-regulated activities any benchmark used under the Draft RTS to calibrate the level of a pecuniary sanction should be confined to the obliged entity's actual AML-regulated activity and exposure to ML/TF risk in the matter concerned. Accordingly, AMLA should ensure that sanction calibration is not driven (expressly or implicitly) by metrics that do not isolate AML-regulated activity, including firm-wide turnover/revenue/overall economic size, or by metrics linked to the earning capacity / annual income of an individual. Such metrics risk producing distorted outcomes for mixed-service professional firms and for

individuals whose income is not a reliable indicator of the scale, seriousness, or impact of an AML-regulated breach.

2.3. 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.

Articles 4(5) and 4(6) of the Draft RTS operate a distinction between legal persons, on the one hand, and natural persons, on the other hand, held responsible for the breach. In particular, Article 4(6) makes a link between the financial strength of the natural person held responsible, and the annual income received from the obliged entity or group of which the obliged entity is part. Relevance of such link may be challenged, in particular in case of lawyers performing their activities under an independent status, while belonging to a structured law firm. In addition, relevance of income at group level (where relevant), is questionable, as group entities, on an individual basis, do not necessarily benefit from income perceived, on an aggregate basis, at group level.

As a general point of principle, any reference to “financial strength” used to set the level of a pecuniary sanction should serve the objective of ensuring proportionality by reference to the obliged entity’s actual AML-regulated activity and exposure to ML/TF risk. For legal professionals, that necessarily requires a careful distinction between AML-regulated activities and the broader set of legal services that fall outside the AML regime.

In that context, there is a concern that approaches that would directly or indirectly use firm-wide turnover/revenue or the earning capacity / annual income of an individual as a metric benchmark for sanction calibration. Where such metrics do not correspond to AML-regulated activity, they risk overstating or understating seriousness and producing outcomes that are not genuinely risk-based or proportionate.

2.4. 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.

Same as for the answer to question 1 above, through the answer to this question, the CCBE would like to reiterate certain comments raised through the CCBE First Answer.

Article 5 of the Draft RTS does not provide distinct criteria for non-financial sector supervisors when applying administrative measures.

For all these measures, given their impact, they should be reserved for the breaches with the highest level of gravity, i.e. breaches with gravity classified as category four (while current draft refers to category three or four). Alternatively, they could be extended to category three breaches e.g. only in case of failure by

relevant obliged entity to remedy within a predefined timeframe. It is important to underline that, for non-financial sector professionals such as legal professionals, administrative measures may prove, in certain circumstances, to be more efficient and have a more deterrent effect than pecuniary sanctions.

Indeed, for instance:

(i) issuing an order to implement specific corrective measures (Art. 56 par. 2 (b), AMLD 6) together with periodic penalty payments (Art.57 AMLD 6) may result more efficient and compelling than a mere pecuniary sanction;

(ii) restricting or limiting the business (Art.56 par. 2., (e) AMLD 6) or requiring changes in the governance structure (Art.56 par.2 (g) AMLD 6) may respectively result in financial loss or compliance costs, and/or reputational impact exceeding the consequences that a mere pecuniary sanction could have on a lawyer / law firm.

Accordingly, administrative measures should not be treated under the Draft RTS as a lower alternative to pecuniary sanctions, but instead, subject to the judgement of relevant supervisor / self-regulatory body, as equivalent to pecuniary sanctions, depending on the author of the identified breach.

The indicators and criteria provided in the Draft RTS generally do not seem completely irrelevant to the legal sector, but as previously commented, and given the relevance of the administrative measures to the non-financial sector professionals (as emphasized hereabove), it is important that these criteria/indicators remain examples to be taken into account by the supervisor, with the supervisor retaining flexibility to apply its own judgement when deciding on a sanction. Based on its supervisory judgement, and regardless of the criteria provided by the Draft RTS, the supervisor should, ultimately, retain discretion in the determination of the administrative measure (or pecuniary sanction) deemed more appropriate in a given circumstance, notably taking into account the seriousness of the identified breach, and the typology of the professional concerned (for instance, as noted above, boutique law firm, vs. law firm pertaining to a network), in order to impose the sanction or measure considered by the supervisor, on a case by-case basis, as the most effective, proportionate and dissuasive - such overarching principle being set out under Article 53 par. 2. of AMLD 6.

There is also a question of attribution of powers and competencies. It can be unfit for purpose because depending on the national system, supervisors might not have enforcement functions (e.g. certain Bar cannot impose fines or take administrative measures, but independent disciplinary courts do). In that sense, the Draft RTS does not fit with the reality and rules regarding supervisory powers in the legal sector and thus may be of limited relevance for the Bars acting as supervisors.

Lastly, as commented under Section 2.2(iv) above, for lawyers, the level of cooperation may be limited or hindered by the strict LPP / PS obligations to which they may be subject. Hence, considering the lack of cooperation with supervisors when considering the need for a change in the governance structure (Article 5(4)(c) of the Draft RTS) cannot be relevant in their respect.

2.5. 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.

Same as for the answer to question 1 above, through the answer to this question, the CCBE would like to reiterate certain comments raised through the CCBE First Answer.

The principle of imposing periodic penalty payments to compel an obliged entity to comply with an administrative measure pronounced against it, is relevant to non-financial sector obliged entities (such as legal professionals. More specifically, decision of imposing periodic penalty payments is rarely taken in isolation and is more likely to be included in a decision to impose pecuniary sanctions or administrative measures. However, the manner in which Article 3 is drafted appears to suggest a procedure and decision-making process that is distinct from the decision-making process relating to an administrative measure. In practice, this is not the case.

However, the proposed methodology for periodic penalty payments should not apply to the non-financial sector.

In addition, Article 53 (10) of AMLD 6 is not the appropriate legal basis for procedural aspects. Such aspects shall indeed be governed by national law only. Articles 7, 8 and 10 of the Draft RTS (to the extent purporting to set forth procedural aspects of periodic penalty payments) must therefore be deleted. In any case, Articles 7 and 8 of the Draft RTS should rather refer to the complete body of defendant rights of due process, instead of focusing exclusively on the right to be heard in relation to periodic penalty payments.