



## Administrative Penalty Publication Notice

This notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C of the Prevention of Money Laundering Act (PMLA) and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

The notice provides select information from the FIAU's decision imposing the respective administrative measure, and is not a reproduction of the actual decision.

### **DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

24 July 2020

### **SUBJECT PERSON:**

Dr Thomas Vella

### **RELEVANT ACTIVITY CARRIED OUT:**

Notary public

### **SUPERVISORY ACTION:**

On-site Compliance review carried out in 2018.

### **DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:**

Administrative Penalty in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

### **LEGAL PROVISIONS BREACHED:**

- Findings in relation to the implementation of a business risk assessment in terms of Regulation 5(1) of the PMLFTR;
- Findings in relation to the carrying out of jurisdiction risk assessments as per Section 8.1 of the Implementing Procedures Part I, and of such assessments being documented as required by Regulation 5(3);
- Findings in relation to the implementation of customer risk assessment measures in terms of Regulation 5(5)(a)(ii) of the PMLFTR, and Section 4.1 of the Implementing Procedures Part I;<sup>1</sup>
- Findings in relation to the requirement to perform the required identification and verification measures in terms of Regulation 7(1)(a) and 7 (1)(b) of the PMLFTR and Section 3.1.1.2 and Section 3.1.2 of the Implementing Procedures Part I<sup>2</sup>;
- Findings in relation to certification of verification documentation in terms of Section 3.1.2 of the Implementing Procedures Part I;

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<sup>1</sup> This obligation is now being expanded upon in Section 3.5 of the Implementing Procedures Part I, issued in July 2019.

<sup>2</sup> This obligation is now being expanded upon in Section 4.3 of the Implementing Procedures Part I, issued in July 2019.

- Findings in relation to the requirement to determine the PEP (political exposed person) status of customers and beneficial owners where applicable, in terms of Regulation 11(5) of the PMLFTR and Section 3.5.3.1 of the Implementing Procedures Part I;
- Findings in relation to Recordkeeping in terms of Regulation 13(1) of the PMLFTR and chapter 5 of the Implementing Procedures Part I;
- Findings in relation to implementing EDD measures as required under Section 3.5 of the Implementing Procedures Part I;

#### **REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:**

The compliance review revealed that the Notary did not have a documented business risk assessment (BRA) in place at the time of the examination. The Notary also failed to consider the risks posed by jurisdictions to which he was exposed to through his operations and failed to carry out the necessary jurisdiction risk assessment.

From the compliance review carried out it transpired that the Notary serviced customers without carrying out a customer risk assessment. As a result, the Notary was servicing customers without understanding the risks posed by same and without therefore determining the mitigating measures necessary in view of any risks identified.

The Notary has also failed on several occasions to identify and verify his customers and beneficial owners where applicable. This finding was exacerbated further since at times not even the deed of sale would be found on file, which document would shed light into the customers that are involved in the transfer of immovable property by providing some identification details. For the few verification documents that the Notary had obtained, it was observed that the Notary failed to certify said documentation.

From the compliance review it was also determined that the Notary had failed to have in place measures to determine whether customers and beneficial owners were applicable, were PEPs. As a result, the Notary was servicing customer without understanding whether they are politically exposed and therefore without understanding the degree of risks posed and the mitigating measures necessary.

The Committee also determined that the Notary has failed to retain documentation necessary to prove compliance with his record keeping obligations. In fact the Notary failed to have any recordkeeping measures in place, so much so he was not even aware as to the place where the documentation is found.

Another failure identified was in relation to the Notary's obligation to carry out enhanced due diligence measures for a particular file which included a high risk situation. The Notary had proceeded with the transfer of immovable property without carrying out the necessary controls in view of the heightened risk.

#### **ADMINISTRATIVE MEASURES TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE (CMC):**

The serious and systemic issues identified, as has been explained above, necessitated the imposition of an administrative penalty that is appropriate and just to the seriousness of the case. For this reason an administrative penalty of sixty thousand, five hundred and eighteen euro (€60, 518) has been imposed on the Notary.

In determining the appropriate administrative measure to impose the CMC took into consideration the shortcomings identified during the compliance review, as well as the nature and size of the Notary's operations. The overall impact of the AML/CFT shortcomings identified vis-à-vis the Notary's own operations were also taken into account. The fact that the breaches identified are

serious and systemic was also taken into consideration by the Committee in determining the administrative penalty imposed.

The Committee has also considered how during the carrying out of the compliance review, the Notary showed a complete disinterest as to what are his AML/CFT obligations and in how he could align his operations with the said obligations, and was not eager to understand the enhancements he needs to carry out in order to align his operations to be in line with the AML/CFT legislative provisions. In fact, the Committee observed that no remedial measures to tackle and remedy the findings outlined in the compliance review report were carried out or planned to be carried out by the Notary.

The Committee further took into consideration that Dr Thomas Vella no longer practices as a Notary public. In view of the circumstance, the Committee also determined that there is no need for a Directive to be served on the Notary in order to request the carrying out of a remediation exercise to remediate the deficiencies identified as abovementioned. However, the Committee has reserved the right to reconsider its position should the Notary resume the carrying out of his profession as a Notary Public and re-start offering services that fall within the definition of relevant activity, in terms of Regulation 2 of the PMFLTR.

31 July 2020

