



## Publication of AML/CFT Administrative Penalties and Measures

### Policies and Procedures

Revised on the 7<sup>th</sup> February 2020

#### Introduction & scope

1. The Prevention of Money Laundering Act (“PMLA”) requires the Financial Intelligence Analysis Unit (“FIAU”) to publish the administrative penalties and measures it imposes on subject persons in exercise of its powers under the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”).
2. The said requirement was introduced by Act III of 2015, through the introduction of Article 13A to the PMLA, albeit limited to the publication of administrative penalties amounting to or exceeding one thousand five hundred Euro (€1,500). Publication was to take place in line with policies and procedures to be adopted by the FIAU’s Board of Governors, with the said policies and procedures having been adopted at the 136<sup>th</sup> meeting of the Board of Governors held on Wednesday, 27 May 2015.
3. Act XXVIII of 2017, amending the PMLA, revised the provisions regulating the publication of administrative penalties through the introduction of Article 13C which replaced the previous Article 13A introduced in 2015. In terms of the said Article 13C, the FIAU was bound to publish the administrative penalties it imposes in terms of the PMLFTR when such penalties became final and due, and where the amount of the penalty exceeded ten thousand Euros (€10,000). The Board of Governors of the FIAU revised the policies and procedures on the publication of administrative sanctions to reflect the changes introduced by Act XXVIII of 2017, which revised policies and procedures were approved by the Board on 22 December 2017.
4. Act I of 2020, amending the PMLA, further revised Article 13C of the PMLA. In terms of the revised Article 13C, the FIAU is to publish all administrative penalties and other measures it imposes in terms of the PMLFTR as provided for in the said provision and in accordance with policies and procedures established by the Board of Governors of the FIAU.
5. The Board of Governors of the FIAU, approved and endorsed this document which constitutes a revised and updated version of the policies and procedures to be followed by the FIAU when publishing administrative penalties and any other administrative measure imposed on subject persons.

## Administrative penalties and measures subject to publication

6. The FIAU is empowered to impose administrative penalties for (i) failure by subject persons to comply with lawful requirements, orders or directives issued by the FIAU; and for (ii) contraventions by subject persons of any provision of the PMLFTR, or of any procedures or guidance issued by the FIAU in terms of Regulation 17 of the PMLFTR. Furthermore, the FIAU may, in addition to or instead of any administrative penalty, also require a subject person to take any action or measure to remedy such contravention or ensure compliance with the relative provisions of the PMLA, PMLFTR, or procedures and guidance issued by the FIAU.

7. In terms of Article 13C, both administrative penalties as well as administrative measures are subject to publication. However, the quantum of the administrative penalty as well as the circumstances in which other administrative measures are imposed will determine the information to be published.

8. The FIAU shall publish those administrative penalties and measures which were imposed in relation to failures and/or contraventions that were identified by the FIAU or any other supervisory authority acting on its behalf, on or after the coming into force of Act III of 2015.

## Information to be Published

9. Where the FIAU is to publish information on an administrative penalty that exceeds Euro fifty thousand (€50,000), the information to be published by virtue of a "Publication Notice" shall include:

- i. The identity details of the natural or legal person subject to the administrative penalty (i.e. full name, identification document number or registration number of the legal person or legal arrangement);
- ii. The kind of relevant activity or relevant financial business carried out by the natural or legal person in respect of which the administrative penalty was imposed;
- iii. The date of imposition of the administrative penalty;
- iv. The value of the administrative penalty imposed;
- v. The details of any other administrative measure imposed in conjunction with the administrative penalty;
- vi. A reference to the lawful requirement/s, order/s or directive/s issued by the FIAU that was not abided by or the legal provision/s or procedure/s contravened;
- vii. A summary of the facts leading to the imposition of the administrative penalty;
- viii. Where the contravention is a serious, repeated or systematic one, a reference to that fact; and
- ix. Where the administrative penalty is appealed in terms of Article 13A of the PMLA, the Publication Notice shall indicate that the administrative penalty has been appealed and shall also indicate which parts of that administrative penalty have been appealed.

10. Where publication is to take place in relation to either an administrative penalty that does not exceed Euro fifty thousand (€50,000) and/or an administrative measure that has not been imposed together with an administrative penalty which exceeds Euro fifty thousand (€50,000), publication is to be anonymous and the FIAU shall ensure that the identity of the subject person is not identifiable

through the published information. The Publication Notice shall otherwise include all the details envisaged under clause 9. For the avoidance of any doubts, the publication of an administrative measure on its own and on an anonymous basis is to include details on the nature of the administrative measure itself.

11. Administrative penalties and/or measures as are referred to in clause 10 above, imposed by the FIAU following the carrying out of thematic supervisory actions covering a number of subject persons may, at the FIAU's discretion, be published in aggregate form on a periodic basis.

12. In situations where the FIAU has determined, following the carrying out of a supervisory examination, that there are multiple failures and/or contraventions by the subject person, the value to be considered to determine the information to be published is to be the total value of the administrative penalties imposed in respect of all the said failures and/or contraventions.

13. In the circumstance whereby an administrative penalty is appealed in terms of Article 13A of the PMLA, and following a decision of the Court of Appeal (Inferior Jurisdiction) the FIAU shall issue an "Appeal Decision Notice" which shall accompany the respective "Publication Notice" and:

(i) where the administrative penalty has been altered or revoked in part, the Appeal Decision Notice shall clearly indicate which parts of the administrative penalty have been so altered or revoked, and which parts have been confirmed on appeal;

(ii) where the administrative penalty has been revoked in its entirety, the Appeal Decision Notice shall clearly indicate that the administrative penalty has been entirely revoked; and

(iii) where the administrative penalty is confirmed in its entirety, the Appeal Decision Notice shall clearly indicate that the administrative penalty has been confirmed in its entirety.

## Timing of Publication

14. The publication of administrative penalties, and administrative measures according to Article 13C shall take place within five (5) working days from the date of notification of the administrative penalty to the subject person.

15. The publication of Appeal Decision Notices, as referred to in clause 13 above, shall take place within five (5) working days from the date of the respective decision of the Court of Appeal (Inferior Jurisdiction).

## Medium of Publication

16. Information on administrative penalties and measures subject to publication in accordance with these policies and procedures shall be so published on the website of the FIAU in such a manner that is clearly visible and easily accessed by website users.

## Period of Publication

17. Publication Notices, and where applicable, the accompanying Appeal Decision Notices, shall remain posted on the FIAU website for a period of five (5) years from the date of publication of the Publication Notice. Upon expiration of the five (5) year publication period, the Publication Notice, together with any accompanying Appeal Decision Notice shall be removed from the FIAU website.

18. Notwithstanding the provisions of clause 17, where an administrative penalty is revoked in its entirety or is altered or revoked in part to the extent that the value of the administrative penalty would no longer exceed Euro fifty thousand (€50,000), the Publication Notice together with the accompanying Appeal Decision Notice shall remain posted on the FIAU website for a period of one (1) year from the publication of the Appeal Decision Notice, following which period both notices shall be removed.

## Exceptions and Exemptions

19. Where the FIAU is of the view that the publication of any administrative penalty, irrespective of its amount, or of any other administrative measure may jeopardise the stability of financial markets or any on-going supervisory, analytical or investigative work, or it considers it to be disproportionate, the FIAU may:

- i. delay the publication; or
- ii. publish the administrative penalty, or measure on an anonymous basis; or
- iii. not to publish such an administrative penalty or measure.

20. In assessing whether a publication of an administrative penalty or any other administrative measure is disproportionate, the FIAU is to assess whether the effects of such a publication would go beyond the intended aim and objective of publishing the same, and in doing so should consider factors including the severity, effects and repercussions of such publication on the subject person on whom the administrative penalty and/or measure was imposed.

## Revocation of previous policies and procedures

21. The policies and procedures on the publication of AML/CFT penalties approved by the Board of Governors of the FIAU on the 27 May 2015, which were revised on the 22 December 2017, shall be revoked and replaced by these policies and procedures.

22. The revocation of the policies and procedures approved by the Board of Governors of the FIAU on the 27 May 2015 and the 22 December 2017, shall not affect the validity of previous publications made by the FIAU in terms of those policies and procedures.