Administrative Measure 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.

This Notice provides selected information from the FIAU's decision imposing the respective administrative penalties and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

29 April 2021

SUBJECT PERSON:

Em@ney plc

RELEVANT ACTIVITY CARRIED OUT:

Financial Institution

SUPERVISORY ACTION:

Onsite compliance review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €359,339 and Follow-up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulation (PMLFTR)

LEGAL PROVISIONS BREACHED:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures, Part I
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures, Part I
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2.1 of the Implementing Procedures, Part I
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the Implementing Procedures, Part I
- Regulation 11(1) of the PMLFTR and Section 4.9 of the Implementing Procedures, Part I
- Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.2 of the Implementing Procedures, Part I
- Regulation 13(1) of the PMLFTR and Section 9.2 of the Implementing Procedures, Part I
- Regulation 15(1) of the PMLFTR and Sections 5.1 of the Implementing Procedures, Part I
- Regulation 15(1) of the PMLFTR and Section 5.4 of the Implementing Procedures, Part I.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures, Part I

During the compliance examination, it was noted that the Business Risk Assessment (BRA) was performed late (at the end of July 2019). Moreover, the BRA was deemed to be inadequate, in that, it failed to refer to specific risks faced by the Company. The assessment of controls was also deemed to be extremely generic, and it was not clear whether such assessment referred to theoretical or actual controls which the Company had in place.

The Committee noted how the Risk Register referred to by the Company was not even dated and therefore, it could not be determined whether it had been in place prior to the adoption of the BRA. It also noted that the BRA provided prior to the onsite examination was dated 26 July 2019. The Committee remarked that the obligation to identify and assess the risks relating to money laundering and funding of terrorism (ML/FT) came into force on 1 January 2018.[1]

The Committee therefore concluded that due to the inadequacies noted within the BRA and the fact that the BRA was performed late, the Company was deemed to be in breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures, Part I.

Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I

The Company's AML/CFT Manual did not set out in sufficient detail the specific steps which the Company takes to control the ML/FT risks it is exposed to. The AML/CFT Manual only covered identification and verification of customers and ultimate beneficial owners (UBO). There was no reference in the said Manual to other measures, such as the collection of information on the purpose and intended nature of the business relationship, name screening and the carrying out of Enhanced Due Diligence (EDD).

In its representations, the Company rebutted the findings of the FIAU's Report. It claimed that information on the purpose and intended nature of the business relationship is being obtained, and that it is indeed performing EDD and name screening. It furnished various documentation with the representations, namely procedures adopted by the Company.

In its deliberations, the Committee noted that the AML/CFT Manual was inadequate and simply contained text taken from the PMLFTR and the Implementing Procedures, without laying down the actual controls, measures, policies, and procedures implemented by the Company.

Hence, the Committee concluded that the Company was in breach of Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I, at the time of the onsite examination.

[1] In this regard, it should be noted that the FIAU and MFSA jointly issued a Supervisory Guidance Paper on ML and TF Institutional/Business Risk Assessment. Despite not being binding, this Paper was intended to provide a high-level guidance and information to assist subject persons to better understand their obligation to carry out their ML and TF risk assessment and adhere to their obligation under Regulation 5(1) of the PMLFTR. The obligation to perform a BRA was eventually also laid down in the Implementing Procedures of 2019.

Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures, Part I

The Committee identified several deficiencies in relation to the Customer Risk Assessment (CRA) performed by the Company which are being relayed below –

- Failure to provide a transparent, complete and satisfactory view of the methodology it adopts to compute the various components of the CRA.
- Failure to establish which risk score makes a customer low, medium or high risk.
- Failure to take into account the customer risk, specifically whether the customer or UBO is a PEP, and interface risk, when conducting the CRA. The Company only considered five risk factors. The Committee noted that Risk Assessment Procedures provided both during the examination and representations were inadequate in capturing these risks.
- The options available for each of the five risk factors being considered are limited. Thus, for instance, in relation to business sector risk, one of the options which could be chosen by the customer is financial services which was deemed to be vague.
- The link in between the transaction scrutiny system and the risk rating assigned to the customer prejudices the Company's ability to risk rate its customers. The Committee noted that unlike what is stated in the Company's representations, operators are not merely inputting new information in the system and allowing the system to recalculate the risk score associated with a given customer. Rather the Company's own procedures set out that operators are also lowering the risk score associated with the revised risk factor so that customers are allowed to make use of their accounts again.
- In 7 files, the Company failed to perform the CRA prior to the commencement of a business relationship.
- Out of the 27 corporate customer files reviewed, there was not a single instance where the Company had conducted searches on the name of the customer before or after onboarding.

Hence, the Committee concluded that the Company was in breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures at the time of the onsite examination. Whilst the finding in relation to the failure to conduct searches on the name of corporate customers was deemed to constitute a breach, the Committee only considered the same for the purposes of the Follow-up Directive it served upon the Company.

Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2.1 of the Implementing Procedures, Part I

The Report explained that no corporate documents were provided for a particular file. In its representations, the Company pointed out that the transactions relating to this account were minimal (around €5500). The Committee reiterated that the low amount of transactions did not exonerate the Company from identifying and independently verifying its customer. Therefore, the Committee concluded that the Company was in breach of Regulation 7(1)(a) of the PMLFTR and Section 4.3.2.1 of the Implementing Procedures.

The Committee also concluded that the Company had failed to determine and verify the identity of the UBO's of its customers in seven instances. Consequently, the Committee determined that the Company had breached Regulation 7(1)(b) of the PMLFTR and Section 4.3.2.1 of the Implementing Procedures.

Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the Implementing Procedures, Part I

The Report noted that prior to 2018, no information was collected in relation to the anticipated level and nature of transactions to be performed throughout the business relationship with respect to 16 files. It was also observed that for natural customers (three instances noted in the Report), the Company had either not collected information on the nature and details of the customer's occupation or otherwise collected information that was generic.

In four files, the Company had not obtained adequate and/or sufficient information in relation to the business activity of its customers. Thus, for instance, in one particular file, the customer's primary business activity of the customer was indicated as Business Consultancy, whilst the secondary activity as IT Consultancy. Nonetheless, from searches performed by FIAU, it transpired that the customer provides 'legal advise in the area of passport acquisition through investment'. The Committee concluded that the information obtained was too generic in order to be able to accurately understand the true nature of the customer's business.

In light of the abovementioned failures, the Committee concluded that the Company was in breach of Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the Implementing Procedures.

Regulation 11(1) of the PMLFTR and Section 4.9 of the Implementing Procedures, Part I

The Company did not have a defined manner of determining what constitutes a high-risk customer. As part of its EDD measures, the Company provided a Source of Wealth (SOW) Declaration Form which it had implemented in September 2019. The Committee noted that whilst the Company's procedures did lay down that EDD measures had to be performed in certain high-risk scenarios, they were silent on what such EDD measures consisted of. The below are case specific examples:

- In two files, the Committee noted that the customers (which had a transactional limit of over €250,000 and average transactions between €5,001 to €50,000) had a fiduciary in their ownership structure. The Committee noted that the corporate structure as well as the annual transactional limit of the customers, should have prompted the Company to perform EDD. The Committee also analysed the transactions reported and concluded that the Company had failed to conduct enhanced ongoing monitoring.
- In another file, the Committee noted that the customer (which had an annual transactional limit superior to €250,000 and average transactions ranging between €5,001 to €50,000) operated in the cryptocurrencies sector. The Committee observed the risks associated with this sector as well as the fact that the Company had failed to scrutinise its transactions in an enhanced manner, and thus concluded that the Company had failed to perform EDD.

The Committee considered that the Company was expected to perform EDD for those customers which it had rated as posing a higher risk and for whom adverse media and/or criminal connections had been found during the examination. In effect, certain customers serviced by the Company had been arrested for forgery (in one file), linked and investigated on the basis of connections with organised crime (in two files). Nonetheless, the Company had failed to perform any type of EDD on such customers.

In light of the above, the Committee determined that the Company was in breach of Regulation 11(1) of the PMLFTR and Section 4.9 of the Implementing Procedures at the time of the onsite examination.

Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.2 of the Implementing Procedures Part I

The Committee noted that despite the fact that the Company's transaction monitoring system was designed and intended to effectively and efficiently monitor transactions, the Company still failed to scrutinise particular transactions or monitored transactions inadequately. Findings relating to this failure or inadequacy were noted in nine files. Some of the breaches identified are being relayed briefly hereunder –

- In one file, an incoming transaction of €200,000 (emanating from another customer of the Company) was not scrutinised by the Company despite the fact that the transacting party had been named in several adverse media reports. The Committee observed that the transacting party was also the Company's customer and therefore the very minimum measure which the Company could have implemented would have been to establish the nature of the relationship between its two customers.

- In another file, transactions ranging from €10,000 to €1,000,000, were observed between June 2015 and November 2018. Out of more than 320,000 transactions associated with this customer's various accounts with the Company, there were no instances of blocked transactions, tickets raised, supporting documentation, internal reports and/or STRs made. In its representations, the Company pointed out that this customer had a gaming licence in Malta and in Italy. The Committee reiterated the Company was still expected to adhere to its AML/CFT obligations regardless of the fact that the customer was in itself a subject person. It was also remarked that though licensed, gaming operators only became subject to AML/CFT obligations as of 1 January 2018, whereas the transactions referred to go back even to 2015.

- In another file, a transaction of €425,000 was not deemed to have been adequately scrutinised by the Company. In its representations, the Company noted that the payment related to a repayment of a shareholders' loan. Nonetheless, the Company provided no supporting documentation (other than nominal ledger transactions) which could enable the Committee to understand the rationale behind this loan. Considering the large amount of the transaction, the Company was expected to at least obtain a copy of the shareholders' loan.

Consequently, the Committee determined that the Company at the time of the onsite examination was in breach of Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.2 of the Implementing Procedures, Part I.

Regulation 13(1) of the PMLFTR and Section 9.2 of the Implementing Procedures, Part I

During the onsite examination, it was noted that the Company did not maintain a complete list of the scenarios and rules it applies to transaction monitoring and the rationale for discounting transaction monitoring alerts.

The Committee found this matter to be concerning in light of the fact that the Company did not retain an understanding of the reason behind allowing a transaction, which was deemed to be anomalous by the system, to be effected. This also meant that if in the future the Company's officials would be investigating similar alerts, they would not be able to understand the rationale behind the discounting of a particular alert.

Consequently, the Committee determined that the Company was in breach of Regulation 13(1) of the PMLFTR and Section 9.2 of the Implementing Procedures Part I at the time of the onsite examination.

Regulation 15(1) of the PMLFTR and Section 5.1 of the Implementing Procedures, Part I

The report highlighted a number of issues with respect to the internal reporting procedures of the company and whether these were adequate and commensurate to the ML/FT risks inherent to the Company's business and to the nature and size of the same.

Hence, the Committee concluded that at the time of the onsite examination the Company was in breach of Regulation 15(1) of the PMLFTR and Section 5.1 of the Implementing Procedures, Part I.

Regulation 15(1) of the PMLFTR and Section 5.4 of the Implementing Procedures, Part I

During the onsite examination, a number of transactions which appeared suspicious were noted. In effect, four transactions were noted wherein the same two customers were effecting payments to one another. The transactions effected ranged from €1,000,000 to €2,000,000. Two of such transactions were supported by two 'Gentleman's Agreements' considered as vague and lacking sufficient detail.

The Committee analysed these transactions as well as the representations made by the Company. It noted that the only supporting documentation provided (for the two transactions where such documentation was actually obtained) was ambiguous and that for two particular transactions, the Company had not even obtained any supporting documentation at all. This was considered even more concerning in light of the links which both customers' UBO (which was common for both customers) had with organised crime.

The Committee concluded that the least the Company's officials could have done in such scenario was to file an internal report. Hence, the Committee determined that the Company was in breach of Regulation 15(1) of the PMLFTR and Section 5.4 of the Implementing Procedures, Part I

ADMINISTRATIVE MEASURES TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE:

After taking into consideration the abovementioned findings, the Committee decided to impose an administrative penalty of three hundred, fifty-nine thousand, three hundred and thirty-nine Euro (€359,339) with regard to the breaches identified in relation to:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures, Part I;
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the Implementing Procedures, Part I;
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures, Part I;
- Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2.1 of the Implementing Procedures, Part I;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the Implementing Procedures, Part I;
- Regulation 11(1) of the PMLFTR and Section 4.9 of the Implementing Procedures, Part I;
- Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.2 of the Implementing Procedures, Part I;
- Regulation 13(1) of the PMLFTR and Section 9.2 of the Implementing Procedures, Part I;
- Regulation 15(1) of the PMLFTR and Sections 5.1 of the Implementing Procedures, Part I;
- Regulation 15(1) of the PMLFTR and Section 5.4 of the Implementing Procedures, Part I.

Furthermore, the Committee served the Company with a reprimand for its failure to scrutinise a particular transaction, in breach of Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.2 of the Implementing Procedures, Part I.

In terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Follow-up Directive, which requires the Company to provide an Action Plan setting out the actions already taken, and any further action points intended to address the breaches highlighted, as well as any other additional enhancements being implementing by the Company, including but not limited to

- The platform integrated adverse news searches;
- An update on the review of active customers undertaken by the Company;
- An update on the de-risking exercise undertaken by the Company;
- Action points addressing the shortcomings relating to the policies and procedures of the Company, by outlining action points in relation to such policies including–

    - An updated Business Risk Assessment;
    - An updated Customer Risk Assessment methodology, which address the conclusions made by the Committee;
    - Updated policies and procedures in relation to obtaining information and documentation on the purpose and intended nature of the business relationship, performing enhanced due diligence as well as internal and external reporting of suspicious transactions/activity;
    - The Company's plan towards ensuring that it has updated documentation, information and data on all of its customers; and

- Action points addressing the shortcomings relating to the implementation of the Company's AML/CFT obligations, by outlining action points in relation to –

    - The manner in which the Company intends to perform customer risks assessments;
    - Obtaining detailed and specific information on the business and risk profile of the customer, its source of wealth and source of funds; and
    - Ensuring that it is collect sufficient and adequate information and documentation and performing enhanced due diligence to mitigate the risks associated with high-risk customers.

In determining the appropriate administrative measures to impose the Committee took into consideration the representations submitted by the Company, the nature and size of the Company's operations, the origin of the Company's clients, the overall impact, actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Subject Person's own operations and also the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also taken into consideration by the Committee in determining the administrative measures imposed. The Committee also considered that the Company's officials were cooperative during the carrying out of the compliance examination. It was also taken into consideration by the Committee that the Company was overall proactive in its approach and had taken a number of steps, prior to the onsite examination to remediate some of its failures.

In the eventuality that the requested documentation and/or documentation is not made available within the stipulated timeframes, the Committee shall be informed of such default, for the possibility to take eventual action, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

30 April 2021

APPEAL:

On Tuesday 18 May 2021, the FIAU was duly notified that Em@ney plc has, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decisions taken by the FIAU. The Company has appealed all breaches as mentioned in this publication in relation to which the FIAU's Compliance Monitoring Committee decided to impose an administrative penalty or reprimand, including where applicable the quantum of the respective administrative penalty itself. The grounds on which the Company is appealing from the Committee's conclusions include that the information provided by the Company was not adequately considered by the said Committee and that the process followed may not have respected the Company's rights including that to a fair hearing.

24 May 2021