



Administrative Measure Publication Notice

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DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

11 June 2021

RELEVANT FINANCIAL BUSINESS CARRIED OUT:

Credit Institution

SUPERVISORY ACTION:

On-site compliance review carried out in 2019.

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €41,670, Reprimand and a Follow-up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulation 5(1) and 5(3) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs),
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the Ips,
- Regulation 5(5)(a) of the PMLFTR,
- Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs; and
- Regulation 7(2)(a) of the PMLFTR.



REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Business Risk Assessment (BRA) - Regulations 5(1) and 5(3) of the PMLFTR and Section 3.3 of the IPs

The compliance review identified that the Bank's first Business Risk Assessment (BRA) conducted was finalised a year after the obligation came into force. The reason put forward by the Bank to justify this finding was its aim to base the BRA calculations on actual figures, to be able to perform a qualitative and quantitative assessment thereon. The FIAU's Compliance Monitoring Committee (the "Committee") however emphasised that the same approach could have easily been adopted by the Bank using data as at the prior year end. Hence, the Bank was found in breach in view of the fact that it opted to operate for over a year without compiling a BRA.

Apart from the delay in compiling the BRA, additional deficiencies to the Bank's BRA methodology reviewed during the onsite examination were identified, including but not limited to:

- The Bank's failure to adequately document the methodology and rationale behind the scores assigned to the inherent risk factors and mitigating measures identified.
 - *E.g.: Although the 'pharmaceuticals industry' was attributed an inherent risk rating of 8 (high) and a residual rating of 7 (medium-high), the BRA failed to portray the rationale behind the selected ratings, in particular what threats arise from the Bank's exposure to this kind of business and the impact of any resulting risks that would justify an inherent risk rating of 8 rather than any other risk rating.*
- Lacking the detail required to analyse the AML/CFT risks emanating from the jurisdictions the Bank is exposed to. Furthermore it failed to clearly identify all the countries it has dealings with and the extent of their exposure. The Committee acknowledged the fact that each jurisdiction is assigned a risk rating within the Bank's Customer Risk Assessment (CRA). However, it failed to include the risk parameters considered for the determination of this rating. In addition, there was no link between the jurisdiction ratings within the CRA and the BRA. The Committee emphasised that referring to the risk factors considered is indispensable to be able to determine the control measures necessary and for Bank officials to understand what the risk indicators for individual jurisdictions are. Hence, the threat from exposure to these jurisdictions and the materiality and impact this exposure may have on the Bank's business operations and business risks is not being adequately assessed.
 - *E.g.: The Bank's assessment is missing the AML/CFT risk exposures which led Bahamas to be rated '49.46', also missing were the mitigating measures required should the Bank come across such exposure.*

The Committee positively acknowledged the remedial action undertaken by the Bank following the compliance examination, this through the adaptation of a revised BRA. The Committee further acknowledged that the Bank's revised BRA remedies some of the deficiencies, in particular through the enhancements implemented to the Bank's actual risk rating, industry assessment and mitigating factors, along with further detail being illustrated within the documentation of the BRA.

Despite the remedial action undertaken, the fact remains that the Bank's initial BRA was adopted a year late, in addition as highlighted above this BRA was not robust enough. Hence, the Bank was found in breach of Regulation 5(1) and 5(3) of the PMLFTR and Section 3.3 of the IPs.

Customer Risk Assessment (CRA) - Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs

The Compliance examination identified shortcomings pertaining to the Bank's Customer Risk Assessment (CRA) methodology. Some of the deficiencies to the Bank's CRA methodology are being relayed hereunder:

- Although an explanation on how to obtain a final risk score was verbally explained by the Head of Risk and Compliance, the reasoning behind such methodology was not documented.
- Not all the products risk assessed at a business wide level were included in the CRA methodology.

Notwithstanding, the Committee positively acknowledged the Bank's remedial action which was undertaken following the onsite examination by shifting its CRA to a new automated system which takes into consideration different risk factors. In addition, the Bank provided documentation illustrating a breakdown of the risk scorings attributed to the different factors and the respective weighting allocated to each factor.

In addition, file specific shortcomings to the Bank's Customer Risk Assessments were also identified by FIAU officials undertaking the onsite examination. This since:

- In seven (7) files CRA was carried out approximately six (6) to eighteen (18) months after the start of the business relationship; and
- In another three (3) files, the Bank was unable to provide a documented CRA for the said customers.
 - *E.g.: In two (2) files, the CRA was not undertaken by the Bank because of the type of product being offered to the customers, that of 'Company-In-Formation accounts' and this product was deemed by the Bank to pose a low risk. The Committee however disagrees with the Bank's approach, since the CRA should not only be based on Product risk. Hence a CRA should have been conducted all the same, to also account for customer, interface, and geographical risks.*

In view of the above, the Committee determined that the findings identified constitute breaches to Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs.



Policies & Procedures - Regulation 5(5)(a) of the PMLFTR

The examination identified shortcomings in the Bank's policies and procedures, as these were not sufficiently comprehensive. More specifically, the Committee identified that the Bank's Policies and Procedures were:

- Lacking guidance as to how the Bank's employees are to raise internal reports and what information to include in these reports. No reference was made to whether internal reports are required to be submitted in writing to the MLRO nor about the required documentation to be recorded should the MLRO decide not to submit a STR. The Committee while acknowledging the importance of the Bank's statement that internal training sessions are delivered on a regular basis and that the process is verbally explained, emphasised the importance of maintaining adequate written procedures to ensure a comprehensive and uniform process. The Committee also positively acknowledged the Bank's commitment to reviewing its procedures to cover any areas which although being implemented, are not expressly reflected in its internal documents; and
- Although the Bank's AML/CFT policy refers to employee screening, FIAU officials determined that this section of the Bank's policy failed to include any detail about the type of checks carried out on its employees. The Committee again considered the Bank's commitment to reviewing its procedures to cover any areas which although being implemented, are not expressly reflected in its internal documents.

In view of the above, the Committee determined that the findings identified constitute breaches to Regulation 5(5)(a) of the PMLFTR.

Identification & Verification (ID&V) - Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs

In three (3) of the files reviewed during the compliance examination, FIAU officials identified shortcomings in the verification of the beneficial owner (BO) in one file and failure to adequately verify the permanent residential address of the BOs in another two (2) files.

In view of the above, the Committee determined that the findings identified constitute breaches to Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs.



Regulation 7(2)(a) of the PMLFTR

The Compliance examination also identified serious shortcomings in relation to the Bank's obligation to scrutinise transactions taking place through its customers' accounts and in some instances, noted the lax approach adopted by the Bank. For seven (7) customer files reviewed, the Bank did not comprehensively understand the reasons for certain transactions that were taking place through the customers' accounts with the Bank.

- E.g.: For five (5) transactions in one file, which were categorised as intra group transfers between the holding and trading company, executed within a four (4) day period to a total of €370,000 and with both companies having a relationship with the Bank, FIAU officials determined that no supporting documentation and information was requested by the Bank to explain them. The Bank clarified that these transactions were between group entities, both of which have active accounts with the Bank and that in these cases, transfers are reviewed on a post-transaction basis, since these are deemed to pose low risks in terms of ML/FT. Despite this the Committee underlined the fact that the Bank's customer had indicated that it would undertake five (5) transactions per month to a total value of €5,000 to €10,000. Hence, the Bank ignored the information held on the customer and allowed the customer to execute transactions worth €370,000 within a four (4) day period, exponentially exceeding the expected level of activity.
- In another file, a transaction of €22,995 was credited to the Bank's customer's administrative account by a Payment Service Provider (PSP) rather than the player's funds account. Hence FIAU officials deemed such transaction as being out of line with the purpose of the administrative account. The Committee noted the agreement provided by the Bank to explain the relationship between the customer and the PSP, notwithstanding, the agreement does not provide any additional comfort as to the rationale behind player funds being deposited into the administrative account. The Committee's concern is aggravated as from the Bank's representations it is apparent that the Bank was notified beforehand by the customer about the transaction, yet the Bank still failed to enquire the discrepancy outlined in terms of the purpose of the administrative account.

In view of the failures in relation to the Bank's obligation to carry out effective scrutiny of transactions, the Bank was deemed to be in breach of Regulation 7(2)(a) of the PMLFTR.



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

After taking into consideration the abovementioned breaches by the Bank, the Committee decided to impose an administrative penalty of forty-one thousand, six hundred and seventy euro (€41,670) with regards to the breaches identified in relation to:

- Regulation 5(1) and 5(3) of the PMLFTR and Section 3.3 of the Ips,
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3; and
- Regulation 7(2)(a) of the PMLFTR.

In addition to the above, the Committee imposed a Reprimand in relation to the minor breaches identified for the Bank's failures in terms of Regulation 7(1)(a), 7(1)(b) of the PMLFTR and Section 4.3 of the IPs.

The Committee positively acknowledged the actions already taken by the Bank and the actions planned to be taken in order to remediate the failures identified during the compliance review. Said enhancements include and are not limited to; the implementation of a revised Business Risk Assessment, shifting to and implementing a new CRA system, carrying out updates to the Bank's policies and procedures and transaction monitoring enhancements. The Committee expects the Bank to ensure that the remediation, both that has already been undertaken and that still planned to be undertaken, is effectively implemented. Hence, to ensure that the Bank's remediation is adhered to, the Committee also served the Bank with a Follow-Up Directive. Through the Directive, the FIAU is requesting the Bank to make available a detailed action plan pertaining to all the breaches identified following the compliance examination, along with any other relevant enhancements the Bank has implemented or plans to implement. The action plan is to include clear reference as to when the actions are to be completed, where applicable to provide supporting evidence and is to explain:

- The remediation undertaken or planned to be undertaken to address the shortcomings outlined in the Bank's Business Risk Assessment and Customer Risk Assessment obligations,
- The updates implemented to the Bank's policies and procedures and how it shall ensure their effective implementation; and
- Explain the remediation undertaken or planned to be taken to the Bank's transaction monitoring obligations.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Bank, together with the remedial actions that the Bank had already started to implement. Also, the nature and size of the Bank's operations and the overall impact that the AML/CFT shortcomings of the Bank had or could have had both on its own operations and on the local jurisdiction in terms of risks. The seriousness of the breaches identified together with their occurrence were also considered by the Committee in determining the administrative measures imposed.

Finally, the Bank has also been duly informed that in the eventuality that it fails to provide the above-mentioned action plan and to make available the requested supporting documentation within the specified deadlines, the Bank's default will be communicated to the Committee for its eventual actions. This including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

11 June 2021