



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 select 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:

1 October 2021

SUBJECT PERSON:

Phoenix Payments Limited

RELEVANT ACTIVITY CARRIED OUT:

Financial Institution

SUPERVISORY ACTION:

Thematic compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €435,576 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 7(1)(c) of the PMLFTR and Sections 4.4.1 and 4.4.2 of the Implementing Procedures (IPs);
- Regulation 11(1)(b) of the PMLFTR and Section 4.9.1 of the IPs; and
- Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs.



REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 7(1)(c) of the PMLFTR and Sections 4.4.1 and 4.4.2 of the IPs

The Compliance Monitoring Committee (Committee) noted that the information collected was considered generic and consequently, the business and risk profile of the customer was not sufficiently complete and accurate. This was noted in the information used by the Company in the account opening form in relation to the business/occupation of the customer. This was also noted in the generic information on the jurisdictions to/from which transactions will be sent/received (which information indicated 'Europe', 'United States' or 'Rest of the world' instead of listing specific jurisdictions. The Committee therefore had no other option but to question the extent and detail recorded in relation to the expected account activity, especially in view of the basic information obtained.

More specifically, the Committee noted that the Company failed to obtain information and/or obtained inadequate information on the –

- Customers' business/occupation/employment,
- Source of wealth and source of the funds of the customer,
- The anticipated level and nature (including the expected value and frequency of transactions) that is to be undertaken throughout the relationship, and
- The jurisdictions to/from which transactions will be sent/received.

These failures (individually or a combination of the same) were observed in the majority of the files selected for the compliance review.

The Committee considered the Company's representations wherein assertions were at times corroborated with evidence, which in most cases was present at the time of the compliance review and therefore not considered material or else not deemed to constitute sufficient justification to counter the findings emanating from the FIAU Report.

In view of the above, the Committee concluded that at the time of the onsite examination, the Company had systematically breached its obligations as laid down in Regulation 7(1)(c) of the PMLFTR and Sections 4.4.1 and 4.4.2 of the IPs.

Regulation 11(1)(b) of the PMLFTR and Section 4.9.1 of the IPs

The Report noted that the Company had not applied enhanced due diligence (EDD) measures in 5 customer files. These files were classified as posing a high or medium high risk by the Company itself and involved customers having higher risk factors associated with them. All of these customers were linked to cryptocurrency, either by being a cryptocurrency service provider or as providers of crypto exchange services and in one instance, linked to a high-risk jurisdiction. In this regard, the Committee referred to Section 3.2.1 of the IPs which highlights that, businesses associated with cryptocurrency present a high risk of money laundering and funding of terrorism. Therefore, adequate measures should have been applied by the Company to mitigate the higher risk emanating from the business relationships with these customers.

The Committee considered the Company's representations wherein it stated that as an enhanced due diligence measure, the Company conducts enhanced ongoing monitoring on the transactions effected by these customers. This was achieved by performing transaction scrutiny on an *a posteriori* basis by checking

the volumes of transactions and approaching the customer when a discrepancy in volumes is detected. The Committee however reiterated that such transaction monitoring cannot be considered as enhanced due diligence. This since the scrutiny was being carried out on an *a posteriori* basis and therefore after the transactions being effected. In addition, from the explanations provided by the Company, this measure consisted only in the consideration of the volumes of the transactions. No other factors were being considered, such as the values of the transactions, their frequency and the jurisdictions from where they were coming/going to, thus raising doubts on how enhanced this type of transaction monitoring was.

The Committee also considered that not only was enhanced due diligence not applied for these 5 files reviewed, but that not even ordinary CDD was conducted comprehensively, since information in relation to the purpose and intended nature of the business relationship of these customers was also insufficient.

The Committee therefore concluded that the Company was in breach of its obligations under Regulation 11(1)(b) of the PMLFTR and Section 4.9.1 of the IPs.

Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs

The Committee noted that in relation to its transaction monitoring systems, the Company had confirmed that the procedures for both the current and the previous transaction monitoring systems had not been documented. The Committee also considered that throughout the compliance examination, various versions of the procedures and rules/scenarios were provided to the FIAU officials in relation to the Company's automated transaction monitoring system. It also considered the fact that in its representations, the Company itself had acknowledged the fact that it did not have a detailed formal transaction monitoring procedure.

Even following the review of the automated system's documented procedures, the Committee expressed its concerns at the lack and inadequacy of such procedures. It pointed out that without adequate and detailed documented procedures, the Company and its officials cannot ensure and guarantee that effective transaction scrutiny is being performed on the transactions effected by the customers.

The Committee also noted that even though the Company had an automatic transaction monitoring system at the time of the compliance examination, the system had several shortcomings, which adversely affected the way transaction scrutiny was being performed. In effect, the system required more effective rules and scenarios, and the consideration of high risk jurisdictions to/from which its customers effected/received payments. The Committee pointed out that the implementation of an automatic transaction monitoring system was not necessarily equivalent to the Company performing effective and efficient transaction scrutiny.

Particularly, the Committee established breaches relating to the Company's failure to:

- Monitor whether transaction patterns are in line with the customer's profile (applicable for all transaction monitoring systems utilised by the Company).
- Scrutinise transactions effected by the customers having a value over EUR 10,000 and EUR 50,000 that should have been monitored as per manual transaction monitoring procedures.
- Provide evidence of the investigation carried out and/or of discounting alerted transactions (transaction monitoring manual system used prior to April 2020).
- Provide evidence of the investigation carried out and/or of discounting 4Stop alerted transactions (transaction monitoring system used after April 2020).

The Committee concluded that the Company had systematically breached its transaction monitoring obligations due to the evident widespread disregard of such important AML/CFT procedures, as evidenced through the file-specific examples. Therefore it was deemed to be in breach of Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs at the time of the compliance examination.

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 €435,576 due to the breaches identified in relation to:

- Regulation 7(1)(c) of the PMLFTR and Sections 4.4.1 and 4.4.2 of the IPs.
- Regulation 11(1)(b) of the PMLFTR and Section 4.9.1 of the IPs.
- Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs.

In terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Follow-up Directive. This 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. In addition, it should include any other additional enhancements being implementing by the Company, including but not limited to action points relating to:

- Revision of transaction monitoring rule-sets and enhancement of monitoring and reporting capabilities.
- Revision of the Company's policy framework, including the adopting of transaction monitoring specific documentation.
- Updated policies and procedures in relation to obtaining information on the purpose and intended nature of the business relationship.
- The way the Company intends to address the shortcomings pertaining to Enhanced Due Diligence.

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 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.

In the eventuality that the requested information and/or documentation is not made available within the stipulated timeframes, the Committee will 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.



1 October 2021

APPEAL: On 25th October 2021, the FIAU was served with a copy of the appeal application filed by Phoenix Payments Limited (“the Company”) before the Court of Appeal (Inferior Jurisdiction) from the decision of the FIAU. Through the said appeal, the Company is requesting the Court to revoke and annul the FIAU’s decision as hereabove described.

The Company is of the view, inter alia, that:

- (1) The FIAU failed to adequately consider and analyse the information submitted by the Company. As a direct consequence of this, the Company submits that the FIAU’s conclusions are manifestly incorrect. It also submits that the FIAU failed to consider the Company’s detailed submissions dated 7th May 2021.
- (2) The administrative penalty in its entirety, is disproportionate. It also submits that the penalty in its entirety is significant, especially when one considers that nature and gravity of the breaches found.

Thus, that the administrative penalty of four hundred and thirty-five thousand, five hundred and seventy-six Euro (Eur 435,576) has been appealed by Phoenix Payments Limited before the Court of Appeal (Inferior Jurisdiction), in line with what is provided for in terms of Article 13A of the Prevention of Money Laundering Act. Pending the outcome of the appeal, the decision of the FIAU is not to be considered final and the resulting administrative penalty cannot be considered as due, given that the Court may confirm, vary or reject, in whole or in part, the decision of the FIAU. As a result, the FIAU may not take any action to enforce the administrative penalty pending judgement by the Court.

This publication notice shall be updated once the appeal is decided by the Court so as to reflect the outcome of the same.

27 October 2021

