



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 measures established by the Board of Governors of the FIAU.

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

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

07 January 2022

RELEVANT FINANCIAL ACTIVITY CARRIED OUT:

Corporate Services Provider (Individual)

SUPERVISORY ACTION:

Targeted offsite examination carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €10,500 and a Reprimand in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

LEGAL PROVISION BREACHED:

- Regulation 7(1), 7(1)(a), 7(1)(b), 8(1) and 8(2) of the PMLFTR and Section 4.3.2.1(iv) and Section 4.6.1 of the Implementing Procedures (IPs)
- Regulation 12(3) and 12(4) of the PMLFTR and Section 4.10.5 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Customer Due Diligence (CDD) – Identification and Verification – Regulation 7(1), 7(1)(a), 7(1)(b), 8(1) and 8(2) of the PMLFTR and Section 4.3.2.1(iv) and Section 4.6.1 of the IPs

- i. No/incomplete verification of the corporate customers' ownership and control structure through independent and reliable sources (for customer files for which no reliance was being placed)

Shortcomings were noted in relation to one of the files reviewed during the examination wherein no reliance was being placed. The Committee noted that the structure chart and letter explaining the ownership and control structure of the corporate customer in question were not considered as being adequate for the purposes of independently verifying the ownership and control structure. The documents which were provided during the examination in relation to this same customer did not sufficiently verify its ownership and control structure.

- ii. Incomplete verification of the corporate customers' ownership and control structure for customer files on which reliance on another subject person was being placed

During the examination, the subject person provided two ownership and control structure charts relating to another corporate customer, both of which were missing information attributed to 33% of the ownership of the entity. The Committee noted that when this information was eventually provided, the certification was dated after the termination of the business relationship. This therefore meant that at the time that the subject person was servicing the customer, he did not have a comprehensive understanding of the ownership and control structure. In addition, he was not sure of having identified all the beneficial owners, since the remaining 33% was not known by him. The Committee stressed on the importance of undertaking appropriate checks and of gathering enough information to allow a complete understanding of the ownership and control structure of the customers, as well as ensuring that the beneficial owner (BO) is adequately determined.

- iii. Proof that BO information was registered with a designated BO register

The Committee noted that the subject person failed to provide proof that the BO information had been registered with a designated BO register for two of the customer files provided. The Committee held that information found on the MBR portal does not constitute proof and that the subject person should have provided a copy of the confirmation sent by the BO register stating that the information had been duly registered.

Reliance – Regulation 12(3) and 12(4) of the PMLFTR and Section 4.10.5 of the IPs

- i. Inability to provide identity verification documentation obtained from the entity relied on

Shortcomings were found in three of the files for which reliance had been placed on a third party. The Committee pointed out that the shortcoming related to the fact that the entity relied on did not provide all the necessary identity verification information as stipulated in the reliance agreement. The Committee held that although a subject person placing reliance is not obliged to receive copies of the verification documents, he is still under the obligation to immediately obtain the information that is required by law under Regulation 7(1)(a) to 7(1)(c) of the PMLFTR. Therefore, the Committee concluded that the subject person was still obliged to be aware of the information relating to the verification of the identity of two of the three files mentioned above. Regarding the third file, the Committee held that since the subject person did not even have a complete view of the ownership of the corporate customer that he was servicing, the subject person did not ensure that all the information necessary was obtained from the entity relied upon.

Customer Risk Assessment (CRA) – Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs

i. No CRAs on file

The Committee noted that the subject person failed to provide CRAs in relation to a number of files during the examination. The Committee considered the fact that the subject person provided the respective CRA documents together with his representations, all of which were dated April 2021, save for one which was dated March 2012. The Committee considered the fact that the subject person claimed that the CRAs were indeed carried out at onboarding for the other files, however it held that the subject person did not substantiate this statement with any evidence. Furthermore, the Committee also pointed out that the CRAs submitted with the representations had not been provided during the review, even though they were dated prior to the examination. Therefore, these CRAs could not be considered by the Committee, as it could not accept them as being reliable to establish that the assessments were indeed carried out in April 2021 and March 2012 and not at a later date following the compliance review report.

ii. CRAs carried out late

The Committee noted that there were several files for which only copies of the latest CRA carried out, were provided during the examination and that when the subject person was asked to provide the earliest CRAs, he had responded with the date of when the CRA was carried out (April 2021). The Committee considered the representations wherein the subject person claimed to have carried out the CRAs manually at onboarding and that he had later transferred the information to an excel based tool, following which he erroneously did not retain the original manual CRAs. The Committee however held that without the CRA, one cannot possibly assess the ML/FT risk exposure through the several business relationships established with customers without having a copy of such assessment.

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

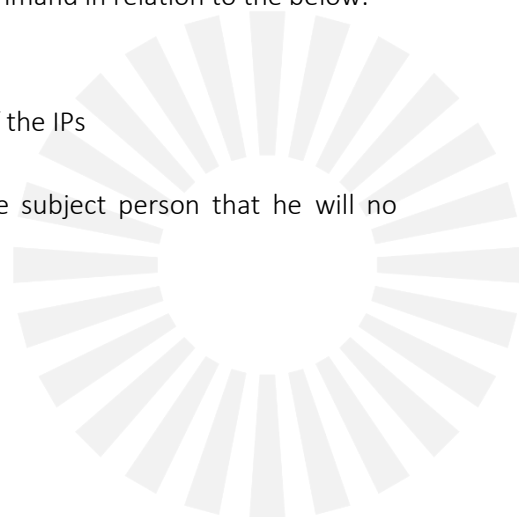
After taking into consideration the abovementioned breaches committed by the subject person, the Committee decided to impose an administrative penalty of ten thousand, five hundred euro (€10,500) with regards to the breaches identified in relation to:

- Regulation 7(1), 7(1)(a), 7(1)(b), 8(1) and 8(2) of the PMLFTR and Section 4.3.2.1(iv) and Section 4.6.1 of the Implementing Procedures (IPs)
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs

Furthermore, the Committee also served the subject person with a Reprimand in relation to the below:

- The second proviso of Regulation 7(1)(a) of the PMLFTR
- Regulation 12(3) and 12(4) of the PMLFTR and Section 4.10.5 of the IPs

The Committee also took into consideration a confirmation from the subject person that he will no



longer be carrying out services falling under the definition of relevant activity. The Committee remarked that if relevant activity was still carried out, it would have also issued a Directive on the subject person, directing him to carry out remedial actions in order to rectify the failures observed.

To decide the appropriate administrative measure to impose, the Committee considered the representations submitted by the Company. The nature and size of the Company's operations and the overall impact that the AML/CFT shortcomings caused or could have caused, both to its own operations as well as to the local jurisdiction were also considered. In addition, the seriousness of the breaches identified, together with their occurrence were considered by the Committee in determining the administrative measures imposed.

10 January 2022

APPEAL: On the 27th January 2022, the FIAU was served with a copy of the appeal application filed by the Subject Person before the Court of Appeal (Inferior Jurisdiction) from the decision of the FIAU. By means of the said appeal, the Subject Person is requesting the Court to annul, revoke or revise the FIAU's decision as hereabove described.

The Subject Person states, inter alia, that the Unit did not adequately consider and analyse the information provided by the same and that the administrative penalty is disproportionate.

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.

28 January 2022

APPEAL OUTCOME: On Wednesday 14th September 2022, the Court of Appeal (Inferior Jurisdiction) delivered its judgement in relation to the appeal that was filed by the Subject Person as above-mentioned. By means of its decision, the Court of Appeal confirmed the breaches identified and sanctioned upon by the FIAU. It re-iterated that the relevant time to be considered in the determination of a breach, is the time when the compliance review is carried out and any subsequent action such as the cessation of the Subject Person's operations, does not nullify previous wrongdoings. Although all

the breaches were confirmed, the Court took into account certain mitigating factors such as the Subject Person's age and the fact that he worked as a sole practitioner and found the quantum of the penalty to be excessive. It thus reduced the administrative penalty imposed by the FIAU from €10,500 to €2,000.

15 September 2022

