



Administrative Penalty Publication Notice

This notice is being published on an anonymous basis by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(2)(b) 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.

The notice provides select information from the FIAU's decision imposing the respective administrative measure, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

10 September 2020

RELEVANT ACTIVITY CARRIED OUT:

Notary Public, when acting in the exercise of his/her professional activities under Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

SUPERVISORY ACTION:

On-site Compliance Review

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of Eur 30,000 and Remediation Directive in terms of Regulation 21(4)(c) of the PMLFTR.

LEGAL PROVISIONS:

- Regulations 5(1) and 5(3) of the PMLFTR as well as Section 8.1 of the Implementing Procedures Part I;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR and Section 4.3 of the Implementing Procedures Part I;
- Sections 4.4.3 of the Implementing Procedures Part I;
- Regulation 11(5) of the PMLFTR and 4.9.2.2 of the Implementing Procedures Part I;
- Regulation 15(3) of the PMLFTR;
- Sections 7.1 and 7.4 of the Implementing Procedures.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulations 5(1) and 5(3) of the PMLFTR as well as Section 8.1 of the IPs

The Committee considered that prior to the commencement of the on-site examination, the FIAU had requested a copy of the Business Risk Assessment ("BRA") that the notary should have carried out with regards to his/her professional activities, however this was not provided. The officials onsite also observed how, when the notary was queried about his/her business risk understanding, he/she was not able to

identify the risks that his/her operations expose him/her to. The Compliance review revealed that although the notary did not have a documented BRA in place at the time of the examination, the notary had already initiated remedial actions to remedy such failure prior to the FIAU's examination through the engagement of an external consultant.

Moreover, during the compliance visit, the file review established that a jurisdictional assessment was never carried out vis-à-vis the geographical areas the notary was exposed to when carrying out his/her services as a Notary Public and in so far as Relevant Activity is concerned. In fact a number of contracts and promise of sale agreements which were reviewed during the compliance review involved parties having connections to non-EU jurisdictions. Yet, such jurisdictions were not assessed in order to determine the possible risks involved.

In view of the above-mentioned shortcomings, the Committee found the notary to have failed to take appropriate steps, proportionate to the nature and size of his/her business, to assess the risks of ML/FT arising of his/her activities and to adequately document such assessment. The Committee therefore decided that the notary is in breach of his/her obligations in terms of Regulations 5(1) and 5(3) of the PMLFTR. Furthermore, the Committee determined that the notary was also in breach of Section 8.1 of the IPs which requires subject persons to assess whether the jurisdictions they are dealing with are non-reputable jurisdictions, high-risk jurisdictions or otherwise.

Regulation 5(5)(a)(ii) of the PMLFTR

Throughout the course of the onsite examination, the initial interview and subsequent discussions held with the notary, the FIAU officials clearly established that he/she did not have Customer Risk Assessment measures in place. As a matter of fact, none of the fifteen client files reviewed contained a CRA. Consequently, due diligence measures could not be performed in a way that would be commensurate to the level risk that customers were posing to the business.

In view of the aforementioned shortcomings, the Committee considered the notary to have failed to have in place adequate risk assessment and risk management procedures that would enable him/her to assess the risk posed by his/her customers and to subsequently implement measures which are appropriate and proportionate to those risks. The Committee therefore decided that the notary breached his/her obligations in terms of Regulation 5(5)(a)(ii) of the PMLFTR.

Regulations 7(1)(a), 7(1)(b) and 7(3) of the PMLFTR

The review also outlined shortcomings with regards to the obligation to identify and adequately verify the customers and/or beneficial owners of corporate customers on-boarded and to ensure that agents representing customers are duly authorised and also verified. Although the Notary collected identity details that were required for the execution of the contracts, the Notary did not carry out the verification of the identity of the customers and/or agents and/or beneficial owners.

In view of the above, after taking the notary's submissions into consideration, the Committee determined that he/she breached his/her obligations in terms Regulation 7(1)(a) for failure to verify the identity of customers in four of the files reviewed, Regulation 7(1)(b) for failure to verify the identity of the ultimate beneficial owners in five of the files reviewed, and Regulation 7(3) for failure to verify the identity of the agent and to ensure the agent was authorised to act on behalf of the Company's customer in one of the files reviewed, as well as of Section 4.3 of the Implementing Procedures.

Sections 4.4.3 of the IPs, Regulation 11(5) of the PMLFTR and 4.9.2.2 of the IPs

EDD on a Risk Sensitive Basis:

While, the Committee comprehends that the notary did not carry out any customer risk assessments on his/her customers, the high risk element of particular situations could still have been determined even if in the absence of a customer risk assessment. The Compliance review determined that six of the reviewed files related to transactions which were fully or partially funded by the customer's own funds, which is considered to pose a higher risk situation for a Notary. It was also observed that in the aforementioned scenarios, SoW/SoF of the respective customers was either not obtained or else was obtained in an inadequate manner.

EDD for PEPs:

Throughout the compliance examination, the file review established that in two instances where the transfer of immovable property involved Politically Exposed Persons, the notary failed to apply EDD in terms of Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IP Part I, since he/she did not take any measures whatsoever to establish the Source of Wealth (SoW) and Source of Funds (SoF) for said PEP exposure, even though the Notary had information to confirm the political exposure of the beneficial owner of the corporate customer (for one of the files) and also the same beneficial owner acting in his/her personal capacity as an individual buyer (for another file). In both of these files, the customer (being the corporate customer in one file and the beneficial owner of the corporate customer in a personal capacity) purchased property from own funds. The source that had generated such funds were not substantiated in any manner by the notary yet he/she still allowed for the transfer to take place.

Measures to determine the political exposure of customers and/or beneficial owners

The compliance review revealed that the notary did not have any procedures to determine whether a customer or a beneficial owner is a politically exposed person. This was reaffirmed since for 9 out of the 15 files reviewed the notary applied no measures to determine whether the parties to the contract were politically exposed or otherwise. Without establishing the political status of customers, the notary was not in a position to identify whether any of the customers were PEPs and therefore whether enhanced measures were called for to mitigate the risks emanating from servicing a politically exposed customer.

The Committee therefore determined that the notary breached his/her obligation to have in place measures to determine whether customers and beneficial owners where applicable, were PEPs, family members of PEPs or close business associates of PEPs in terms of Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures.

Regulation 15(3) of the PMLFTR

During the onsite examination, the file review revealed that in one particular instance, the notary was faced with a situation where the purchaser had part financed an immovable property by making a substantial payment in cash. As part of the representations and as had also been clarified to the officials on-site, the notary submitted that he/she did not suspect that the purchaser was utilizing funds related to a predicate offence because he/she was a personal acquaintance. However, the Committee discussed that

being acquainted to someone is not a justification for not querying the source of the payment made in cash. In particular and given the risks of tax evasion to which cash intensive businesses exposes the notary to, he/she were expected to understand the provenance of such funds. All this should have triggered an element of suspicion in the customer wanting to pay in cash and particularly since no evidence to substantiate the provenance of such cash was provided. Such funds could have been related to a predicate offence and based on such a suspicion an STR should have been filed.

In view of the abovementioned shortcoming the Committee has decided that the notary breached his/her obligations in terms of Regulation 15(3) of the PMLFTR which requires a subject person to file a Suspicious Transaction Report (“STR”) to the FIAU as soon as is reasonably practical, but not later than 5 working days from when such knowledge, suspicion or reasonable grounds of suspicion arose.

Sections 7.1 and 7.4 of the Implementing Procedures

During the initial interview with the notary and during the on-site examination in general, it was noted that the notary was not cognisant of the ML/FT risks, threats and vulnerabilities that he/she may be exposed to when carrying out relevant activities as a subject person. Consequently, he/she was not equipped with the necessary knowledge and awareness in order to duly adhere to his/her AML/CFT obligations at Law. In fact, during the initial interview, it was established that the nature and number of training sessions that he/she had attended, were not sufficient in order to obtain a solid understanding of what his/her AML/CFT obligations truly entail. Moreover, officials noted that the notary did not maintain your AML/CFT training records in the manner specified by the IPs.

In view of the findings identified during the compliance examination and as relayed above, the Committee concluded that the notary was found to be in breach of his/her obligations and defined under Sections 7.1 and 7.4 of the Implementing Procedures.

ADMINISTRATIVE MEASURES TAKEN BY THE FIAU’S COMPLIANCE MONITORING COMMITTEE (CMC):

The failures identified, as explained in this document, necessitated the imposition of an administrative penalty that is appropriate and just to the seriousness of the case. For this reason an administrative penalty of €30,000 has been imposed upon the Notary. In relation to the Notary’s failure in terms of Sections 7.1 and 7.4 of the Implementing Procedures, the Committee has imposed a Reprimand for such failure.

In terms of its powers under Article 21(4)(c) of the PMLFTR, the FIAU also served the Notary with a Remediation Directive containing several requirements in order to ensure that the Notary understands the risks surrounding his/her operations and that he/she has implemented sufficient controls to mitigate such identified risks. Specifically, the Directive requires the Notary to make available:

- A detailed explanation of the Customer Risk Assessment the notary is conducting and how this is being implemented in practice; and
- To ensure effective implementation of the CRA methodology and the AML/CFT obligations in general, the notary is to provide the FIAU with a number of files wherein the transfer of immovable property has been carried out post the date of the compliance examination and up to the date of the imposition of the administrative measure being imposed.

Furthermore, the Remediation Directive also provides for a follow up meeting to be conducted with the notary in order to discuss the actions being taken to address the shortcomings highlighted and to ensure

the documented policies and procedures made available, including the most recent Business Risk Assessment are well understood by the notary. The follow up meeting is intended to provide the FIAU with more reassurance that the remedial actions are being implemented in practice and to ensure that the notary has sufficient knowledge with regards to the AML/CFT obligations.

In determining the appropriate administrative measure to impose, the CMC took into consideration the failures determined by the Committee and relayed in this publication, as well as the nature and size of the Notary's operations, which were not considered to be large within the Notarial profession. The overall impact of the AML/CFT shortcomings identified vis-à-vis the Notary's own operations were also taken into account. The degree of seriousness of the breaches that have been identified was also taken into consideration by the Committee in determining the administrative penalty imposed.

Finally, the Notary has also been duly informed that in the eventuality that if he/she fails to make the abovementioned documentation available within the specified deadline, the Notary's default shall be communicated to the CMC for its eventual actions, including the possibility of the imposition of an administrative penalty for the failure to abide with the requirements of the Directive, in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

17 September 2020

APPEAL:

On Friday 2nd October, the FIAU was duly notified that the Notary, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decision taken by the FIAU. The Notary appealed the breaches identified in relation to:

- Section 8.1 of the Implementing Procedures Part I for which the Notary is contesting the connections in relation to one particular jurisdiction and therefore the requirement to carry out a jurisdiction risk assessment on same; and
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the Implementing Procedures Part I for which the Notary is contesting the involvement of a Politically Exposed Person (PEP) in relation to two transfers of immovable property and thus the requirement of applying EDD measures to mitigate the risk emanating from such PEP involvement.

The quantum of the administrative penalty imposed is also being challenged by the Notary.

6 October 2020

Pending the outcome of the appeal, the decision of the FIAU leading to the imposition of the administrative penalty is not to be considered final and the resulting administrative penalty cannot be considered as due, given that the Court may confirm, vary or revoke, 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 to reflect the outcome of same.

4 August 2021

APPEAL DECISION NOTICE:

On the 7th October 2022, the Court of Appeal (Inferior Jurisdiction) decided the aforementioned appeal. In its decision it:

- (i) Confirmed all breaches identified by the FIAU which gave rise to the imposition of an administrative measure in terms of the relative laws and regulations.
- (ii) Emphasized the seriousness of the breaches of the subject person's obligations, and further noted that the nature of the breaches showed a serious lack of diligence and accountability in fulfilling its obligations, which could have serious and adverse effects on the fight against money laundering and terrorist financing.
- (iii) Decided to limitedly uphold the subject person's appeal by reducing the overall quantum of the administrative penalty to four thousand Euro (€4,000), as it deemed the penalty imposed by the FIAU to be excessive.

12 October 2022