



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:**

23 December 2022

**SUBJECT PERSON:**

ECCM Bank plc

**RELEVANT FINANCIAL ACTIVITY CARRIED OUT:**

Credit Institution

**SUPERVISORY ACTION:**

Offsite compliance review carried out in 2020

**DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:**

Administrative Penalty of €310,217, a reprimand, and a remediation directive.

**LEGAL PROVISION BREACHED:**

- Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.3 of the Implementing Procedures (IPs) Part I
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.3 and 8.1 of the IPs Part I
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs Part I
- Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs Part I

**REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:**

Business Risk Assessment (BRA)

The Committee noted that the Bank had drafted its BRA in March 2019, over a year after the requirement to carry out a BRA first came into place. Moreover, the BRA failed to make any references to the National Risk Assessment (NRA) or to the Supranational Risk Assessment (SNRA). The Committee considered that the services offered by the Bank are mainly the granting of credit facilities in terms of loans, overdrafts, guarantees and the provision of current and term deposit accounts and payment services and that it does not service customers operating in any high-risk sectors identified in the EC reports. It further considered that the Bank does not transact cash and that all inflows and outflows are processed from bank to bank. It also noted that the Bank does not provide internet banking, credit cards, and/or other peculiar services. In view of this, it highlighted that the Bank was exposed to less risks than other credit institutions. Nonetheless, the Bank still had an obligation to carry out a comprehensive BRA in a timely manner.

In view of the above, the Bank was found in breach of Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.3 of the IPs.

### Customer Risk Assessment (CRA)

#### *Finding 1 – Deficiencies in relation to the jurisdiction risk analysis methodology*

The Committee noted that the Bank considers Know Your Country (KYC) website ratings to risk rate customers from a geographical perspective and acknowledged that KYC does indeed carry out a thorough assessment on the respective country which produce relatively good checks. Notwithstanding this, the Committee raised its concerns in relation to the Bank's understanding of the risks to which each jurisdiction exposed it and this since it only had the risk rating of each jurisdiction without any rationale as to how the ratings were reached.

Moreover, the Committee also commented on the fact that the jurisdiction risk analysis embedded within the CRA tool did not cater for the inclusion of additional jurisdictions which could possibly be linked to the respective business relationship. This because it only considers countries where the customer is incorporated and the country/ies where the customer operates. The Committee pointed out that whilst said countries are indeed important and need to be considered in the jurisdiction risk analysis, they are not comprehensive, as relying solely on these countries could potentially result in an incorrect consideration of jurisdiction risk, in turn potentially distorting the overall customer risk. It further commented that when carrying out the jurisdiction risk assessment the subject person is to consider factors such as the volume of the business coming from the jurisdiction in the context of the particular business relationship, the extent of the exposure which the customer in question has with a particular jurisdiction, whether the risks associated with these jurisdictions will affect the business relationship and the jurisdiction from where the particular assets are derived.

#### *Finding 2 – Findings related to the CRAs carried out*

- i. *The CRA did not adequately capture all the ML/FT risks emanating from the client's business arrangement*

The Committee noted that the Bank had failed to clearly outline the risks emanating from the business relationship in the CRA for all the client files reviewed. The CRAs held on file a note which merely stated that the Bank held detailed knowledge on the ownership of the corporate customers, the controlling members, and the SOW and SoF. However, this information was not reflected in the client files reviewed. Moreover, the compliance review revealed that most of the Banks customers are risk rated as presenting a moderate/standard risk, or a low risk of ML/FT. However, the conclusion reached by the Committee is that the assigned risk ratings do not reflect the ML/FT risks posed to the subject person especially when considering the corporate structures involved including a foundation, the undisclosed beneficiaries, voluminous transactions performed, the connected jurisdictions and the limited information held on the customers' BOs. The Committee highlighted that considering that the clients' model reflects a higher degree of risk due to the nature of the structures' complexity, the Bank was required to establish in detail the purpose and objectives of the customers, how the wealth of the BOs was accumulated and the source of wealth to be injected in the client accounts during the business relationship. The complexity of the client's structure should be considered in the CRA carried out, to ensure a proper and comprehensive understanding of ML/FT risks and adopt robust measures to minimise the heightened risks emanating from the business relationships.

Thus, in view of the above, the Committee held, that the risk ratings assigned by the Bank to its customers, where not comprehensive in considering all the risk factors and therefore this could have resulted in a distorted understanding of risk and in the incorrect application of controls.

*ii. CRAs performed after the establishment of the business relationship*

The compliance examination revealed that for four customer files not only was a CRA carried out late but aggravating this breach was the fact that transactions were allowed to be carried out prior to having a CRA in place.

*iii. The CRA was not always updated based on periodic review timelines*

With respect to four customer files, customers were not risk assessed with the new risk assessment methodology, despite periodic reviews that were due to be conducted. Moreover, for three customer files it was noted that a significant amount of time had passed between the risk assessment performed at onboarding stage and the updated risk rating performed during the business relationship. The CRAs held on file for these customers were dated 2015 and 2019. The three customers were classified as moderate risk, and according to the Bank's Policies and Procedures, reviews for moderate risk relationships are performed every 24 months.

It was positive to note that in its representations the Bank clarified that it had completed an exercise to both update its CRA methodology as well as put in place measures which will ensure that going forward the process is kept up to date.

The Committee held that, notwithstanding the Bank's explanations in this regard, the fact remains that the Bank had failed to adequately perform periodic reviews of the business relationships in line with its Policies and Procedures.

In view of the above reasons, the Committee determined that the Bank was in breach of its obligations under Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.3 and 8.1 of the IPs.

**Information on the Purpose and Intended Nature of the Business Relationship**

*i. Insufficient information on the nature and details concerning the customer's business activity*

The Bank was not collecting adequate and comprehensive information on the business activity of its customers. This shortcoming was noted in two files, with the Committee observing that the only information held by the Bank indicated that these customers were holding investments, with no other supporting rationale obtained. In its representations the Bank submitted that it obtains details on the nature of the customer's business activity when carrying out transaction monitoring. Committee members however, noted that no supporting documentation was provided both during the examination and at representations stage to substantiate such argument.

Committee members observed that although the CRAs contained information in relation to the activity of the customer, the information was documented between one to four years after onboarding. The Committee declared that obtaining this information after onboarding hinders both the ability to understand the customer at onboarding, as well as to carry out effective ongoing monitoring of the business relationship during the business. Committee members emphasised the importance that sufficient

information on the business activity needs to be collected at the beginning of the relationship to ensure that the business activities of the customer make sense with the products or services being used.

*ii. Inadequate information on the anticipated level and nature of business that is to be undertaken throughout the relationship*

The Committee observed that five of the files reviewed during the compliance examination did not hold sufficient and adequate information on the expected level of activity that would be undertaken throughout the business relationship. Examples of this shortcoming are being relayed hereunder:

Case 1: This customer held a term deposit account with the Bank, which was held as collateral to cover credit facilities that were being provided to a related third party. The amounts flowing through were significant and represented the principal and interest payments. The Bank indicated that the customer was set up primarily for this purpose, and that it could not determine the planned amounts to be processed as these depended on the level of borrowing that may be required by the related third parties. However, the Bank was still required to get an indication of what it was expecting in terms of activity through the relationship. While the Bank indicated that it held financial statements which could confirm that the customer held sufficient assets to justify the deposits, however the Committee observed that the financial statements were not audited, hindering the level of reliability of these statements. The Committee therefore determined that the information and documentation held for this customer were inadequate.

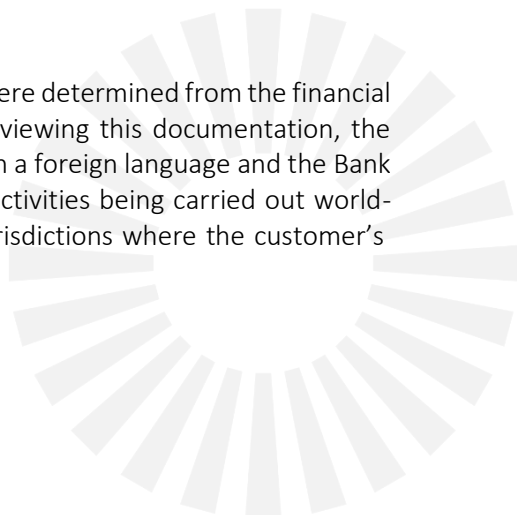
Case 2: The client file held information on the opening form and the KYC review, however the Committee observed that the information was only documented almost five years after the customer was onboarded. Whilst the Bank informed the Committee that this information was supported by documentation that the customer was supplying to the Bank on a quarterly basis, this documentation was neither made available during the compliance examination nor with the representations submitted. It was thus determined that the Bank did not hold adequate information to determine the anticipated level and nature of the business relationship.

The Committee stressed that whilst it had taken into consideration that the Bank had updated the CRA of its customers following the commencement of the business relationship and included more information on the purpose and intended nature, it could not disregard the fact that this information was collected late, at times almost five years from the start of the relationship. This delay meant that until the information was collected, the Bank could not adequately monitor the level of activity that was expected to be undertaken.

*iii. The expected source(s) and origin of the funds used during the business relationship was not adequately collected*

The Committee observed that in three files, the information collected on the expected source and origin of the funds was overly generic, indicating that the customers' funds would originate from for example "world-wide business activities", without clearly indicating what the business activities consisted of. An example of such a shortcoming is being relayed hereunder:

Case 1: Although the Bank indicated that the level and source of wealth were determined from the financial results that were submitted to the Bank on a quarterly basis, upon reviewing this documentation, the Committee could not confirm these arguments as the documents were in a foreign language and the Bank did not have the documents translated. With regards to the business activities being carried out world-wide, the Bank informed the Committee that this referred to all the jurisdictions where the customer's



clients are located. The Committee however, observed that the Bank did not document what the business activities of the customer were, and thus it could not determine from where the customer's funding was being generated.

In view of the above, the Committee determined that the Bank was in breach of its obligations under Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs.

### **Transaction Monitoring**

During the compliance examination a number of transactions were identified wherein the information held on file was insufficient. Examples of these cases are being relayed hereunder:

Case 1: The information obtained at onboarding indicated the customer's expected monthly credits/debits as €250,000. A contribution in kind of over € 17 million was received by the customer from the foundation owning it. Moreover, the customer received another capital contribution from the foundation of €10 million to enable the corporate customer to make another deposit with the Bank with a pledge against that account as security for loans which ECCM Bank was making to another related entity. The amount of the abovementioned transactions was above the average value of other transactions performed by the client. In its representations, the Bank held that on the day of the transaction of over €17 million, funds were already held on the Bank's books in the name of another customer. Funds were subsequently assigned to the corporate customer by virtue of an assignment agreement. Hence, according to the Bank, there was no cash movement involved. Furthermore, the Bank asserted that the transaction was above the average value since this represented an extraordinary deal which was not previously planned by the entity. Nonetheless, the Committee held that the fact that these funds were deriving from another customer should have made it easier for the Bank to understand the source of funds and provide further documentation on this transaction. This was more critical due to the high value of the transaction which was processed. The fact that the funds were already held at the Bank (but in the name of another customer) is not a sufficient justification since the Bank had to ensure it held sufficient information and documentation to understand and evidence the source of such a large value transfer. Moreover, while noting the reference to this being an extraordinary deal to justify the divergence from the expected and usual customer activity, the Committee determined that this is not sufficient. The Bank had to understand the rationale for such a large value transaction and the purpose why the corporate customer required such amounts, and not simply refer to a cash deposit in kind.

Case 2: Three transactions were reviewed: one incoming transaction amounting to circa €100 million and two outgoing transactions, one of over €1 million and the other of €1 million. As a means of supporting documentation, minutes of an extraordinary general meeting, which do not make specific reference to the mentioned transactions were provided. With its representations, the Bank provided a copy of minutes evidencing that the €100 million plus were to be used towards investments. According to the Bank this document indicates what the transaction represents, the value involved and that this is in line with the Company's business profile. However, the Committee took into consideration the fact that these minutes were not amongst the documentation submitted by the Bank during the compliance review but were only provided with the representations. Moreover, upon reviewing the minutes, it was noted that these did not indicate from where the money was deriving and how these were generated, but simply outlined the purpose of use. With regards to the two outgoing transactions, the Bank held that both related to a Share Capital increase by the customer shareholders and it acknowledged that the minutes provided did not make specific reference to these two payments but to the full amount payable only. To this effect, the Bank retrieved the original payment requests sent by customers at the time, however, the Committee

noted that there was no indication regarding the source from where the money was deriving and how these were generated. It is pertinent to clarify that simply knowing that the funds derived from the shareholder is not sufficient, since this shows the flow of funds but not their source. With respect to the transactions concerning this customer file, the Committee reiterated that the Bank must be aware not only of the reason behind a particular transaction but should also have knowledge of the source of funds, that is, how the amount in question was derived.

In conclusion, the Committee was concerned that the Bank was simply satisfied with knowing the flow of funds rather than obtaining the necessary information and documentation to understand the source of funds. In view of the above, the Committee held that the Company is in breach of Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs.

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

After taking into consideration the abovementioned breaches by the subject person, the Committee decided to impose an administrative penalty of three-hundred and ten thousand, two hundred and seventeen euro (€310,217) in view of the Bank's failure to abide with its obligations in terms of:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.3 and 8.1 of the IPs.
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs.
- Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs.

Furthermore, the Committee decided to reprimand the Bank for its delay to carry out the BRA and obtain the Board of Director's approval for it and for its failure to refer to the NRA or SNRA, in its BRA, this being in breach of Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.3 of the IPs. Moreover, the Committee determined to reprimand the Bank for its failure to carry out a CRA prior to engaging in a business relationship in respect of four customer files. In addition, the Bank was reprimanded for its failure to comply with its own Policies and Procedures in relation to the periodic reviews that were to be conducted on its customers, thus breaching Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.3 of the IPs.

In addition to the above, the Committee also served the Subject Person with a Remediation Directive in relation to:

- Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.3 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.3 and 8.1 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 of the IPs
- Regulation 7(2)(a) of the PMLFTR and Section 4.5.2 of the IPs

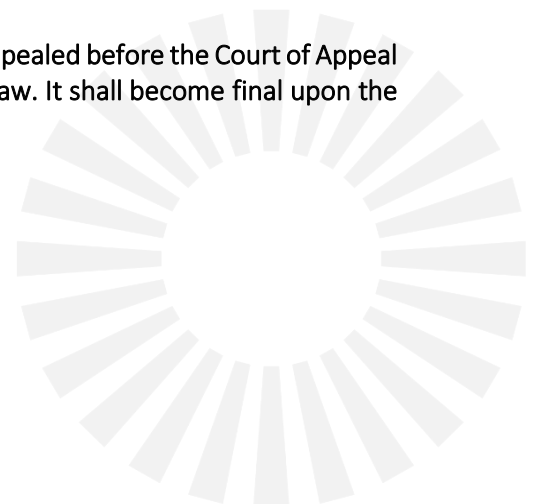
The aim of this Remediation Directive is to direct the subject person to take the necessary remedial actions to ensure that it understands the risks surrounding its operations and that it has implemented sufficient controls to mitigate the identified risks. Furthermore, it aims to ensure that the Subject Person is effectively addressing the breaches set out above. In virtue of this Directive, the Subject Person was requested to:

- Provide a revised version of the Bank's BRA, clearly outlining how the Bank has tackled the shortcomings identified by the Committee in relation to their latest BRA. A confirmation of when the BRA has been endorsed by the Bank's Board of Directors shall also be subsequently made available.

- The Bank shall also provide documented CRA procedures which include an explanation of the updated CRA methodology, that is, how each risk factor is assessed and scored, and an explanation of how the final CRA rating is obtained. The Bank needs to ensure that in the updated CRA, the rationale behind the ratings assigned to the different components of the risk factors is properly documented. The Bank must ensure that when carrying out jurisdictional risk assessments it takes into consideration factors such as the volume of the business coming from the jurisdiction in the context of the specific business relationship, the extent of the exposure which the customer in question has with a particular jurisdiction, whether the risks associated with these jurisdictions will affect the business relationship and the jurisdiction from where the particular assets are derived. The Bank should ensure that information/documentation obtained to understand the SOW and expected SOF are also factored in to understanding the customer risks. Moreover, the Bank is required to ensure that its policies and procedures allow for the risks of all its active customer base to be well understood and that the CRAs maintained by the Bank are accurate, adequate and in accordance with the Bank's updated CRA methodology.
- The Bank shall ensure that the measures it has in place are such that all customers provide the necessary information on their business activity, the anticipated level and nature of business that is to be undertaken throughout the relationship, as well as the expected source and origin of funds to be used. The Bank is to review, on a risk sensitive basis, the information/documentation it has on its current customers and to obtain updated information/documentation on them as necessary. The Bank is to ascertain that any new customers onboarded provide the information/documentation required to build the customer business and risk profile. The Bank is to provide a plan for the updating of customer information where necessary, which includes the timeframes for updating. The Bank must remedy the files where it was found in breach of its obligations in a timely manner.
- The Bank is required to substantially enhance its transaction scrutiny measures to ensure that large, anomalous transactions and transactions that significantly diverge from the customer's expected and actual level of activity are flagged, adequately assessed, and reviewed, comprehensively documented, and escalated or cleared (with adequate rationale being documented) as necessary. The Bank is required to provide, any enhancements carried out since the compliance review or otherwise present a plan of action to ensure transactions passing through the established relationships are being adequately and comprehensively monitored, on a risk sensitive basis.

When determining the appropriate administrative measures to impose, in addition to the specific considerations outlined above, the Committee took into consideration the importance of the obligation breached, the seriousness of the findings identified, and the risk of possible ML/FT caused by the breach identified. The Committee also considered the impact that the subject person's failure may have had on both its operations and on the local jurisdiction, the size of the subject person, as well as the fact that the subject person's officials were cooperative during the compliance examination. The Company's immediate actions to remediate the failures observed, and the actions initiated on its own motion prior to the imposition of the Remediation Directive were also considered. Furthermore, the Committee ensured that the penalty being imposed is effective, dissuasive, and proportionate to the failures identified.

**The administrative penalty hereby imposed is not yet final and may be appealed before the Court of Appeal (Inferior Jurisdiction) within the period as prescribed by the applicable law. It shall become final upon the lapse of the appeal period or upon final determination by the Court.**



## Key Takeaways

- The carrying out of a comprehensive and approved BRA is essential for subject persons to combat ML/FT risks sufficiently.
- Subject persons need to assess the risks that they are exposed to because of the business relationships they engage in. This is to be done by assessing the inherent risk which depends on the identification of the existent threats and vulnerabilities by considering “risk factors including those relating to customers, countries or geographical areas, products, services, transactions and delivery channels”. In Section 3.2, the IPs provide specific definitions and explanations of what each risk factor constitutes and what elements need to be considered to assess the same; these shall be taken into consideration by subject persons when creating their CRA methodology.
- Subject persons should keep in mind that the CRA is one of the pillars of a sound AML/CFT compliance program, this measure is necessary both for determining the level of due diligence required to build comprehensive customer profiles, as well as for ascertaining the degree of on-going monitoring necessary. Therefore, not conducting an adequate CRA has serious and widespread repercussions. Furthermore, given that risk is dynamic, it is important that the CRA is reviewed from time to time depending on the risk presented. The level of detail of a CRA is to reflect the complexity of the business relationship being engaged in. The more complex the customer and the relationship, the more thorough the details required to assess it need to be, in order to ensure a comprehensive risk understanding.
- Subject persons are expected to evaluate the reputability as well as the risks prevailing in the jurisdictions that it is operating in and the jurisdictions that its customers are connected to. Such jurisdictional risk assessment needs to take into consideration indices which assess the risks of ML/FT and prevalent crimes in the country. The Company is also expected to consider FATF public statements and other similar statements issued by other bodies including the EU Commission. It is indispensable for subject persons to ensure that material connections to jurisdictions are adequately considered. These would include country of operations, as well as the country from where the funds would be deriving.
- Building a comprehensive customer business and risk profile is crucial to enable both an understanding of the customer, as well as the ability to monitor actual against expected activity. Obtaining information/documentation on the business operations, the source of wealth/the source of funds, the expected level of activity and the purpose of the relationship are crucial to enable the effective management of the risks presented.
- Transaction monitoring is particularly important for subject persons to identify behaviour or transactions that diverge from the usual pattern of transactions carried out by a particular customer or that do not fit within the customer’s profile. Transaction monitoring is also essential to determine whether the initial risk assessment requires updating, and whether, in view of the updated risk assessment or other considerations, the business relationship remains within the subject person’s risk appetite. Effective transaction monitoring enables anomalous or large transactions to be flagged/noted, assessed, and analysed to ensure a legitimate purpose is identified and evidenced. Moreover, effective transaction monitoring measures should enable banks to capture high value and high-risk transactions before they are allowed to pass through the system. This scrutiny should also enable the Company to identify suspicious activity in relation to which a suspicious transaction report needs to be filed with the FIAU.



27 December 2022

**APPEAL** – On the 13th January 2023, the FIAU was served with a copy of the appeal application filed by the Bank before the Court of Appeal (Inferior Jurisdiction), from the decision of the FIAU.

The Bank is, inter alia, contesting the FIAU's decision, in relation to BRA, CRA, CDD and Transaction Monitoring, as well as the fact that, in its view, the FIAU's conclusions lack a clear motivation. It also contests the penalty imposed upon it by the FIAU as being disproportionate and excessive. Lastly, it complains that the FIAU's decision has Constitutional and fundamental human rights implications.

The Bank thus asked the Court to revoke and annul the decision, the penalty and all that provided in the FIAU's sanction letter.

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.

16 January 2023

