



## Publication Notice: Late/No Replies to Requests for Information

### **SUPERVISORY ACTION:**

Late/No Replies to Requests for Information made by the FIAU

### **DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED**

Administrative measures in terms of Regulation 21 of the PMLFTR for failure to satisfy the requirements in terms of Regulation 15(8) of the 2018 Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

Data is being published in a combined form, covering all the administrative measures imposed by the Compliance Monitoring Committee (CMC or the Committee). Based on an assessment of late or non-submission by Subject Persons to requests for information made by the Financial Intelligence Analysis Unit (FIAU) as soon as is reasonably practicable but not later than five working days from when the request is first made. The requests for information were made during the period April 2018 to December 2019.

### **INTRODUCTION**

The Financial Action Task Force (FATF) Recommendation 29 and its respective Interpretative Note require countries to establish a Financial Intelligence Unit (FIU) that serves as a national centre for the receipt and analysis of: (a) Suspicious Transaction Reports; and (b) other information relevant to Money Laundering (ML), associated predicate offences and Funding of Terrorism (FT), and for the dissemination of the results of that analysis. Furthermore, an FIU should be able to obtain additional information from reporting entities and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.

Therefore, in line with FATF Recommendation 29, the EU Anti-Money Laundering and Counter Funding of Terrorism Directives, as well as Article 16 of the Prevention of Money Laundering Act (PMLA), the FIAU's analytical function is carried out by the Intelligence Analysis section. This consists in collecting, processing, and analysing information obtained from various sources. The information collected is disseminated as intelligence to combat ML/FT. The FIAU issues requests for information following; the receipt of STRs, the receipt of requests for information from foreign FIUs and in cases generated by the FIAU itself. The entities approached include subject persons, foreign FIUs, the Malta Police, supervisory and competent authorities, as well as government departments and agencies.

During 2018, there was an increase of 70% in requests for information made by the FIAU, when compared to 2017; with 10,196 requests for information made to 576 entities in 2018. This upward trend was also observed in 2019 with the FIAU making 13,696 requests for information to approximately 1,650 entities. The resulting 34% increase was largely a result of the overall increase in

the number of STRs and cases dealt with in 2019. Moreover, as noted in previous years, credit institutions remained the primary source of information for the FIAU. This conclusion was based on the fact that the majority of all requests for information sent by the FIAU were directed towards these entities.

Sector	Category	Requests per Sector
Financial Sector	Credit Institutions	13,375
	Financial Institutions	1,262
	Insurance Licensees	2
	Investment Service Providers	946
Gaming Sector	Casino Licensees	44
	Remote Gaming Companies	64
Non-Financial Businesses and Professions (DNFBPs)	Trustee Corporate Service Providers	3,764
	Independent Professionals (Accountants, Notaries and Lawyers)	8
<b>Grand Total</b>		<b>19,465</b>

**Table 1:** Number of Requests for Information made per Sector from April 2018 to December 2019

## ADMINISTRATIVE MEASURES

As per Regulation 15(8) of the PMLFTR, the FIAU may, where it deems necessary, demand information from any subject person. The subject person shall comply as soon as is reasonably practicable but not later than five working days from when the demand is first made, unless otherwise instructed by the FIAU. A subject person may make representations justifying why the requested information cannot be submitted within the said time. The FIAU may, at its discretion and after having considered the representations, extend the time as is reasonably necessary to obtain the information. The subject person must then submit the information requested within the extended timeframe.

Failure to reply to Requests for Information or the late submission of responses led to **151** potential breaches letters being issued to subject persons as illustrated in Table 2 below.



Sector	Category	Number of Subject Persons
Financial Sector	Credit Institutions	10
	Financial Institutions	20
	Insurance Licensees	0
	Investment Service Providers	41
Gaming Sector	Casino Licensees	0
	Remote Gaming Companies	0
Non-Financial Businesses and Professions (DNFBPs)	Trustee Corporate Service Providers	80
	Independent Professionals (Accountants, Notaries and Lawyers)	0
<b>Grand Total</b>		<b>151</b>

**Table 2:** Potential Breaches Issued by Category

Subject persons in receipt of the potential breaches letter were invited to submit representations (supported with any evidence as necessary), in relation to their failure to reply to requests for information or for replying late. Representations received by the FIAU were presented to the FIAU’s Compliance Monitoring Committee (the “Committee”) to make a final decision about the case. In its deliberations on each case and when deciding on the amount of the administrative penalty to impose (where appropriate), the Committee took into consideration: the representations made by the subject person, the nature and size of each subject person and the seriousness of the findings. Furthermore, it considered the possibility that the subject person might have prejudiced local and/or international analytical reviews or investigations through its failure to reply or replying late to FIAU requests for information.

Following the evaluation of all cases and corresponding representations, the Committee decided to impose an administrative measure on **one hundred and thirty-six (136) subject persons**. These included pecuniary fines totalling **€284,000** imposed on 89 subject persons and written reprimands imposed on 47 subject persons. Whenever the findings warranted, and in line with the FIAU’s policies and procedures, an amalgamation of administrative measures including both a reprimand and a pecuniary penalty were imposed on subject persons.

Table 3 illustrates the total number and value of administrative penalties imposed per Sector. As can be noted the total count of administrative penalties imposed by the FIAU, is lower than the number of potential breaches that was initially issued. The reason for this difference is because the Committee, based on the specific information in relation to the case (including the representations submitted by the subject person) concludes that a number of subject persons were not in breach of their obligations.



Sector	Category	Number of Subject Persons	Administrative Measures Imposed	
			Amount of Administrative Penalties (€)	Number of Reprimands
Financial Sector	Credit Institutions	11	€ 42,750	11
	Financial Institutions	19	€ 55,750	16
	Insurance Licensees	0	€ 0	0
	Investment Service Providers	35	€ 32,600	25
Gaming Sector	Casino Licensees	0	€ 0	0
	Remote Gaming Companies	0	€ 0	0
Non-Financial Businesses and Professions (DNFBPs)	Trustee Corporate Service Providers	71	€ 152,900	69
	Independent Professionals (Accountants, Notaries and Lawyers)	0	€ 0	0
<b>Grand Total</b>		<b>136<sup>1</sup></b>	<b>€ 284,000</b>	<b>121</b>

**Table 3:** Number and Value of Administrative Penalties Issued

## CONCLUSION

The FIAU emphasises that requests for information sent by the Intelligence Analysis Section are crucial and indispensable to obtain information for the Unit's analytical function. Therefore, no circumstance should prevent a subject person from replying to these requests within the timeframes required. This also applies in cases of NIL return. Failure to reply or to reply late to requests for information made by the FIAU, not only results in a subject person failing to satisfy the requirements of Regulation 15(8) of the PMLFTR, but this failure also has a detrimental impact on the FIAU's analytical function.

The purpose of this exercise is not only to take administrative action against subject persons who fail to reply to FIAU requests for information or otherwise reply late. It is also to ensure that subject persons appreciate the importance of these requests and the serious repercussions for breaching Regulation 15(8) of the PMLFTR.

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<sup>1</sup> 5 of the administrative measures imposed have been appealed in front of the Court of Appeal (Inferior Jurisdiction) by the subject persons 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.

## APPEAL OUTCOMES

On the 20<sup>th</sup> April 2022, the Court of Appeal (Inferior Jurisdiction) decided the appeal brought forward against the decision of the FIAU dated 23<sup>rd</sup> July 2021, whereby the FIAU imposed an administrative penalty of €18,750 and a reprimand. The Court varied the FIAU's decision and reduced the administrative penalty to €7,950.

On the 27<sup>th</sup> September 2023, the Court of Appeal (Inferior Jurisdiction) decided the appeal brought forward against the decision of the FIAU dated 21<sup>st</sup> May 2021, whereby the FIAU imposed an administrative penalty of €6,000 and a reprimand. The Court varied the FIAU's decision by:- cancelling the FIAU's decision in so far as the penalty was concerned; and upholding the FIAU's decision in so far as the reprimand according to law was concerned.

