



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 select information 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 June 2021

RELEVANT FINANCIALACTIVITY CARRIED OUT:

Notary Public

SUPERVISORY ACTION:

Off-site compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €58, 238 and a Follow-up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”).

LEGAL PROVISION BREACHED:

- Article 26(2)(b) of the PMLA;
- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures (IPs);
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5 of the IPs;
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs;
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs; and
- Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Failure to comply with lawful requirements, orders and directives given by the FIAU in terms of Article 26(2)(b) of the PMLA

The Committee noted that although the Notification letter issued by the Supervision Section of the FIAU included detailed instructions and directed the Subject Person to provide information and documentation required for the proper conduct of the examination, such directive was not adhered to. More specifically, the Subject Person:

- Failed to provide an active client list as requested by the FIAU
The Committee noted that difficulties in obtaining such client list were immediately experienced by the supervisory officials conducting the compliance review and extensions to the deadline originally established were granted to the subject person. Although the active client list was provided within such extensions, this was not in the format requested by the FIAU and did not include all the information requested by means of the Notification letter sent to the Subject Person.
- Failed to provide an inactive client list as requested by the FIAU
The Committee again noted that in order for supervision officials to obtain the inactive client list, a number of extensions to the original deadline were granted to the Subject Person. However, despite such extensions, the inactive client list was still not provided within the stipulated timeframes. In addition, as with the previous finding, the format of such client list was not in line with the instructions provided by the FIAU in the Notification letter.
- Failed to provide the FIAU with the sample of files requested
Although a sample of files were requested, the Subject Person only provided 26% of the total sample requested within the stipulated deadlines. 53% of the files requested were never provided to the FIAU while the remaining 20% were provided late.

In view of the above-mentioned, the Committee expressed its disappointment towards the lack of appreciation demonstrated by the Subject Person to the FIAU's functions and her AML/CFT obligations. The Committee considered that by the lack of consideration towards the requests and instructions made by the Supervisory Section of the FIAU, the Subject Person has hindered the FIAU's supervisory process even after several extensions to deadlines originally established were granted. The Committee therefore determined that the findings identified constitute as breach of a lawful order given by the FIAU in terms of Article 26(2)(b) of the PMLA.

Business Risk Assessment ("BRA") – Regulation 5(1) of the PMLFTR and Section 3.3 IPs;

The Committee noted that the Subject Person failed to have in place a business risk assessment that would identify and assess the risks of ML/FT that arise out of her operations. The Committee also noted that during the compliance review, it was evident that the Subject Person lacked knowledge and understanding not only in relation to the risks she is exposed to through her operations but also on the obligation to have a BRA in place itself. The Committee in fact noted correspondence carried out between the Subject Person and Supervision Officials in which the Subject Person is stating that the completion of a BRA does not apply to her and that instead, customer risk assessments are carried out. While this in itself evidenced the Subject Person's lack of knowledge in relation to her BRA obligations, as will be indicated in the subsequent finding, her CRA obligations have not been met either.

The Committee therefore determined that the findings identified constitute as breach of Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs.

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

In all the files reviewed, the Committee noted that no CRA was conducted. The Committee also noted the Subject Person's admittance of such finding and that she has no established CRA procedures.

Consequently, the Subject Person carried out occasional transactions without first establishing the risk associated with that transaction, potentially exposing her to a higher ML/FT risk without having knowledge of such risk, let alone being able to mitigate any risks exposed to.

In view of the above, the Committee determined that the findings identified constitute as breaches to Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

Policies & Procedures - Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs

The Committee noted that during the compliance review, the subject person had stated that she makes use of the Notarial Council's Manual. However, as was evident from the various findings of the compliance review, there was no implementation of such Manual. The Committee reiterated that although Notaries may make use of the Notarial Council's Manual as part of their AML/CFT Framework, when doing so one shall ensure that whenever the Manual does not cater for particular situations, separate procedures that would complement such Manual should be established in order to address the actual operations of a particular notary. For instance, the Subject Person had no Customer Acceptance Policy (CAP) in place. Consequently even had adherence to such Manual been made in practice, something which as is evident from the findings identified was not done, you have failed to establish comprehensive policies and procedures that are reflective of your operations and risks.

In view of the above, the Committee determined that the findings identified constitute as breaches to Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs.

Identification & Verification ("ID&V") - Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2 of the IPs

In all the files reviewed, shortcomings were identified in relation to the identification and verification of the customers and beneficial owners. In fact, whenever one of the parties was a corporate customer, no explanation on the company's ownership and control structure was maintained. In addition, the beneficial owners of such customers were not identified and verified. The Notary therefore proceeded to allow the transfer of immovable property to take place without having a clear understanding of who her customers were and in case of corporate customers without having the knowledge of who ultimately owned and controlled the corporate customers.

In view of the above, the Committee determined that the findings identified constitute as breaches to Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3 of the IPs.

Politically Exposed Persons ("PEPs") - Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs

Although the Subject Person had in place a CDD form which included a question that would establish the PEP status of a customer, from the file review it transpired that this form was not being implemented in a comprehensive manner in practice. In fact various parties in all of the files reviewed did not have such form filled in and therefore their PEP status was not established by the Subject Person. In such absence, the Subject Person was unable to implement the enhanced due diligence measures to mitigate the increased risk associated with PEP customers whenever services are being provided to same.

In view of the above, the Committee determined that the findings identified constitute as breaches to Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs

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

After taking into consideration the abovementioned breaches by the Notary, the Committee decided to impose an administrative penalty of fifty eight thousand, two hundred and thirty eight euro (€58, 238) with regards to the breaches identified in relation to:

- Article 26(2)(b) of the PMLA;
- Regulation 5(1) of the PMLFTR and Section 3.3 of the IPs;
- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5 of the IPs;
- Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs;
- Regulation 11(5) of the PMLFTR and Section 4.9.2.2 of the IPs; and
- Regulation 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2 of the IPs.

The Committee acknowledged the statements made by the Notary in relation to some of the shortcomings identified outlining the commencement of remediation. The Committee however remained overall concerned towards the degree and extent of the Notary's lack of adherence to her AML/CFT obligations. In particular as evidenced during the compliance examination but even when considering the lack of detail provided in the letter of representations in relation to these enhancements. The majority of the failures have been considered by the Committee as systematic, with all failures evidencing a serious failure to have in place an adequate and effective AML/CFT program that would enable the Notary to mitigate any risks associated with ML/FT. The systematic nature of these findings has led the Committee to conclude that the abovementioned administrative penalty should be imposed in terms of its powers under Regulation 21 of the PMLFTR.

The Committee also issued a Directive on the Notary to ensure that full remediation of her shortcomings is carried out and that such implementation shall be monitored by the Enforcement Section of the FIAU as part of a follow up process. In terms of its powers under Regulation 21 of the PMLFTR, the Committee directed the Notary to provide the FIAU with an Action Plan setting out the actions already taken, the issues that still need to be addressed, the actions that should be carried out and the timeframes by which these actions should be implemented.

In determining the appropriate administrative measures to impose, the Committee took into consideration the representations submitted by the Notary together with the remedial actions outlined in the letter of representations. Also, the nature and size of the Notary's operations and the overall impact that the AML/CFT shortcomings have caused or could have caused both to its own operations and also to the local jurisdiction. The seriousness of the breaches identified together with their occurrence were also considered by the Committee in determining the administrative measures imposed.

Finally, the Notary has also been duly informed that in the eventuality that she fails to provide the above-mentioned action plan available with the specified deadlines, her default shall be communicated to the Committee for its eventual actions, including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.



24 June 2021

Appeal:

On Monday 19 July 2021, the FIAU was duly notified that the Notary has, in accordance with the provisions of Article 13A of the Prevention of Money Laundering Act (PMLA), appealed the decisions taken by the FIAU. The Notary has appealed the nature of the administrative measure imposed by the Compliance Monitoring Committee in relation to the breaches mentioned in this publication on the basis of wrong evaluation of facts. The quantum of the administrative penalty imposed is also being challenged.

23 July 2021



Appeal Decision Publication Notice

On Wednesday 15 June 2022, the Court of Appeal (Inferior jurisdiction) delivered its judgement in relation to the appeal that was filed by the Subject Person as communicated to the FIAU on the 19 July 2021. By means of its decision, the Court of Appeal:

- Confirmed all breaches identified and which gave rise to the imposition of an administrative measure by the FIAU; and
- Revised the quantum of the administrative penalty imposed by the FIAU to Eur 7, 000.

In its deliberations, the Court held that whether subject persons reduce their operations or otherwise, does not exonerate them from fulfilling their AML/CFT obligations. Neither does a subject person's adherence to other legal obligations. This since the obligations emanating from the PMLFTR are specifically aimed at combatting AML/CFT and the non-adherence to these Regulations cannot be justified with the adherence to any other law. Although the Court considered the breaches identified by the FIAU as serious and confirmed that the imposition of an administrative penalty was merited, it deemed the penalty as excessive.

17 June 2022

