

Administrative penalty of 21 September 2023 for non-compliance with professional obligations related anti-money laundering/counter financing of terrorism

Administrative penalty imposed on the investment firm **Fuchs & Associés Finance S.A. (in liquidation)**

Luxembourg, 23 April 2024

Administrative decision

On 21 September 2023 the CSSF imposed an administrative fine amounting to EUR 785,000 on the investment firm (in liquidation) "Fuchs & Associés Finance S.A." ("Entity"), authorised at the time of the on-site inspection to provide activities and services in accordance with the provisions of Articles 24-1, 24-2, 24-4 et 24-5 of the amended Law of 5 April 1993 on the financial sector ("LFS").

The CSSF would like to point out that, as notified in its press release 23/13 of 18 July 2023, following an application for liquidation on its own initiative with the *Tribunal d'arrondissement de et à Luxembourg* (Luxembourg District Court), the latter sitting in commercial matters ordered the dissolution and judicial liquidation of the Entity on 18 July 2023, pursuant to Article 129(1) point 2 of the Law of 18 December 2015 on the failure of credit institutions and certain investment firms.

Moreover, following a decision of 7 July 2023, the CSSF had withdrawn the Entity's licence with effect from 15 July 2023.

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to Article 2-1(1) as well as Article 8-4(1), (2) and (3) of the amended Law of 12 November 2004 on the fight against money laundering and terrorist financing ("**AML/CFT Law**") for non-compliance with anti-money laundering/counter financing of terrorism ("**AML/CFT**") professional obligations taking into account the criteria set out in Article 8-5(1) of this law, in particular the

gravity and duration of the breach and the financial situation of the legal person held responsible for the breach.

In this context, the CSSF would like to point out that the amount of the fine imposed is proportionate to the percentage of the Entity's annual turnover.

The professional obligations in relation to which the breaches were observed are set out in particular in:

- The AML/CFT Law;
- The amended Grand-ducal Regulation of 1 February 2010 ("**AML/CFT Grand-ducal Regulation**") specifying certain provisions of the AML/CFT Law;
- The amended CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing ("**CSSF Regulation 12-02**") which constitutes an implementing measure of the AML/CFT Law;

as applicable at the time of the on-site inspection.

Legal bases for the publication

This publication is made pursuant to the provisions of Article 8-6(1) of the AML/CFT Law insofar as, following an assessment of proportionality, the CSSF considered that the publication on a named basis is not disproportionate and does not jeopardise neither the stability of the financial markets nor an ongoing investigation.

Context and major cases of non-compliance with the professional obligations identified

This administrative fine follows a CSSF on-site inspection at the Entity, meanwhile in liquidation, targeting the AML/CFT framework. During the on-site inspection, the CSSF identified breaches and ongoing violations in the AML/CFT framework of the Entity, some of which had already been identified during previous inspections, which related in particular to the following points:

- With respect to a certain number of clients of the trading desk, the process of onboarding new business relationships was deficient at several levels. The CSSF has noted that, for some new clients, the Entity had neither formally accepted the clients nor

had applied any customer due diligence measures, even though large-scale operations had been carried out for these clients for several years, constituting a failure to comply with the obligations to apply customer due diligence measures pursuant to Article 3, (1)a) and (2) of the AML/CFT Law and Article 9(1) of CSSF Regulation 12-02. The analysis of KYC files also revealed that the Entity had been unable to determine whether some of those clients were acting on their own behalf or for another person, thereby failing to comply with the provisions of Article 17 of CSSF Regulation 12-02; in some cases, the Entity even had doubts about the true identity of the beneficial owners. The Entity has therefore failed to comply with the obligations to identify beneficial owners, pursuant to Article 3(2) b) of the AML/CFT Law and Article 22(2) of CSSF Regulation 12-02, the latter clarifying the behaviour to be adopted by the professional if any doubts arise as to the real identity of the beneficial owner. The Entity had not attempted to clear its doubts, to terminate the business relationship or to refrain from carrying out transactions and had not considered whether a suspicious transaction report to the Financial Intelligence Unit ("**FIU**") had to be filed without delay.

Within the same context, the CSSF had identified a lack of information and a non-corroboration of information on the source of funds of some clients of the trading desk, despite the important amounts of the operations and/or the level of risk of those clients, which constituted a failure to comply with Article 3(2)d) of the AML/CFT Law and Article 24 of the CSSF Regulation 12-02 which require, among others, to collect, record, analyse and understand information on the source of funds and, depending on the risk assessment of the client, to obtain supporting evidence.

In relation to the above-mentioned deficient entry into business relationship process, the CSSF has also detected that the Entity did not gather adequate and sufficient information and documentation in order to reasonably exclude the risk of a primary tax offence for some of the above-mentioned trading desk clients, even though the files contained several

elements indicative of a tax risk, as described in Circular CSSF 17/650 and Circular CSSF 15/609.

- The CSSF has noted an absence of categorisation of some trading desk clients, according to their respective money laundering and terrorist financing risk, as however required by Article 3(2a) of the AML/CFT Law and Article 5 of CSSF Regulation 12-02.
- The ongoing monitoring of business relationships was also deficient at several levels. Indeed, the name screening controls aiming at detecting persons subject to prohibitions and restrictive measures in financial matters had not been carried out for all clients of the trading desk, as their names were not included in the databases used to feed the name screening systems. Furthermore, the name screening tools were updated only once a week, and no additional controls were in place, particularly when new European and United Nations lists are issued. The above-mentioned deficiencies constitute a failure to comply with the obligation to detect these persons, entities and groups without delay, in order to apply the necessary restrictive measures to them. In this regard, the Entity failed to comply with the provisions of Article 33(1) and (2) of CSSF Regulation 12-02 implementing Article 3(2)d) of the AML/CFT Law, and with Article 39(1) of CSSF Regulation 12-02. Furthermore, the absence of a complete and exhaustive client database is a breach of Article 4(3) of the AML/CFT Law, requiring professionals to have systems in place, enabling them to respond fully and rapidly to any enquiries for information from the Luxembourg authorities responsible for the fight against money laundering and terrorist financing.
- The transaction monitoring as implemented by the Entity was insufficient and even non-existent for the clients of the trading desk. For instance, the Entity had only carried out transactional controls on part of its customer base (disregarding in particular clients not classified as high risk based on their money laundering and terrorist financing risk and clients whose assets were deposited with banks for which the data were not accessible via the Entity's internal software on which the transactional controls were

based). Furthermore, the CSSF found that the Entity had not had any access to this software for some time. Finally, the analyses revealed that the Entity was unable to control transactions related to high-risk countries. The elements set out above constitute a breach of Article 3(2)d) and (7) of the AML/CFT Law, Article 1(3) of the AML/CFT Grand-ducal Regulation as well as Articles 32 and 39(1) and (2) of CSSF Regulation 12-02, which insist on the need to examine the transactions carried out in order to ensure that they are consistent with the professional's knowledge of his client and his risk profile, while paying particular attention to unusual or significant transactions with regard to the business relationship.

These breaches of the legal and regulatory AML/CFT framework were considered as even more critical as the Entity's internal auditor had already pointed out prior to the on-site inspection that no transaction monitoring was carried out for business relationships classified as medium and low risk, which represented the vast majority of the Entity's customer base. The Entity had therefore knowingly failed to comply with its obligations to monitor clients' transactions on a continuous basis, over several years.

- The AML/CFT procedures were inadequate because they had not been updated for several years, even though major regulatory changes had taken place, which constitutes a failure to comply with Article 4(1) of the AML/CFT Law and Article 7(1) of the AML/CFT Grand-ducal Regulation, and this with full knowledge of the facts, as this breach had already been reported to the Entity on several occasions by the internal auditor prior to the on-site inspection without prompting any diligent reaction from the Entity's authorised management.
- Although there were indications that generated serious suspicions of money laundering in one file, the Entity had not reported them to the FIU, which constitutes a breach of Article 5(1) a) of the AML/CFT Law.