

Administrative penalty of 16 February 2023 for non-compliance with professional obligations related with anti-money laundering / counter financing of terrorism and management of conflicts of interest

Administrative penalty
imposed on the
specialised PFS Reference
Financial Services S.A.

Luxembourg, 16 January
2024

Administrative decision

On 16 February 2023 the CSSF imposed an administrative fine amounting to EUR 114,000 on the specialised PFS Reference Financial Services S.A. ("**PFS**"), authorised as registrar agent, Family Office, corporate domiciliation agent, professional providing company incorporation and management services, client communication agent, and administrative agent of the financial sector in accordance with the provisions of Articles 25, 28-6, 28-9, 28-10, 29-1 and 29-2 of the amended Law of 5 April 1993 on the financial sector ("**LFS**").

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to:

- (i) Article 2-1(1) as well as Article 8-4 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; and to
- (ii) Article 63(1), first indent and (2), third indent of the LFS with regard to inadequate management of conflicts of

interests, taking into account the criteria defined in Article 63-4 of this law, in particular the gravity and duration of the breach and the financial situation of the legal person responsible for the breach.

The CSSF has duly taken into consideration the remedial actions undertaken by the PFS to resolve the breaches identified.

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;
- The amended Law of 23 December 2016 implementing the 2017 tax reform ("**Law of 23 December 2016**") which specifically concerns the extension of the money laundering offence to aggravated tax fraud and tax evasion and certain provisions of which are more particularly developed in point 2 of the Circular CSSF 17/650 ("**Circular CSSF 17/650**") on the application of the AML/CFT Law and the AML/CFT Grand-ducal Regulation to primary tax offences; and
- The LFS;

as applicable at the time of the facts.

Legal bases for the publication

This publication is made pursuant to (i) 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 was not disproportionate and did not jeopardise neither the stability of the financial markets nor an ongoing investigation, and (ii) the provisions of Article 63(2), second subparagraph, of the LFS, the CSSF having considered that the present publication does not seriously jeopardise the financial markets or cause disproportionate harm to the parties involved.

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

This administrative fine follows a CSSF on-site inspection at the PFS targeting the AML/CFT framework. During the inspection, the CSSF identified important breaches in the AML/CFT and internal governance framework of the PFS which related in particular to the following points:

- The name screening controls aiming at detecting persons subject to prohibitions and restrictive measures in financial matters had not been carried out over a period of several years, thus constituting a failure to comply with the obligation to detect these persons, entities and groups without delay so that the necessary restrictive measures can be applied to them. In this regard, it was a failure to comply with the provisions of Article 33(1) and (2) of CSSF Regulation 12-02 constituting an implementing measure of Article 3(2)d) of the AML/CFT Law, and with Article 39(1) of CSSF Regulation 12-02. The detection of persons subject to prohibitions and restrictive measures in financial matters is an essential professional obligation to ensure compliance with the above-mentioned provisions and with European Union acts containing prohibitions and restrictive measures in financial matters, the national regulatory texts on financial sanctions based on the Law of 27 October 2010 on the implementation of United Nations Security Council resolutions (part repealed since the entry into force of the Law of 19 December 2020 on the implementation of restrictive measures in financial matters);
- The process of entering into business relationships and keeping client files up to date which was deficient and therefore did not permit the professional to have complete and duly documented information where appropriate, which constitutes a breach of the legal and regulatory framework. In this regard, the CSSF had in particular identified a lack of information and a non-corroboration of information on the source of funds of some clients which constituted, in view of the importance of the amounts and/or the level of risk of those clients, a failure to comply with Article 3(2)d) of the AML/CFT Law as developed by Article 24 of CSSF Regulation 12-02 and therefore a breach of the obligation to collect, record, analyse and understand information on the origin of customers' funds and, depending on the risk

assessment, to obtain supporting evidence. The periodical review of clients' files at appropriate times and within an adequate timeframe depending on the risk assessment of customers was also not in place, constituting a failure to comply with Article 3(5) of the AML/CFT Law, Article 1(4) of the AML/CFT Grand-ducal Regulation and Article 35(1) and (2) of CSSF Regulation 12-02 which foresee a periodic review of the clients' files at appropriate times and within an appropriate timeframe according to the risk assessment;

- The ongoing due diligence applied to the transaction monitoring was insufficient, in violation of the provisions of Article 3(2) d) and (7) of the AML/CFT Law, Article 1(3) of the AML/CFT Grand-ducal Regulation and Article 32 of CSSF Regulation 12-02 which insist on the necessity to examine the transactions concluded in order to ensure that they are consistent with the professional's knowledge of its client, while paying particular attention to unusual or significant transactions with regard to the business relationship;
- Although there were indications that generated serious suspicions of money laundering, the PFS had not reported them to the Financial Intelligence Unit, or had reported them with delay, constituting a breach of Article 5(1) a) of the AML/CFT Law and Article 8(2) of the AML/CFT Grand-ducal Regulation;
- The AML/CFT procedures were inadequate because they merely copied the various legal and regulatory texts without describing the measures put in place in practice by the PFS to meet its legal and regulatory obligations, which constituted a non-compliance with Article 4(1) of the AML/CFT Law, Article 7(1) of the AML/CFT Grand-ducal Regulation and Article 38 of CSSF Regulation 12-02;
- The application of the risk-based approach was not compliant with the legal and regulatory framework. Indeed, it has been established that there was a lack of consistency in the application of the methodology for classifying customers according to their risk of money laundering or terrorist financing and a lack of consideration of all risk factors when classifying customers, which constituted a failure to comply with Articles 3(2a) and 3-2(1) of the AML/CFT Law, Article 5(1) and (2) of CSSF Regulation 12-02, as well as with the



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Law of 23 December 2016 and point 2 of Circular CSSF 17/650.

- The internal governance framework presented a potential conflict of interest due to the combination of commercial and AML/CFT functions by several individuals without the PFS having put in place the necessary measures to ensure that decisions were taken objectively and independently. In the absence of adequate mitigation measures, the combination of such functions is likely to call into question the objectivity of decisions taken regarding the identification, control and management of money laundering or terrorist financing risks due to the lack of independent control. This resulted in non-compliance with Articles 17(2) 2nd subparagraph, 36(1) and 36-1(1) of the LFS, Article 4(1) of the AML/CFT Law and Article 43 of CSSF Regulation 12-02.

