



# Enforcement

Enforcement Section

Seminar on BO Obligations



# Regulatory Provisions

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- The FIAU is empowered to enforce the provisions found under the:
  - I. Prevention of Money Laundering Act (PMLA)
  - II. Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)
  - III. Any procedure or guidance issued in terms of the PMLFTR
  
- This through the imposition of Administrative Measures for identified breaches of AML/CFT obligations in terms of the FIAU's powers envisaged under:
  - I. Regulation 21 of the PMLFTR
  - II. Article 30C of the PMLA

## CHAPTER 373

### PREVENTION OF MONEY LAUNDERING ACT

*To make provision for the prevention and prohibition of the laundering of money in Malta.*

*PREVENTION OF MONEY LAUNDERING  
AND FUNDING OF TERRORISM*

[S.L. 373.01

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### SUBSIDIARY LEGISLATION 373.01

PREVENTION OF MONEY LAUNDERING AND  
FUNDING OF TERRORISM REGULATIONS

FINANCIAL INTELLIGENCE ANALYSIS UNIT

IMPLEMENTING PROCEDURES



# Imposition of Administrative Measures

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## Why?

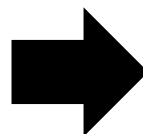
- To ensure compliance with AML/CFT obligations and prevent the jurisdiction from being used for criminal purposes.

## How to determine the most appropriate administrative measure to impose?

- By understanding the seriousness, severity and materiality of the case/s under review.

### Punitive

Proportionate, effective and dissuasive



### A culture of compliance

Ensure that SPs enhance their policies, procedures and controls to ensure that they are able to understand their risks and effectively manage the same.



# Types of Administrative Measures

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## Administrative Penalties

- If Repeated, serious or systematic, or a combination thereof:
- Relevant activity: Max €1m, or not exceed twice the amount of the benefit derived from the contravention;
- Relevant financial business: Max of €5m or not exceed 10% of the total annual turnover.

## Directives

- Remediation vs Follow up Directives
- Identifies the end goals which need to be achieved to complete the remediation.
- Actionable steps which are to be followed to achieve the goals.
- Target dates for completion.

## Written Reprimand

- Did not give rise to significant consequences, it is nonetheless not acceptable and should not be repeated.
- Taken into consideration when assessing any future cases of non-compliance.

## Publications

- In terms of article 13C of the PMLA the FIAU is required to publish the administrative measures imposed by the FIAU.
- Published by name administrative penalties that exceed €50k

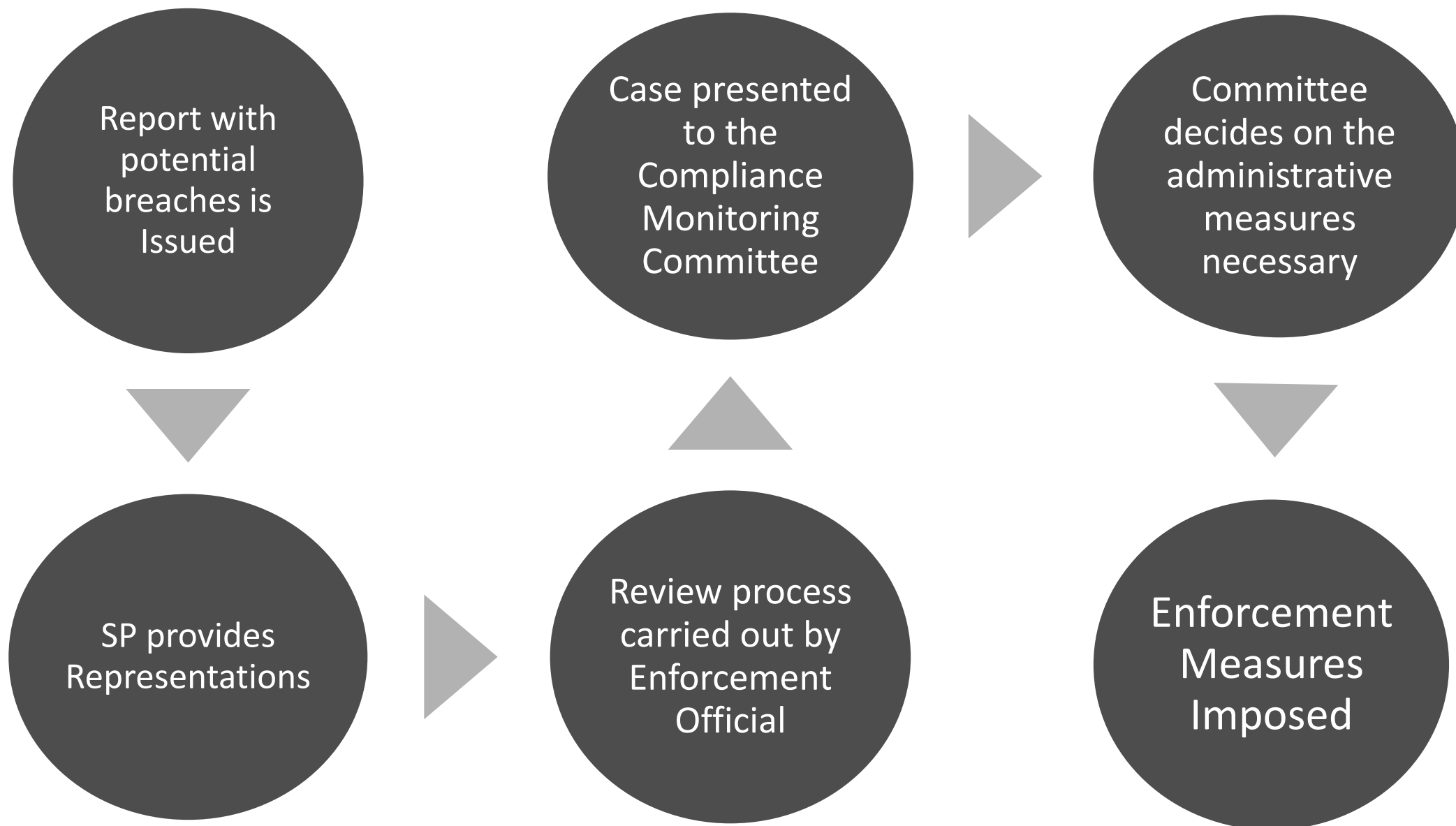
## Others

- Directive to appoint Independent Auditor
- Directive to close off a business relationship
- Recommendation to prudential regulator/ joint actions



# Enforcement Process

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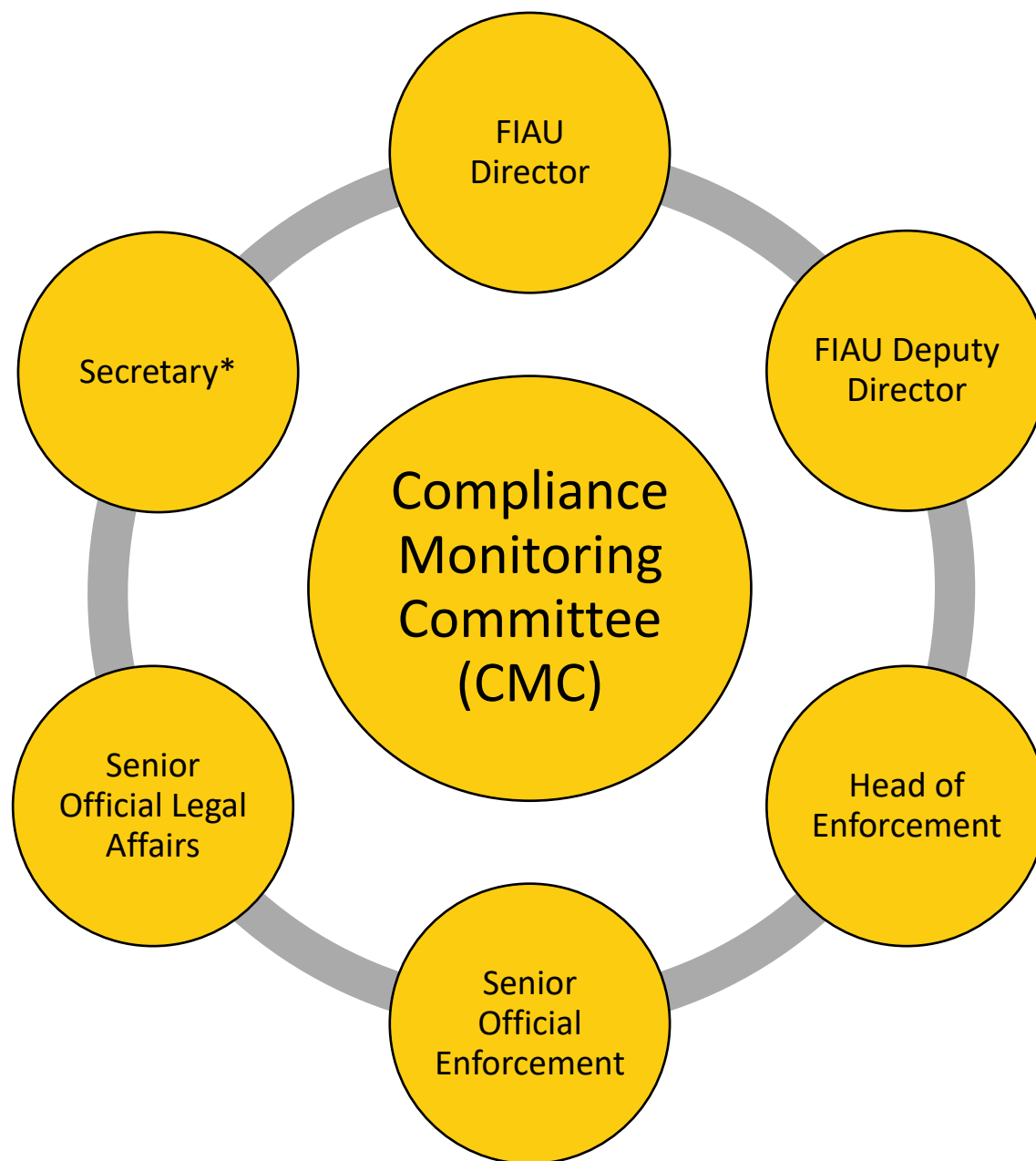


# The Compliance Monitoring Committee (CMC)

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The Compliance Monitoring Committee (CMC) is an internal organ set up by the FIAU to:

- Evaluate findings in relation to potential breaches of AML/CFT obligations.
- To impose the most appropriate measures to address determined breaches.



*\*The Secretary does not have voting rights*



# CMC Tools

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## Sanctions Policy

- Implements the principles of Proportionality, Effectiveness and dissuasiveness in deciding on administrative measures imposed by the CMC.
- Outlines the administrative measures that the CMC is empowered to take.
- Provides guidance on the considerations to take to decide on the administrative measure.
- Defines the processes to be followed in the application of each administrative measure.
- Provides guidance on the interpretation of Serious, Systematic and Repetitive AML/CFT breaches.

## Sanctions Tool

**Aggravating  
Factors**

**Mitigating  
Factors**



# Aggravating/ Mitigating Factors (1 of 2)

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Seriousness	Repeated/ Systematic	Size	ML/FT Risk of the Sector	Breach Repercussions
<ul style="list-style-type: none"> <li>•Nature of the AML/CFT obligation in breach</li> <li>•Materiality of the breach (breach exposure/ amount)</li> <li>•Time period within which the breach subsisted.</li> </ul>	<ul style="list-style-type: none"> <li>•Breaches which result or are indicative of a structural issue (Qualitative/ Quantitative)</li> <li>•SP carries out a breach of the same nature again at a later date.</li> </ul>	<ul style="list-style-type: none"> <li>• Micro to Large</li> <li>• Corporates vs Individuals</li> <li>• Turnover, number of customers.</li> </ul>	<ul style="list-style-type: none"> <li>• Financial vs Non Financial Sectors</li> </ul>	<ul style="list-style-type: none"> <li>• Impact to Jurisdiction</li> <li>• Facilitation of ML/FT</li> </ul>

*\*The above is not an exhaustive list and other considerations are taken into account.*





## Aggravating/ Mitigating Factors (2 of 2)

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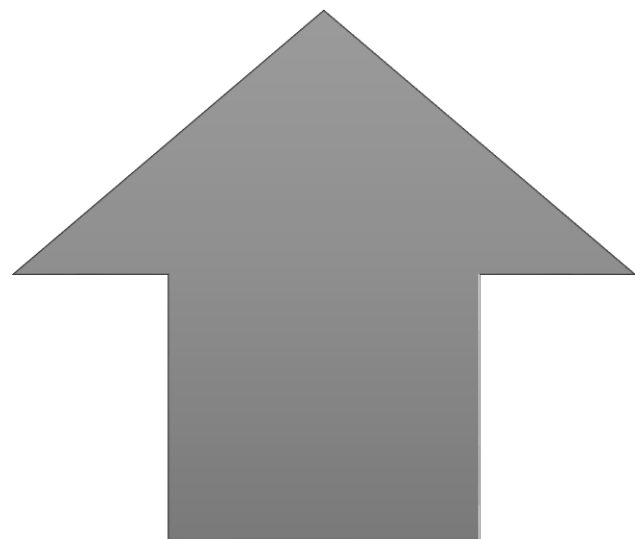
Level of Cooperation	Regard/ Approach to AML/CFT obligations	Remedial Action	Other administrative measures
<ul style="list-style-type: none"><li>• Lack of cooperation</li><li>• Cooperative</li></ul>	<ul style="list-style-type: none"><li>• Total disregard</li><li>• Good regard</li></ul>	<ul style="list-style-type: none"><li>• Effectiveness of the Remedial action taken / planned to be taken</li></ul>	<ul style="list-style-type: none"><li>• Taken by the FIAU or other supervisory authorities</li></ul>

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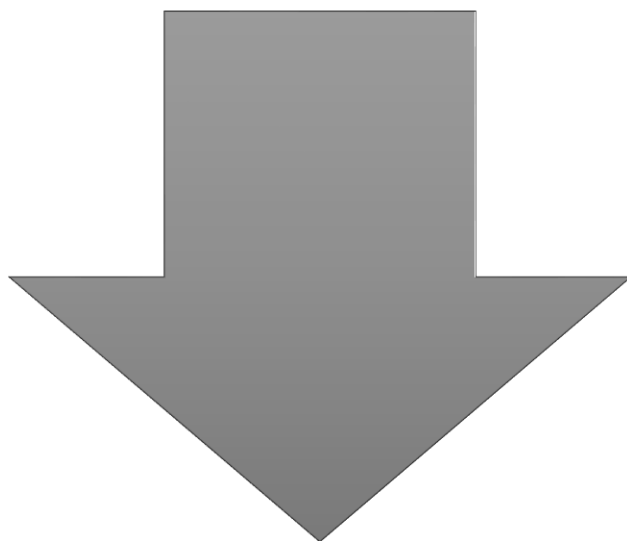


## Seriousness: BO Related Obligations (Example 1)

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Failure to Report or consider reporting an STR where the suspicion is due to concealment or disguise of BO

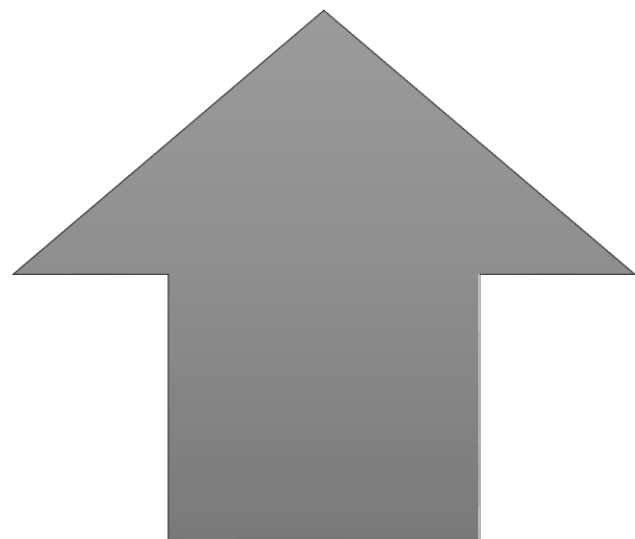


Verification of Identity and/or Residential Address carried out through expired/ outdated documentation

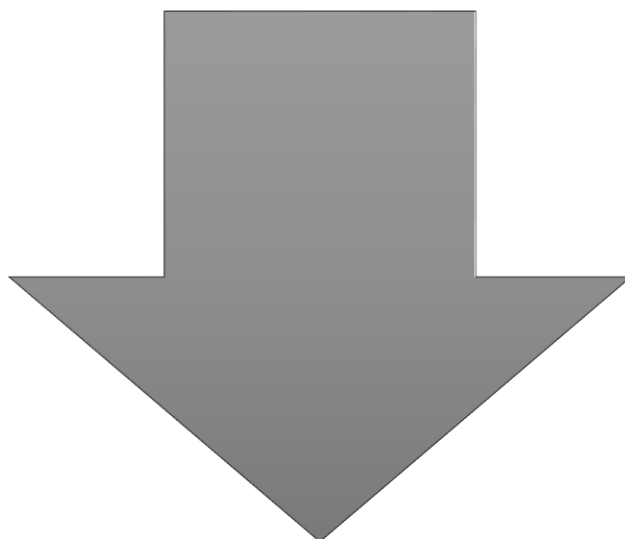


## Seriousness: BO Related Obligations (Example 2)

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BO/s Not Known



Verification of Residential  
Address documents not  
independent, reliable or  
inadequate



# Examples of Enforcement Cases (BO Obligations)

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**Administrative Penalty**  
€80 – €100K

## **Aggravating Factors**

- Failure to Report suspicion of BO concealment found in more than 3 files.
- Significant Activity undertaken running in millions, probability of facilitating ML/FT.
- Failure persisted for more than 1 year.
- Impact on local Jurisdiction

## **Mitigating Factors**

- Size of SP is small
- Level of cooperation exhibited
- Not Repetitive
- Not Systemic

**Administrative Penalty**  
€30k – €50K

## **Aggravating Factors**

- Failure to Report suspicion of BO concealment found in less than 2 files
- Failure persisted for more than 1 year
- Size of SP is large

## **Mitigating Factors**

- Minimal activity undertaken, hence low probability of facilitating ML/FT
- Level of cooperation exhibited
- Impact on local Jurisdiction
- Not Repetitive
- Not Systemic

**Administrative Penalty**  
€30k – €50K

## **Aggravating Factors**

- Failure to Report suspicion of BO concealment found in less than 2 files
- Significant Activity undertaken running in millions, probability of facilitating ML/FT.
- Failure persisted for more than 1 year
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## **Mitigating Factors**

- Size of SP is small
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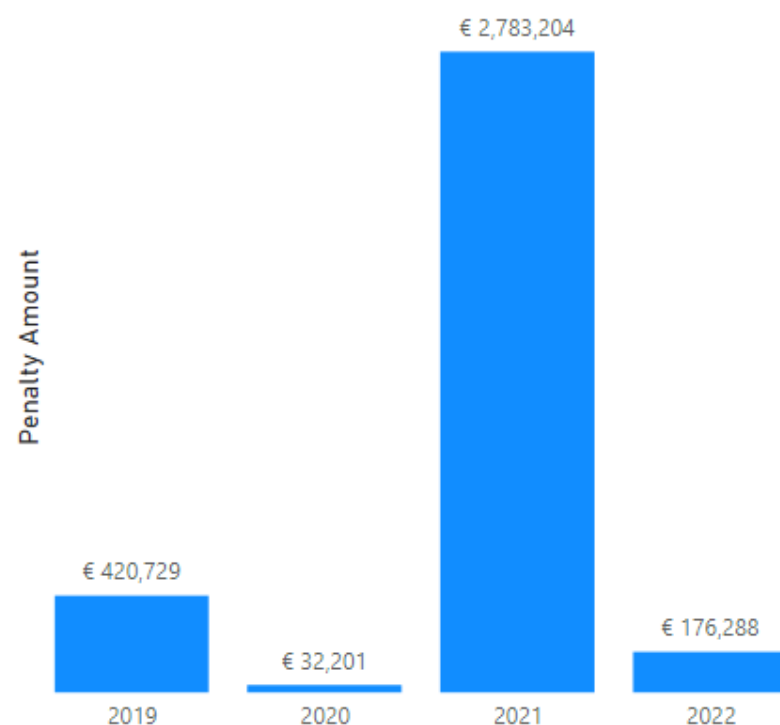


# Enforcement Statistics: BO Related Obligations

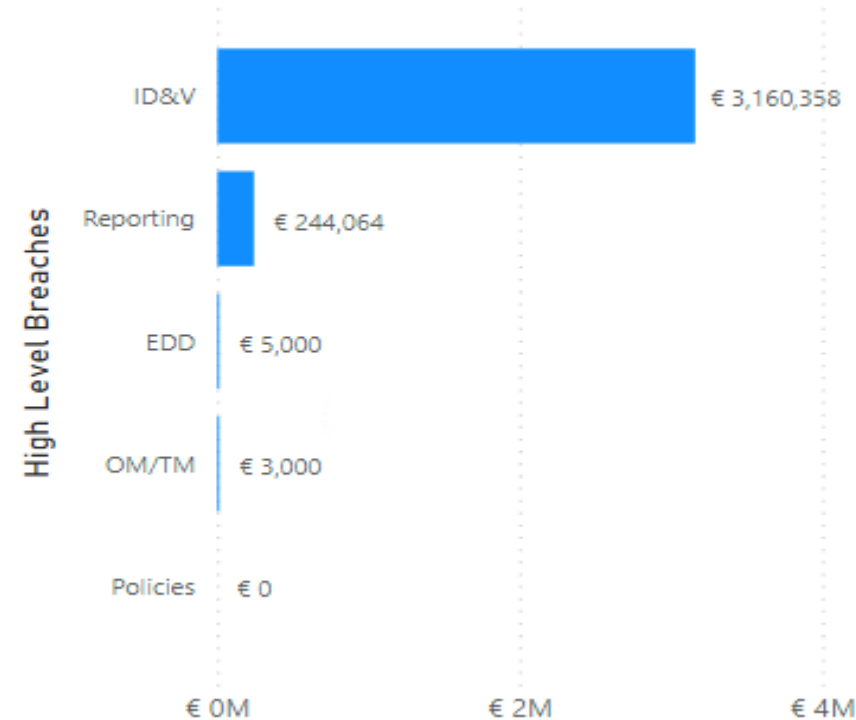
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Subject Persons	No. of Breaches	No. of Penalties	Penalty Amount	No. of Directives Imposed	No. of Reprimands Imposed
41	58	27	€ 3,412,423	22	14

Penalties Imposed



Penalties by Breaches



*\*Data ranging from 2019 up to 30/04/2022*



# Thank you!