

Newsletter

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Editorial



Dear ALCO Members, dear Readers,

First of all, at the beginning of a year of uncertainty, I would like to extend to you my best wishes as President and on behalf of our association.

As Mr Mersch, Governor the Central Bank of Luxembourg, states in the interview which he kindly agreed to grant us, we must expect new international regulations, and in particular new European directives. The Compliance Officer's role will inevitably be enlarged.

For his part, our colleague Patrick Schott, who has personally experienced the various legislative and regulatory changes in the field of money laundering, will explain to us how the tightening and multiplication of professional obligations do not necessarily lead to a "*legal text... that is more precise and easier to apply*". Moreover, this lack of precision sometimes provokes very different reactions from one financial institution to another: for example, the creation of an "ad hoc committee [which] decides whether [or not] to make a report" is seen by some as a way of helping Compliance Officers finalise their opinion, while others consider that it is likely to undermine their independence or autonomy.

The uncertainties are likely to increase, as can be seen from the increasingly sustained activity of the WG33, WG34 and WG35 working groups, which deal according to their specific remit with questions raised by members. In addition to the reports of each of these working groups published on the ALCO website, the editorial committee (WG16) has decided to devote part of the newsletter to some of the major issues dealt with by the working groups. For example, you will find in this Newsletter 19 the answer to a question concerning commissions in the framework of MIFID requirements and a summary of the roundtable devoted to “Filtering Transactions” in the framework of anti-money laundering measures.

With once again my very best wishes for 2010,
Jean Noël Lequeue
President

Interview

Interview with Mr Yves Mersch, Governor of the Central Bank of Luxembourg

COMPLIANCE AND THE FINANCIAL CRISIS

We are pleased to publish below the text of the interview kindly granted by Mr Yves Mersch, Governor of the Central Bank of Luxembourg, to ALCO, on the subject of “Compliance and the Financial Crisis” which shook the financial sector.

1) The Compliance function is part of control functions as a whole, but it includes in addition, in our opinion, an ethical dimension. In these two regards, it is not unreasonable to consider that, if it had been better able to perform its role or had done so more effectively, it would have undoubtedly in part mitigated the impact of the crisis on financial institutions. Do you share this view?

When analysing the situation it is necessary to clarify clearly what belongs to the private sector and what falls, by its nature, within the scope of the tasks of general interest which are normally the responsibility of the public sector. Compliance is a function which, under the responsibility of a board of directors or the general management, must basically be linked to the interests of the specific institution concerned. Should its role be to give priority to those interests or to focus on the protection of consumers? Should it, within the private sector, act as a “deputy sheriff”?

For my part, I consider that the aim of the Compliance function is to ensure that the decision-making process runs smoothly within private sector institutions, by satisfying itself that all the relevant rules have been properly taken into account. Up to that point, everything is clear. But when you refer to an ethical dimension, I fear a certain confusion of roles. Moral standards and legal obligations are two circles which intersect to some extent. In a private company, the Compliance function cannot be an “in-built circuit breaker” in the name of unclear values.

However, the public authorities have delegated to the financial sector certain tasks of general interest, such as combating money laundering, for example.

True, that is an exception. Initially, combating money laundering was limited to crimes against humanity, such as drug trafficking. There is now a trend towards enlarging this exception.

2) Wasn't the financial crisis the result of financial institutions, unable to see beyond their short-term interest, granting loans without taking account of the needs and possibilities of their borrowers? Doesn't this reflect a failure by the American authorities and the control functions of the institutions concerned?

The main creators of complicated structured assets which were supposed to diversify credit risk were investment banks which, in the United States, were not directly subject to supervision. Securitisation is an instrument which can be used to transfer credit risk. This involved increasingly complex contracts, products lacking in transparency, with the resultant package often having an AAA rating. More often than not the promoters of these products limited themselves to producing a rating via cashflows based on insufficiently solid assumptions rather than on an

analysis of the long-term risks. When confidence fell and, as a result, liquidity dried up, this triggered the crisis which, hopefully, is now behind us.

What we saw was a financial machine out of control in a context where, during a generation, the industry had recruited the best brains: lawyers, engineers, mathematicians, etc. Levels of risk were excessive while at the same time product ratings were the new religion.

Were bonuses partly to blame?

Bonuses as a form of performance-related remuneration are legitimate, but they must not be distributed in advance, before it is possible to measure performance over the lifecycle of a product, for example.

3) What could Compliance have done?

Compliance is not an all-powerful God. The Compliance function is there to help, not to discharge the management, which is ultimately responsible after the board of directors, of its responsibilities. The Compliance function must be autonomous rather than independent, a term which I always use sparingly. It must have the necessary authority to perform its duties and contribute to the smooth functioning of governance. The various control functions must form a whole which reports to the CEO.

In all that, I would be inclined to distinguish the **concept of ethics**, a “macro” concept which has a real responsibility in the formulation of ethical standards, from the Anglo-Saxon compliance concept, which is a “micro” concept based on ensuring compliance with regulations from the top to the bottom of the ladder. These two concepts do not mix.

4) Are there new post-recession expectations for Compliance?

Post recession, there will be more regulations, with the aim of reducing risks, in particular systemic risk. Compliance must fulfil its role of reducing reputation risk and legal risks. It also has a role to play from an ethical point of view.

The objective of Compliance is not short-term financial productivity, but it helps to curb over-regulation. Via the Compliance function and ethical standards, professionals can offer a response to the questions raised by the recession.

What we need above all is better regulation. Compliance’s role has an ethical self-regulatory dimension. We need to avoid operational bottlenecks. Within the financial industry, we hold up as an example MIFID, which was originally intended as a consumer protection measure, but which has now been extended to the functioning of the financial system as a whole.

5) It seems that the European Commission now considers that banks are too big?

This question is complex and the European Commission’s actions sometimes paradoxically lead to bigger banks.

Some large global banks have problems managing their organisation correctly, but that is not really the case in Europe. Reducing the size of banking groups may also lead to the creation of specialised banks rather than universal banks. However, in my view the latter are intrinsically

more solid than the former and the systemic risk-taking is greater as a result of accumulation in specialised banks.

The size of a bank must be assessed in comparison to the size of the country and the sector. There are risks associated with dominant positions and concentration, as well as the risks of a bank's influence on society, the possibility that it may no longer have any social utility.

6) Would you prefer “local” supervision or consolidated supervision?

I am not totally convinced that attempting to achieve financial efficiency always satisfies the needs of social efficiency, especially in very large companies. In the event of a crisis, the national level rapidly comes to the fore again: for example the protection of bank deposits. There is a debate on the European supervisory structure. Can the Compliance function, in its most mechanistic definition, target conformity at European level?

In any event, the BCL has taken the initiative of launching a comparative analysis of the Compliance function within European Union Central banks.

7) Thank you, Governor. Do you have a final message for ALCO members?

Our companies have a greater need for values and ALCO plays a notable and important role in this regard.

Interview conducted by Jean-Marie Legendre and Jean-Noël Lequeue, on 8 December 2009

Doctrine

Reporting suspicions

The age of suspicion? Thoughts on reporting suspicions

The development and internationalisation of private banking activities in Luxembourg have been accompanied by a gradual tightening of the legislative and regulatory arsenal intended to prevent the use of the financial sector for money laundering.

After initially focusing on combating the illicit traffic in narcotic drugs and psychotropic substances¹, the movement has gathered pace and increased in scope, both as regards so-called predicate offences² and the obligations imposed on “regulated” professionals whose circle has also continuously been extended.

Bankers have always been at the centre of discussions on this subject and their obligations have increased considerably over the years; thus, the initial “timid” approach in 1989, which consisted of the obligation for banks to identify clients, monitor significant transactions and raise awareness among and train their staff, meant that the obligation to cooperate in the framework of anti-money laundering (AML) legislation was still all in all a “controllable” constraint. However, 1993 was a decisive turning point with the law of 5 April 1993 which defined, for the first time under the laws of Luxembourg, a certain number of professional obligations to be respected in the financial sector. Although not all these obligations were new, the key element of these new provisions was, as was noted by the Luxembourg Monetary Institute in its circular 94/112³, “the obligation imposed on financial sector professionals to inform, on their own initiative, the State Prosecutor of any fact that could constitute an indication of money laundering”. Articles 40 and 41 of the law of 5 April 1993 laid down in this context the principles to be respected: designation of contact person(s) for the State Prosecutor/IML, not executing the transaction, non-communication to the client and exemption from the secrecy obligation.

In substance, the obligations introduced in a precise manner in 1993 and summarised very briefly above, are still valid – they have however been fine-tuned during successive legislative stages, in particular when the second⁴ and third⁵ European AML directives were transposed into the laws of Luxembourg.

The first of these directives had made it compulsory for professionals, as transposed into the new article 5 of the law of 12 November 2004, “to inform the State Prosecutor at the district court of Luxembourg, on their own initiative, *of any fact which might be an indication of money laundering or terrorist financing, in particular in consideration of the person concerned, its development, the origin of the monies, the purpose, nature and procedure of the operation*”.

Following the transposition of the third AML/CFT directive, article 5 of the law of 12 November 2004 was maintained, but with the following wording: professionals are required “*to promptly inform the State Prosecutor at the district court of Luxembourg, on their own initiative, where they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being committed or attempted, in particular in consideration of the person concerned, its development, the origin of the monies, the purpose, nature and procedure of the operation*”.

The inescapable fact is that, over time, the text governing the spontaneous cooperation of banks and other professionals with the authorities has been considerably reinforced: from any fact that might constitute an indication of money laundering and which must be reported to the authorities, spontaneous cooperation is now compulsory when the professional knows, suspects or has reasonable grounds to suspect that money laundering

¹ Law of 7 July 1989 amending the law of 19 February 1973 on the sale of drugs and the fight against drug addiction as amended (Memorial A, 50.19.07.1989; IML circular 9/57)

² Predicate offence – offence(s) from which the proceeds of money laundering are derived

³ IML Circular 94/112 “The fight against money laundering and the prevention of the use of the financial sector for money-laundering purposes

⁴ Directive 2001/97/EC of the European Parliament and of the Council of 04.12.2001

⁵ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 and Directive 2006/70/EC of the European Commission of 01 August 2006

is being committed or attempted because of the relevant legal criteria”. However, has the legal text become more precise and easier to apply? We have our doubts on this subject, in particular for the following reasons:

□ Apart from the cases and situations which are clearly out of the ordinary, that is to say which depart from customary practices having regard to the special circumstances of the case in point, it will be impossible for professionals – on the basis of the multiplier effect of predicate offences – to know when they are faced with a current, attempted or completed act of money laundering. Even if the legislator in Luxembourg has limited predicate offences to any offence punishable by a term of imprisonment of not less than six months and has removed from the scope of predicate offences both tax avoidance and tax fraud, it will be extremely difficult for professionals to determine whether the funds entrusted to the bank are the proceeds of an offence considered as a “predicate offence” as the law currently stands. For example, how can they know whether the funds deposited are the proceeds of “chewing gum” offences, such as the misuse of company funds, or offences which are difficult to classify, such as infringements concerning the environment, etc.? In these circumstances, we cannot but share the opinion expressed on several occasions by the Council of State⁶ which, faced with the proactive trend of grafting the offence of money laundering onto almost all predicate offences, has expressed serious reservations. These reservations concern not only the risk of the systemic implosion of control mechanisms, when suspicion becomes the rule and when good faith must be proven, but also the fact that this approach results, if not in law, at least in practice, in the burden of proof being reversed; in fact, the generalisation of the criminalisation of money laundering may result in the prosecution of money laundering offences no longer depending on proof of the underlying offence. It will be sufficient to demonstrate the illegal origin of the funds to be laundered. In other words, it would be sufficient for jurisdictions to rule, in general, that the origin of the assets is illegal, without being under any obligation to establish the specific crime or offence from which the funds to be laundered are derived⁷. When such an approach is applied to money laundering offences, there is a risk that the burden of proof will, as it were, be reversed: from the time the State Prosecutor can provide the proof that overall origin of the funds to be laundered is illegal, the accused person, in order to avoid being found guilty and having the assets confiscated, must prove on a case-by-case basis that the origin of a given asset is not illegal, but on the contrary lawful;

□ The situations referred to by the law – reporting to the State Prosecutor and the CSSF when the professional knows, suspects or has reasonable grounds for suspecting – remain, apart from the first case, somewhat vague. Where does suspicion start and what are reasonable grounds on which professionals can base their suspicions? It seems perfectly natural to alert the authorities when a professional is certain that money laundering has been committed or attempted. Beyond a professional obligation, this is in any event a civic duty which makes each citizen – when confronted with an infringement of the law – “officers of the law”. On the other hand, suspicion and its basic element, doubt, are far more difficult to apprehend: etymology is not particularly helpful in this regard – derived from the verb “suspicer”, to look someone up and down, the “Larousse” defines suspicion as an unfavourable opinion about someone, his or her behaviour, based on indications, a feeling or intuition, but without precise proof. It will therefore involve an extremely subjective assessment which will depend on the information available and personal experience. Intrinsically, it will therefore inevitably vary according to the individual required to assess the information available – some will see wrongdoing everywhere and will submit a large number of reports, whereas others, more indulgent or less critical, will have few doubts/suspicions and will rarely make reports;

□ The position of the State Prosecutor in this regard is very coherent and has the virtue of being clear: as the Financial Intelligence Unit emphasised in its 2008 report: “professionals do not need to have proof of money laundering or terrorist financing, all suspicions should be reported. Suspicions may be based on a fact (relating to the person concerned, the origin of the assets) and/or a transaction (nature, purpose or details). When professionals have any such suspicions, they are legally required to report them to the FIU. The risk-related approach is not applicable at this stage, as it is only authorised as regards the obligation to identify the client and client monitoring measures”;

□ In these conditions, it will be for professionals to make a report to the State Prosecutor and the Commission de Surveillance du Secteur Financier whenever they have any doubts about a client, his or her behaviour or the economic background to a transaction. The words “when in doubt, do nothing” are transformed here into “when in doubt, report it”. Suspicions must be reported – moreover the Financial Intelligence Unit has emphasised in

⁶ Opinions of 22 April 2008 (Parl. doc. 47.755 and 47.883), 30 March 2004 (parl. doc. No. 5165) and 17 March 1998 (parl. Doc. 4294)

⁷ Belgian Supreme Court of Appeal 31.10.1995, unpublished

this regard the “ratio legis”, as it emerges from the preparatory work on the laws of 11 November 1998 and 12 November 2004 to the effect that “it is not for professionals to attempt to ascertain either whether the indication of money laundering is sufficiently conclusive as the basis for an investigation, or prosecution to be instigated, or what is the predicate offence which may be at the origin of any money laundering transaction, or whether the conditions for a prosecution have been met. This is the responsibility of the authority charged with processing the information received. Thus, it is not for professionals to carry out an in-depth analysis of the facts of which they are suspicious or to attempt to ascertain whether these facts constitute a criminal offence; that is the responsibility of the judicial authorities”;

□ In practice, in what circumstances will professionals be called upon to make a report? What is the situation as regards a potential client that has applied to open an account, but where the application has been refused because of doubts regarding the reliability of the account opening information provided, the origin of the funds or a lack of transparency (distant country) or simply because the account applicant wishes to deposit a large amount in cash? Is it necessary where there is a doubt, the precursor and constituent of suspicion, to make a report?

□ Moreover, what should diligent professionals do, in the event that they have doubts about the origin of the client’s funds and where, despite having received reassurances in this regard (written assurances/confirmations), their doubts persist? When they mandate a specialised company to carry out an in-depth due diligence search and where the findings show that some aspects remain unclear, should the authorities be informed?

□ Obviously, some indications of money laundering (general/specific/aggravated) have been made available to professionals⁸, but the list provided will not be enough on its own to guide professionals – the latter must be reasonably convinced that there are grounds for suspicion and decide whether or not to make a report.

What is, moreover, the difference between an “established suspicion” and “reasonable grounds for suspecting” referred to in the law? An analysis of the legal text suggests that there is a gradual “escalation” between the “know, suspect or have reasonable grounds to suspect” stages leading professionals to make a report. What is the difference between the situations where a banker “is suspicious” and the situation where he “has reasonable grounds to suspect”? Point 5⁹ of the specimen reporting form provided by the States Prosecutor requires professionals to describe the indications giving rise to the suspicion of money laundering and to state the reasons on which the report is based. This obligation to state the reasons is somewhat at odds with the affirmation (see above) that, rather than attempting to ascertain whether there is proof of money laundering (difficult to do from a practical point of view), professionals should limit themselves to making a report directly when they have suspicions;

□ Thus, the State Prosecutor’s Financial Intelligence Unit specified in its 2008 report¹⁰ that the elements which gave rise to suspicions of money laundering in 2008 were:

- information on current criminal investigations or judicial decisions reported by the press, information found in certain databanks, more rarely information collected by private firms carrying out due diligence searches;
- a client’s atypical behaviour (refusal to provide a justification, an unconvincing or false justification regarding the origin of the funds);
- complex operations with no economic justification.

The following elements have now been added to these traditional elements: precise knowledge, as a third party or victim, of offences, such as forgery, use of forgeries and fraud (e.g. declarations relating to a transfer order of financial instrument which prove to have been falsified).

As regards combating terrorist financing, suspicions are generated by the supposed inclusion of the client’s name on official lists (case of namesakes).

⁸ Circular CSSF 08/387, annex II

⁹ 2008 report, July 2009 and circular 20BIS/08 FIU www.justice.public.lu/circulaires/declaration20-08-fr.pdf

¹⁰ 2008 report, Page 11, littera b) – rationale for suspicions

□ Another effect of disclosure, namely the risk of collateral damage, has been emphasised by some authors¹¹ (A. Steichen); as it is the State Prosecutor's role to investigate and prosecute any criminal offences, the principle of specialisation does not apply to it, so that a certain risk of "excesses" cannot be avoided; if banks lack judgement by being over zealous, this may well lead to the State Prosecutor detecting other offences apart from money laundering, in particular triggering tax fraud proceedings.

□ In our opinion, in these circumstances, a reasonable and pragmatic approach to disclosure must be based on a series of corroborating indications¹² supporting the doubts that banks or a member of staff (normally the manager) in contact with the client may have had when dealing with the latter¹³. In order to avoid relying solely on the judgement of one person, by definition subjective and sometimes biased, it would appear to be judicious for an "ad hoc" committee to decide whether there are grounds for disclosure – this committee should be composed of an authorised management member, the client manager and the Head of Compliance; as timing is important and as the State Prosecutor must be informed "promptly" in accordance with the provision added by the law of 17.07.2008, this committee must meet very rapidly in case of need and make the necessary decision which, if it is negative, must be duly documented.

Should we welcome the way in which legislation has developed or, on the contrary, deplore it, when bankers are asked to act, in addition to their traditional role, as a representative of the law? If it is difficult to adopt a position, it seems to us evident that the KYC/KYB obligations relative to clients will have to be applied even more rigorously by banking professionals and, faced with the inability of professionals to focus their doubts on one or more precise predicate offences, the number of reports will inevitably trend upwards. We cannot but welcome, in this context, the fact that "tax matters" are – at least for the time being – excluded from the "anti-money laundering" system – otherwise the private banking sector in Luxembourg, which has already suffered enough as a result of the repeated attacks on its banking secrecy, would have been weakened even further.

¹¹ A. Steichen – "Le secret bancaire face aux autorités nationales et étrangères" and "Le blanchiment du produit des infractions en Belgique et au Grand-Duché de Luxembourg" by Alexia Jonckheere

¹² Lists of indications of money laundering can be found in particular at the end of circular CSSF 08/387 (Annex II)

¹³ See also: Compilation of AML/CFT professional obligations, page 51 "Bankers must base their judgement on an overall assessment of all the elements in the file"

Member Question

Question:

In what circumstances are MiFID Best Execution requirements compatible with the practice by a financial institution of taking a spread or margin in the price of a security or derivative instrument being traded by a client (retail or professional)?

Answer:

First of all, each institution has to refer to its own Best Execution Policy, where different criteria have been defined.

Indeed, the principle of best execution means that credit institutions and investment firms have to take reasonable measures to obtain the best possible result for their clients when they execute orders for them. For this, they have to take into consideration the price, the cost, the speed and the likelihood of the execution and the settlement, the size, the nature of the order. Based on this, it depends on how each credit institution has defined its best execution policy as it has to take into consideration these different criteria being fair to the clients.

As any institution must also be able to prove that it has applied the best execution for any trade, taking a margin or a spread out of the price of a security is not easy to fit into the best execution principle:

- **for shares:** as we have to compare the share price paid by the client to the market price, such practice seems incompatible to us, at least when the financial intermediary does not act as systematic internaliser or MTF;

- **for bonds:** as there is no official market price, financial institutions could feel inclined to apply a margin to cover the risk they take when establishing a position in a certain bond. This issue and possibility to have such a margin, with or without disclosing it to the client, is still a "grey" zone. It might be a good idea to mention the fact that the bank may take a margin in the best execution policy. Furthermore, some banks consider that a bonds transaction may be seen as a request for quote (the client requests a quote, the bank gives it, and the client agrees) and as such triggers a "specific client instruction", liberating the bank of its best execution duties. This argument is however only accepted by CESR_i for professional clients; for retail clients, CESR guidance is still awaited;

- **for derivatives:** if the client agrees with the trading rate, we could consider such instruction as a "specific instruction", or a "request for quote".

In summary, some uncertainties still exist around this issue. It is nevertheless worthy to note that upon a recent CESR consultation, the industry seemed to feel comfortable with this situation. It will still await CESR's guidance resulting from the consultation.

In the meantime, should a financial institution decide to be more transparent towards their clients on this issue, this will certainly not contravene MiFID provisions.

Round Table

Third thematic roundtable “Filtering Transactions” 24 November 2009

Fifteen people attended this 3rd roundtable.

The technical adviser invited to guide our discussions was Mr Serge Wagener, Vice President, Payment Services, of the BCEE and Chairman of the ABBL working group ‘Means of Payment, IT systems and Standardisation’. We wish to thank him for his availability and participation. Xavier Leydier and Charles van Doorslaer of the WG34 chaired the meeting. Some fifteen banks were represented around the table.



It is not easy to summarise, in a few pages, two hours of varied and intense discussions. It should be borne in mind that the objective of these roundtables is to enable compliance officers to exchange freely their experiences, ideas and questions on a given subject. The results of the discussions can therefore not be considered as positions of the banks represented by the participants, nor of the ALCO.

A questionnaire on filtering transactions had been sent to all members prior to the roundtable, with the aim of using the answers as the basis for our discussions. Fourteen forms were duly completed and returned before the meeting. A summary of the answers is annexed hereto.

The main findings can be summarised as follows (% according to the answers received):

- 79% of banks have purchased an external automatic filtering solution;
- in 93% of cases, the Compliance function is responsible for determining the filtering criteria;
- only 29% outsource 1st level controls of received hits to another department. With one exception, the final responsibility in these cases remains with the compliance officer;

- apart from MT103 messages, which are filtered in 100% of cases for incoming messages and in 79% of cases for outgoing messages, there are significant differences regarding message filtering;
- 86% of respondents consider that the new payment regulations (SEPA, MT 202Cov, etc.) have had very little impact (or even no impact) on their filtering process.

Discussions

The roundtable was organised in order to enable the participants to discuss the results of the abovementioned survey. The discussions revealed that the participants were struck by the disparity of the messages filtered. MT 103 and MT202 messages seem to be the only messages which a majority of respondents felt needed to be filtered. Some participants expressed their surprise at the large number of incoming and outgoing messages which do not seem to be filtered. The usefulness of replacing real-time filtering by a posteriori filtering was discussed. The question of the level within the organisation at which filtering controls should be implemented was raised.

The configuration of the filtering system is a key to ensuring the relevance of controls.

Filtering all the fields of all SWIFT messages is rare but feasible. Alerts are then analysed, in a dedicated service, according to local requirements and those of the financial group. In order to more efficiently manage alerts and reduce their numbers, to make them more relevant, it is advisable to configure the system by integrating the possibility for the system to identify “good guys”.

The banks represented at the meeting acknowledge the need to integrate the risk/cost ratio while complying with legal requirements. This is particularly true when it comes to filtering the names of individuals for whom numerous aliases exist (or, on the contrary, namesakes). This is an internal list management problem.

All alerts must be checked. Controls must be documented and the underlying risk explicitly accepted by the general management in the case of an alert. It is generally accepted that the Compliance Officer’s responsibility is involved and that it is necessary to distinguish between regulatory responsibility and operational responsibility. Some banks carry out filtering feedback tests in order to analyse the relevance of filtering and the follow-up of alerts. These statistics are transmitted to the general management.

As a general rule, for banks that are member of an international group, the discussions revealed that the choice of the software was made at the group level while leaving considerable leeway as regards to the configuration at local level. These configuration choices are based, for example, on the level of risk (country, nationality, etc.) or on the client’s activity. The discussions revealed that repair messages (corrections sent at the request of the recipient) and text messages tend to be excluded from filtering although these messages can include information which needs to be filtered.

Several participants seemed to regret that there are no business line products but only standard products. The major international groups can therefore opt for routing the flows by speciality in order to optimise alert reviews. The discussions highlighted that a considerable amount of work needs to be carried out for tuning the system used in cooperation with the

relevant department and the IT service provider in order to optimise the use of the chosen system: depending on its activity and its risk criteria.

One bank explained a technique used to limit the number of false alerts: by deleting the “originator” fields in outgoing messages (field 50) and “beneficiary” fields in incoming messages (field 59), or by deleting the address area in Worldcheck, the number of alerts has fallen dramatically. The participants acknowledge that, in fact, since these two fields concern the personal data of the bank’s client, they are part of the data checked during due diligence controls and during periodic screening operations. In principle, there is therefore no risk in regards to these fields for the concerned messages.

The participants do not use any means of transfer other than SWIFT. Naturally payments by cheque must not be excluded from controls. However, controls on payments by cheque do not fall within the scope of a filtering procedure, but are covered by a specific internal procedure.

For most of the participants, domestic flows are not treated differently from crossborder flows. The same filtering criteria apply to the two types of messages, depending on the bank’s criteria. Account-to-account transfers are, in general, not filtered; they are subject only to a posteriori controls (monitoring).

Internal lists, which supplement ‘international’ lists are, in general, compiled using:

- an analysis of press reviews;
- the bank’s experience;
- data from FIU circulars;
- specific Internet alerts.

The participants acknowledged the limited impact of these lists. The frequency with which they are updated can be an obstacle to their effectiveness. They emphasised the important difference in the use of internal list for AML controls and for filtering purposes.

There is no obligation to block a transaction in favour of a PEP. Consequently, for this type of clientele, a posteriori controls may be sufficient. It is for each bank, on the basis of its knowledge of the level of risk relating to its PEP clientele, to decide whether it should carry out a priori or a posteriori checks on this type of clientele according to its own criteria. Internal lists must be declared to the national data protection commission, the Commission Nationale de Protection des Données (CNPD), as they fall within the scope of the notification obligation.

The Internet – and Internet search tools – seems to be in widespread use to validate or invalidate an alert. In the event of a positive result in this regard filtering settings must be updated. The entity must organise information flows to the Compliance Officer in order to enable the latter to validate changes to both the internal list and the system’s configuration.

The participants considered that that there are no financial risks involved in filtering transactions. If a transaction needs to be blocked as a result of an alert, this action is covered by both the AML law and the PSD law since the latter takes into account existing legislation for determining transfer times. Provided that the suspension of a transaction can be duly justified and the financial institution can prove that the transaction was analysed within a reasonable period of time, if a financial institution acts within the framework of the law, it is not liable to pay any compensation for any financial loss suffered as a result of the late execution of a transfer.

Similarly, the participants recognised that the bank issuing a transfer order cannot be held liable if the transaction is blocked by a correspondent bank. They also recognised that international regulations are binding on the financial centre’s operators and that they do not benefit from any

exemption for information requests issued by foreign banks regarding transfer orders, such as American institutions, for example.

Transaction filtering can also be a way of protecting clients; for example where a client requests his bank to make a transfer to a high-risk financial institution. The bank may draw the client's attention to this fact and avoid the transfer being made to an account with a counterparty on the verge of failure.

Finally, the discussions revealed that the filtering of transactions can also be used a posteriori in order to determine or control the "patterning" risk in certain client transactions. However, this falls more within the scope of internal controls rather than the obligation to filter transactions. This also requires specific configuration of either the filtering system itself or the financial institution's core system.

Conclusion

This roundtable highlighted once again the diversity of our business and its ability to adapt to the environment in which it operates. Thus, the introduction of the legal obligation to check transactions (to fight against money laundering and terrorist financing) varies according to whether or not the financial institution is specialised in commercial banking, private banking or investment funds.

Participants acknowledged that there are no standard responses but a certain prudential approach. It would have been interesting, at the end of this roundtable, to ask whether participants are still satisfied with their level of filtering in the light of the roundtable's discussions.

An analysis of the evaluation forms completed by the participants at the end of the meeting confirms that the participants appreciated the discussions and the format of the meeting. There seems to be a consensus on the benefits of using a questionnaire completed beforehand. The roundtable also enabled participants to compare their points of view and share interpretations of regulations in force. This type of exercise also helps to establish benchmarks for participants on the basis of the financial centre's professional practices.

At the end of the meeting, some participants expressed the wish for ALCO to set up a working group in order to extend the discussions. They were encouraged to express their interest in participating in such a project by completing the ad hoc form available online on the ALCO site. Some participants also exchanged business cards in order to be able to continue the debate with fellow participants.

Association Activities

VIE ASSOCIATIVE

GROUPES DE TRAVAIL ACTUELS

Groupe de travail 11

Site Internet

Responsable Olivier GILSON
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Groupe de travail 16

Commission permanente juridique et relations publiques

Responsables Claudine FRUTSAERT
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Groupe de travail 20

Funds practices and recommendations AML

Responsable Patrick Watelet
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Groupe de travail 21

Interprétation pratique des restrictions d'investissements de fonds

Responsable Tim WINFIELD
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Groupe de travail 27

Formations IFBL

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Groupe de travail 29

Abus de marché

Coordinateur Cyril MATHIEU

Association Activities

Current working groups

WORKING GROUP 11

WEBSITE

Owner Olivier GILSON
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WORKING GROUP 16

LEGAL AND PUBLIC RELATIONS

Owners Claudine FRUTSAERT
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Jean-Marie LEGENDRE
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Working group 20

FUNDS PRACTICES AND RECOMMENDATIONS AML

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Working group 21

PRACTICAL INTERPRETATION OF FUND INVESTMENT RESTRICTIONS

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WORKING GROUP 27

TRAINING IFBL

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WORKING GROUP 29

MARKET ABUSE

Coordinator Cyril MATHIEU

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Phone +352 40 46 46 400
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Groupe de travail 30

Domiciliation de société

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Coordinateur Jean-Noël LEQUEUE
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WORKING GROUP 30

DOMICILIARY AGENT

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Coordinateur Jean-Noël LEQUEUE
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Groupe de travail 33

Réponses aux questions des membres

Coordinateur Carine VAN MULDER
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WORKING GROUP 33

ANSWERS TO QUESTIONS OF MEMBERS

Coordinator Vincent WILLEM
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Groupe de travail 34

Tables rondes

Coordinateur Charles VAN DOORSLAER
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WORKING GROUP 34

ROUND TABLES

Coordinator Charles VAN DOORSLAER
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Groupe de travail 35

Doctrine

Coordinateur Guillaume BEGUE
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WORKING GROUP 35

DOCTRINE

Coordinator Guillaume BEGUE
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MEMBRES ET VIE ASSOCIATIVE***Members and Association activities*****Nombre de membres (au 31/01/2010):**

Banques	215
Fonds	91
Fonds / Banques	32
Assurances	53
Consultants / Réviseurs	37
Admin. et domiciliation de sociétés	21
Avocats	9
PSF	46
Gestion de fortune	17
Autres	11

Effectif total: 532

Membres effectifs 433

Membres d'honneur 91

Effectif total: 532**Number of members (as per 31/01/2010):**

Banking sector	215
Funds sector	91
Funds / Banking sector	32
Insurance sector	53
Consultants / Auditors	37
Admin. and company domiciliation	21
Law firms	9
SFP	46
Asset management	17
Other	11

Total number: 532

Active members 433

Honorary members 91

Total number: 532**Réunions et activités:**

Mensuellement	Réunions du conseil d'administration
1 / 2 x par an	Réunions plénières
2 / 3 x par an	Rencontres informelles autour d'un thème

Meetings and activities:

Monthly	Board meetings
1 / 2 x per year	Plenary assemblies
2 / 3 x per year	Informal meetings on a subject

– Board of Directors :

Jean-Noël LEQUEUE	President
Claudine FRUTSAERT	Vice-President, insurance section
Patrick WATELET	Vice-President, funds section
Vincent SALZINGER	Vice-President, bank section
Valerie ALEZINE	Treasurer
Guillaume BEGUE	Director
Sundhevy GOÏOT	Director
Jean-Marie LEGENDRE	Director, Honorary President
Custodio PORTASIO	Director
Patrick CHILLET	Adviser
Olivier GILSON	Adviser
Thierry GROSJEAN	Adviser
Karine VILRET-HUOT	Adviser
Tim WINFIELD	Adviser

- ALCO Secretariat:

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- Newsletter secretariat:

Emilie Schmitt
secretariat@alco.lu

- Editorial Committee:

Claudine FRUTSAERT (responsable), Patrick SCHOTT, Jean-Marie LEGENDRE, Julie BECKER, Leen BOM, Stefano PIERANTOZZI, Olivier GILSON, Jean-François PEMMERS

VISIT OUR WEBSITE: www.alco.lu