



Association Luxembourgeoise
des Compliance Officers
du Secteur Financier

News Bulletin

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Editorial



Dear friends and members of ALCO,

ALCO has continued its activities since our last bulletin, and many of you joined us in celebrating the Association's 5th anniversary. Since January we have thus gained almost 50 new members.

Although it was spoiled by the announcement of the Mittal Group's bid to take over Arcelor, which deprived us of the presence of Luxembourg Minister Luc Frieden, this celebration marked a success for ALCO, and Minister Frieden nevertheless sent us an encouraging message which was passed on to us by Luxembourg financial regulator CSSF director Arthur Philippe. Furthermore, the latter was kind enough to give a short speech, and to cite our Association as "*one of the successes of the Luxembourg financial market place*", which we naturally found very encouraging.

The speeches by Arthur Philippe and Hans-Peter Bauer, founder of the Wolfsberg Group, together with the excellent turnout, helped to make this anniversary celebration a real success.

Since then we have met again, in smaller numbers, during the General Meeting at the end of March, and on 18 May, together with PRIM and IACI to present our report on Compliance, Operational Risk Management and Internal Audit.

After the summer, we will hold a social meeting in the run-up to a new conference which we are preparing jointly with IRE for the end of the year.

The “GT 16” team has put together a particularly meaty package for this 8th issue of the Bulletin. In addition to the usual sections on legislative news and association activities, you will also find the following articles:

-Michel Guay highlights the trend which is affecting company auditors, a major change which is likely to expand their role more and more.

-Then Jeannot Nies gives us his thoughts on a company director’s criminal liability... and that of the Compliance Officer who, and I quote, “*is likely to incur liability as a result of his independence*”. Read and ponder.

-Finally this issue contains a rich and well-documented article by Nancy Carabin on corporate ethical committees and corporate social responsibility, areas where the Compliance aspect is evident.

I’d like to thank the three authors for their contributions and would be grateful to other members of ALCO for submitting more articles for future Bulletins.

‘Bye for now, and have a good summer!

Jean-Marie Legendre
President

Legislative news

Actualités luxembourgeoises

La loi du 9 mai 2006 relative aux abus de marché publiée au Memorial A N° 83 du 16 mai 2006

Actualités européennes

Communiqué de presse IP/06/605

Le 11 mai 2006 les Etats membres s'accordent sur le projet de la Commission portant des mesures d'exécution de niveau 2 dont l'intitulé est le suivant :

DIRECTIVE ../.../CE DE LA COMMISSION du [...] portant mesures de mise en œuvre de la directive 2005/60/CE du Parlement européen et du Conseil pour ce qui concerne la définition des «personnes politiquement exposées» et les conditions techniques de l'application d'obligations simplifiées de vigilance à l'égard de la clientèle ainsi que de l'exemption au motif d'une activité financière exercée à titre occasionnel ou à une échelle très limitée.

Le comité sur la prévention du blanchiment de capitaux et le financement du terrorisme, comité de réglementation composé des États membres et présidé par la Commission européenne, a approuvé le 10 mai 2006 le projet officiel de la Commission concernant les mesures techniques d'exécution de la troisième directive sur la prévention du blanchiment de capitaux et du financement du terrorisme. Adoptée en octobre 2005 (IP/05/682), cette directive doit être mise en œuvre avant décembre 2007. Les mesures techniques proposées ont été officiellement présentées au Parlement européen et au Comité à la mi-avril 2006.

Luxembourg News

The law of May 9th, 2006 regarding market abuse released in the Memorial A N°83 of May 16th, 2006.

European News

Press release IP/06/605

Money laundering and terrorist financing: Member States agree to Commission draft for 'level 2' implementing measures

COMMISSION DIRECTIVE ../.../EC of [...] laying down implementing measures for Directive 2005/60/EC of the European Parliament and the Council as regards the definition of "politically exposed person" and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

The Committee for the Prevention of Money Laundering and Terrorist Financing, a regulatory committee composed of Member States and chaired by the European Commission, agreed on 10 May 2006 to the Commission's formal draft for technical measures implementing the Third Directive on the prevention of money laundering and terrorist financing. The Directive was adopted in October 2005 (IP/05/682) and is to be implemented at the latest in December 2007. The proposed technical measures were formally presented to the European Parliament and to the Committee mid-April 2006.

Bulletin

Les mesures ont été élaborées sur la base d'une large consultation des parties concernées et couvrent les points suivants: (a) définition de ce qu'il convient d'entendre par «personne politiquement exposée», (b) conditions techniques permettant d'étendre les situations dans lesquelles les procédures de vigilance à l'égard de la clientèle peuvent être simplifiées et (c) conditions techniques autorisant les États membres à exclure du champ d'application de la directive les personnes ou entités qui exercent des activités financières à titre occasionnel ou à une échelle très limitée. Ces mesures offriront une plus grande flexibilité aux États membres tout en maintenant des conditions de concurrence équitables. Elles sont en outre essentielles à la réalisation de la troisième directive, qui représente une mesure phare pour prévenir et lutter contre le crime organisé et le terrorisme au niveau communautaire. Conformément aux procédures de la directive, le Parlement disposera d'un mois à compter du vote du Comité pour vérifier, avant que la Commission n'adopte les mesures (probablement au cours de l'été 2006), que les limites fixées dans les mesures de niveau 1 ont été respectées.

Pour le texte du projet de directive :
http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

The measures are based on extensive stakeholder consultation and address the following: (a) a definition of what should be understood by the term 'Politically Exposed Person'; (b) technical criteria allowing the extension of situations in which the procedures for customer due diligence may be simplified; and (c) technical criteria allowing Member States to exclude from the scope of the application of the Directive those persons/entities conducting financial activities on an occasional or very limited basis. The measures will provide greater flexibility to Member States while maintaining a level playing field, and are essential to the completion of the Third Directive, which is a key measure for preventing and combating organised crime and terrorism at EU level. In accordance with the Directive's procedures, the Parliament will have one month following the committee's vote to verify that the limits set in the 'level 1' measures have been respected, before the measures are adopted by the Commission, probably during summer 2006.

For further information:
http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

INSTITUTE OF COMPANY AUDITORS

AUDIT STANDARDS AND THE PROFESSION OF COMPANY AUDITOR

The various financial scandals that have shaken the international markets in recent years have occasioned a flurry of activity on the part of legislators, standards organisations and other international bodies. The ensuing legislative and standards initiatives are therefore intended to restore investors' confidence in companies and in particular in their financial relations.

In order to make the role of external auditors more transparent to the public, the International Assurance and Advisory Standards Board (IAASB) has undertaken a reform of international audit standards to which the Institut des réviseurs d'entreprises, or Institute of Company Auditors, has adhered. The intended aim is to further regulate auditors' work on the basis of the standards that apply to all engagements and all audit firms.

These reforms are evidence of a significant trend towards introduction of a series of new audit procedures intended to improve quality, which can be divided into three parts:

- Standards relating to risks demand new procedures to be followed when planning the engagement, whatever the company size or intended audit strategy. Henceforth, for each audit the auditor will have to document his understanding of the internal audit environment and the financial information production process. Analysis and documentation will extend to risks specific to the company, and to

the risk of submitting fraudulent or erroneous annual accounts. The auditor must also verify the suitability of the internal controls implemented and that they have been put into place, including information systems. The auditor will define his annual account audit strategy according to this preliminary analysis and will decide to test the operational efficiency of internal controls. The extent of the nominal work on the accounts will depend on the results of this preliminary analysis, as well as on the results of the operational effectiveness tests.

The standard relating to quality control will basically cause audit standards, formerly focussed on carrying out an audit engagement, to develop by expanding to embrace establishment of organisational standards for the audit firm itself. It is a question of implementing a quality control system designed to reassure executives that the firm and its personnel comply with professional standards as well as the regulatory and legislative provisions, and that the reports issued by the firm or the responsible associates are appropriate to the circumstances. This includes, in particular, the rules for accepting new clients, human resources regulations, rules on independence, ethics, and review of audit certificates by a person not involved in the audit engagement, prior to issue thereof. This review will be compulsory for all public interest companies and companies deemed to be similar by the audit firm. The quality control procedures adopted by the audit firms must be documented and compliance therewith will be examined by the profession's future public supervision organisation.

Bulletin

- **The standard relating to insurance engagements concerning non-financial information** requires a specific framework for intervention and precise definition of criteria for assessing the quality of information. Under no circumstances may these criteria be drawn up by the company auditor, so that the latter may protect his independence in relation to the assessment that he is asked to prepare. For business sectors subject to public supervision and which require preparation of analytical audit reports, the challenge which the competent authorities and the supervised entities must meet will be that of specifying the reference criteria to be adopted.

Apart from the additional work imposed by this reform of standards, the profession must face an unprecedented demand for **control documentation**, both in terms of the form to be adopted and the level of detail required, according to the “not documented, not done” principle. Very clearly, the objective will be availability at the end of the engagement of a file likely to withstand any form of subsequent investigation. Implementation of new standards will give rise to the following direct and indirect consequences:

- improved knowledge and consideration of specific risks and internal processes in each company on the part of the auditors;
- significant expansion of controls and greater documentation of audit work;
- specific considerations regarding the risk of fraud and error in annual accounts in the context of pressure from management;
- recourse to more experienced, better trained auditors or auditors with greater specialisation in information systems or auditing fraud;
- increased training for audit firms.

In all likelihood these changes will lead to an increase in auditors’ hours of work in order to meet the new demands and to respond to the need to call on better trained and more experienced persons. As a result an average increase in audit costs of 15 to 20% is to be expected.

In fact, if the heavily regulated big companies will be targeted more specifically by new rules relating to preparation of analytical audit reports, SMEs will be more directly affected by the fact that the additional audit work will be all the more significant since procedures for internal controls, and identification and management of risks, especially where fraud and presentation of financial information is concerned, are little documented or not documented at all, and not systematic, even non-existent.

Generally speaking, the complexity of internal organisation and information systems, as well as the way in which companies are managed, will also have a direct impact on the time and level of experience required. Relatively important additional work, which calls on highly qualified specialists, will in fact have to be carried out on understanding risks, internal controls and the financial reporting process. The new audit standards imposed on everyone as a result of this reform may seem relatively onerous for some Luxembourg commercial companies, especially small and medium-sized enterprises or family companies far removed from the international financial markets.

But these new standards must, however, be reflected in the general quality of audits and thus in the level of the financial information’s viability in general for everyone who uses it. Furthermore, the general standard of internal controls implemented by companies and everyone’s

Bulletin

awareness of the risk of errors, whether intentional or not, must also be strengthened.

The smallest structures could thus benefit fully from implementation of these new audit standards to update or bring up to standard their risk analysis and some of their procedures, which is by the way required by the European Directive on capital adequacy of credit institutions.

But developments in the profession do not stop at the standards framework, but also extend to the latter's legal framework. In fact the revised 8th Directive will be published soon. This Directive concerns the profession of legal accounts controller. The most striking reform in this revised Directive concerns supervision of the profession. It demands implementation of a public supervision body which has very wide powers, from approving company auditors, via quality control, to disciplinary directives. Clearly this is the beginning of the end for self-regulation of the profession.

It is important for Luxembourg to show quickly what it intends to do in this respect, all the more so since the American supervisory authority, the Public Company Accounting Oversight Board (PCAOB) has started to make monitoring visits to practices in Europe registered with it. The PCAOB may rely on the quality control carried out by a public supervision body in a member state on condition that it is recognised as being equivalent by the Americans. Luxembourg clearly has a challenge to take up here.

Of course the 8th Directive contains lots of other important features such as the requirement for extended training, the rules of independence and good professional conduct, internal rotation of audit executives, audit standards, special requirements for auditing public interest

companies and increased transparency in audit firms. The Directive must be adapted into Luxembourg law within 24 months.

The profession has embarked on a process of change which is accelerating, but which essentially envisages increased investor confidence in the financial systems and from then on good economic progress.

Michel Guay, IRE

Some thoughts on the criminal liability of the company manager and Compliance Officer in the context of the fight against money laundering and terrorist financing.

The purpose of the present account is not to provide an exhaustive study of the subject; instead it will restrict itself to providing readers with some food for thought¹ that may, perhaps, provide guidance when they are carrying out their jobs.

In fact, if the aspects of a compliance officer's functional responsibility have been established clearly in the instruments concerning him, and in particular both in the law of 12th November 2004² concerning the fight against money laundering and terrorist financing and in CSSF circular 04/155 of 27 September 2004³, at present it does not seem as though there has been a legal decision⁴ that has stipulated the extent of his criminal liability.

This problem is, however, very real.

There are two scenarios that may arise.

1) Either the Compliance Officer is himself implicated in a money laundering case, as the perpetrator, joint perpetrator or accomplice, for having knowingly

¹ Which can only be an expression of the author's own ideas without the ability to involve either national or international institutions in the latter's work.

² Memorial A 2004, p. 2765, see in particular this journal, no. 4, (Jan. 2005) p. 6-12, for a commentary on the law by Patrick Schott.

³ See this journal, no. 4, (Jan. 2005), p. 3-6.

⁴ The CRF-FIU annual report for 2004 (p. 20-21) only lists the criminal orders, unfounded decisions and cases under investigation, which obviously cannot be prejudged, without the position of the person addressed by the case becoming known, amongst other things.

committed one of the offences provided for either in article 506-1 of the criminal code, in article 8-1 of the amended law of 19 February 1973 concerning the sale of medicinal substances and the fight against drug abuse. This scenario hardly presents a problem; the compliance officer is *de facto* personally criminally liable. The same applies if the compliance officer is personally implicated in a case of terrorist financing.

Consequently this scenario is omitted from the following considerations.

2) Either the compliance officer is accused by the public prosecutor of having breached article 9 of the aforementioned law of 12 November 2004, sanctioning with a fine of 1,250 to 125,000 euros "*those who have knowingly contravened the provisions of articles 3 to 8*" of the same law, which constitutes the body of the professional obligations which must be observed by any professional mentioned in article 2 of the same law⁵.

I will not return here to the question of knowing whether ignorance of professional obligations – as the Luxembourg Director of Public Prosecutions has notably asserted – is to be classed as a purely material offence or indeed – in accordance with the opinion defended by the Bar Association, amongst others – as an intentional offence, the legislator having opted for the second solution⁶, in the face, moreover, of formal opposition from the Council of State.

⁵ Subject, of course, to the fact that, depending on the facts of the case submitted to the judge, the two offences may coincide.

⁶ On this point see Dean Spielmann, *Quelques réflexions au sujet de l'élément moral du délit de non-coopération à la lutte anti-blanchiment* (Some thoughts on the subject of the moral aspect of the

The factors constituting this offence are thus currently well determined in law and are only waiting for the Cour and courts to adopt a position, enabling them to be honed in practice. It may still be useful, however, to analyse who will be declared liable criminally if these factors happen to coincide.

Thus, if application of the common law of criminal liability is first directed at the person of the responsible company manager (I), the compliance officer is not safe from harm (II).

I) Application of the common law of criminal liability to the legal entity...

A) The principle of the company manager's liability...

Let us briefly recall that contrary to French and Belgian law in particular, Luxembourg criminal law still does not currently recognise the criminal liability of legal entities⁷ and continues to apply the adage that “*societas delinquere non potest*”⁸.

Apprised of a criminal act, the judge will thus investigate which natural person, acting consciously and freely, may be classed as the criminally liable perpetrator of an offence. In principle these are the legal representatives or, more generally, those who take an active

offence of non-cooperation in the fight against money laundering), in Bulletin du Cercle François Laurent, 2004, I, p. 79 – 107.

⁷ Although the legislator seems to be on the verge of wanting to introduce it, see the Ministry of Justice's annual report for 2004, p. 22

⁸ On this point see in particular Alphonse and Dean Spielmann, *Droit pénal luxembourgeois* (Luxembourg Criminal Law), Bruylant, 2nd ed. 2004, p. 353 *sqq.*; see also Jules Roger Nlend, *La responsabilité des dirigeants de sociétés en droit luxembourgeois* (The liability of company directors in Luxembourg law), publishers ECONSULT SCP, Luxembourg, 1997.

part in managing the legal entity, who are thus held to be the perpetrators of the offences in question⁹.

Under the terms of a consistent case law, all company directors (for public limited companies) or managers (for private limited companies) are jointly and severally liable in this respect, whatever their actual role in management of the company¹⁰, although some decisions allow the judge the faintest possibility of not holding the director criminally liable *ipso facto*, but imposing an obligation on him “*to determine the liable person(s) in question, i.e. the person who really committed the offence*”¹¹.

Application of this principle “*demands that the manager personally ensures all the time that the pertinent legislation is being applied without enabling him to plead his lack of involvement or a servant's mistake*” the appeal judges specifying that “*the director may not take refuge in laxity or indifference*”¹².

The same order holds that, in the case in question “*abstention (...) from implementing all the methods necessary likely to ensure accomplishment by his subordinates of acts that the law orders constitutes intentional negligence*” in the appellant's charges.

When applied to the question of money laundering, the manager's liability will certainly be investigated in the first instance if the obligations to combat money laundering and terrorist financing, in particular implementation of an adequate *ad hoc* structure, have not been observed.

⁹ See CA 18/12/1992, no. 308/92 V, unpublished, on this principle.

¹⁰ TAL 20/02/1992, no. 714/92, confirmed on this point by CA 05/03/1993, no. 69/93 V, Pas. lux. 29, summ. p. 89, no. 121.

¹¹ TAL 31/03/2004, BIJB 2004, p. 187.

¹² CA 25/01/2006, no. 41/06 X, unpublished.

In the absence of specific legal criteria, it is up to the judge to determine the concept of adequate structure on the basis of the evidence in the criminal case.

In this regard it should be recalled that CSSF circular 05/211, summarising the previous situation, provides that “*having obtained approval directors ... are liable for ensuring compliance with the legal and regulatory provisions, for implementing policies and internal procedures in (the) case (in question) and ensuring that they are applied correctly*”¹³, and sets out in detail the procedures to be followed by entities subject to its careful supervision.

Subject to what is said below about their standardising value, the rules established in this way are certainly likely to outline the professional obligations provided for in the law of 12 November 2004, and could thus serve as a “*guide*” for the criminal judge in his assessment of the case.

However, the fact that the manager is the first person against whom criminal proceedings are directed does not mean that he is necessarily found guilty if the facts are proved.

B)... is not absolute

In fact, as with any person appearing before the criminal judge, the manager may try to exonerate himself, even if the offence brought before the judge has been proven. Thus all the general grounds for justification, including in particular force majeure¹⁴ or absence of criminal liability, may be invoked by him, as applicable, to prevent his criminal liability being brought into play.

¹³ CSSF circ. 05/211, p. 8 (II 3.)

¹⁴ Force majeure is defined as an unpredictable and insurmountable event external to the person who invokes it and which is completely beyond the latter’s control.

In practice, more often than not managers intend to exempt themselves from liability for the acts committed by their servants by putting it that they had delegated their directorial powers to a third party¹⁵.

This possibility is clearly admitted by case law, which allows the manager of a company to invoke “*delegation of power to a person endowed with the competence, the authority and the necessary means to accomplish his assignment*”¹⁶, the judge verifying on a case-by-case basis whether the person deputed meets these conditions or whether, on the contrary, he is nothing but a “*straw man*”, or front.

Applied to the case under review, the manager will try to unburden himself by showing that he has implemented an internal structure that conforms to the law, and that this structure is likely to comply with all the obligations imposed on his company by the pertinent legislation, in particular by including qualified personnel vested with the powers necessary to ensure compliance with the law.

¹⁵ The concept of delegation of powers has been the subject of an in-depth study by Denis Philippe and Caroline Notte, *Responsabilité pénale des personnes morales et délégation de pouvoirs* (Criminal responsibility of legal entities and delegation of powers), *in*: *Annales de Droit Luxembourgeois*, vol. 14, pp. 163 – 273, such that this account basically restricts itself to reiterating the principles with the help of some recent case law.

¹⁶ CA 14/03/2000, no. 99/00 V; see also CA 08/02/2002, no. 46/02 V, which permits delegation of “*management of part of the company, even of a specific job, to a servant vested by (the manager) and endowed with the competence and authority necessary to effectively ensure that the provisions of the law are observed, in which case (the) liability devolves*” to the deputy; in the same vein CA 25/03/2003, no. 96/03 V, unpublished decisions.

It remains to be seen how the regulations to be observed in the field that concerns us will take shape:

First and foremost it is a question of the law of 12 November 2004 on money laundering and terrorist financing.

It is furthermore a question of CSSF circulars, especially circulars 05/211 and 04/155.

Article 4 of the law of 12 November 2004 sets out professionals' obligation to have a suitable internal organisation, basically comprising establishment of appropriate internal control and communication procedures in order to avert and prevent the illegal transactions in question. Article 5 of the same law reiterates the obligation to cooperate with the authorities entrusted with combating money laundering, cooperation which passes in the first instance to persons specially appointed for this purpose by the professional.

CSSF circular 05/211 brings together “*all the directions and instructions concerning practical application of professional obligations*”¹⁷ for the sector subject to its surveillance, whilst CSSF circular 04/155 seems to “*specify*” the terms of application of articles 5(2) and 17(2) of the 2004 law, by “*providing for implementation of a compliant control function and setting out the terms on which the latter operates*”¹⁸.

Thus these circulars do not create new constraints, but they specify the pre-existing obligatory legal framework within the particular scope of the sector subject to CSSF surveillance.

This point is fundamental: if the ultimate purpose of the circulars was to set up a special regulation independent of a previous legal regulation, the question arises as to their conformity with the constitutional principles governing the regulatory power of public institutions (art. 108a of the Constitution¹⁹) taken as an exception to the authoritative regulatory power vested solely in the Grand Duke by virtue of article 36 of the Constitution.

In fact, if the CSSF is indeed a public institution competent in the fields set out in article 2 of the law of 23 December 1998 creating this instruction, and its role as defined in article 3 of the same law certainly provides for a power of prudent surveillance – which obviously includes the power to specify by means of circulars on which points and with the help of which criteria this surveillance will be conducted – to date the law has not expressly included in this same role a regulatory power within the terms of article 108a of the Constitution which, within the scope of the CSSF's own specialism, would replace the powers normally reserved for the Grand Duke, or indeed, for the Law.

If it is true to say that article 15 of the law of 4 November 2004 has come to specify that, without prejudice to the obligation to cooperate with the legal authorities provided for in article 5 of the same law, the CSSF “*is the authority competent to ensure compliance with professional obligations in matters of combating money laundering and terrorist financing*”, this role, as in the past, is restricted to “*ensuring that the legal provisions are observed, not only those of*

¹⁷ CSSF circ. 05/211, p. 7 (I 1.)

¹⁸ See first paragraph of this circular.

¹⁹ Introduced by the amendment of 19 November 2004, Mem. A 2004, p. 2784. For a – critical – study of this amendment, see Marc Thewes, *Le pouvoir réglementaire fragmenté (Fragmented regulatory power)*, *in*: *Annales de Droit Luxembourgeois*, vol. 14, pp. 91 – 120.

Bulletin

the law relating to the financial sector, but also other laws and, in particular” those of the law of 12 November 2004²⁰, without expressly creating a regulatory power particular to the Commission within the terms of article 108a of the Constitution.

Having mentioned the principles governing the manager’s criminal responsibility and described the framework of the regulations to be observed in relation to money laundering and terrorist financing, we still have to analyse the compliance officer’s situation, especially in the circumstances of a structure that complies with regulations indeed having being implemented, but which has not succeeded in preventing an illegal act.

II) ...does not necessarily exclude that of the compliance officer

Circular 04/155 defines the role of Compliance as *“an independent role whose aim is to identify and evaluate an establishment’s compliance risk and to assist directors in management and control of this risk²¹.*

The remainder of the circular highlights this function’s independence which, although it is linked hierarchically to management, *“must be able to carry out its role and its responsibilities on its own initiative”²² within the scope of the Compliance charter with which the institution must equip itself²³. Thus these responsibilities, set out *de minimis* in section IX of the same circular, cover every aspect of the battle against the criminal phenomena provided for in the law of 12 November 2004, and in particular all*

communications with the authorities entrusted with this battle.

In their aforementioned study, with regard to bringing into play the compliance officer’s criminal liability, Denis Philippe and Caroline Notte conclude²⁴ that *“it is important to stress that despite the fact that the compliance officer is delegated the task of ensuring compliance with the laws and regulations within the scope of the bank’s activities, it is not delegation of power in the criminal sense”*. The authors base this conviction on the absence *“more often than not”* of the authority and autonomy in decision making, and compare the compliance officer to *“an in-house policeman who reports his findings to superiors who will take”* the decisions necessary in view of the findings.

This opinion may, however, be accepted only if one takes into account the reservation that the authors themselves provide: the judge will issue his opinion case-by-case, by analysing both the exact extent of the delegation of power²⁵ granted to the compliance officer by the manager, and the behaviour of the same when confronted with specific information from his compliance officer, as well as the latter’s specific attitude: has he correctly carried out the duties entrusted to him, or has he *“knowingly”* neglected them to the point of becoming criminally liable, superiors evidently being able to act only if the compliance officer has fulfilled his role correctly²⁶?

²⁴ See note 15, in this case p. 262 more particularly.

²⁵ In particular from the point of view of the scope – actual or theoretical – of the powers delegated to the compliance officer.

²⁶ For example, it would be difficult for a compliance officer to avoid criminal proceedings if he (knowingly) neglects to inform the CRF-FIU of facts that could be a sign of money laundering, or if he has neglected (knowingly) to provide information or to comply with injunctions requested or made legally by this entity respectively, especially if he is, as is

²⁰ Parl. doc 5156, statement of reasons, p. 25

²¹ CSSF circ. 04/155, no. 9, p. 12

²² *ibid*, no. 28, sub a)

²³ *ibid*, section VII

Bulletin

If the last scenario should arise, an interesting question is bound to come up: could the compliance officer in turn and following the example of the manager, plead his exemption from liability?

Without wishing to prejudge the positions that our courts may assume, the following considerations may arise:

- nothing should prevent the classic grounds for exemption being brought into play, such as the insurmountable error, force majeure, duress²⁷, etc.

- On the other hand it seems to me that the situation is far less obvious where delegation of powers is concerned. In fact CSSF circular 04/155 provides expressly that if certain Compliance tasks can be delegated to third parties, liability for all the tasks, even those which would have been delegated “*remains with the Compliance department*”²⁸, which must implicitly, but necessarily, exclude any delegation of responsibility, especially criminal liability, within the terms of the case law quoted above.

This provision, although it only appears in the CSSF circular and not in the law of 12 November 2004, so that as stated above it has no proper regulatory bearing, is no less part of the professional obligations provided for in article 9 of the law in question and may therefore incur a criminal penalty. It is therefore a good bet that contrary to the manager, the compliance officer would not invoke “*sub-delegation*” of his powers to

another person and, in this event, would be charged with the offence of which he is accused.

Thus one can only note that in this matter too, independence is prone to entail liability, which is obviously not likely to make the compliance officer’s burden any lighter.

Jeannot Nies
Magistrate

generally the case, the contact person provided for in article 5 (2) of the law of 12 November 2004.

²⁷ Thus he could also try to exempt himself from liability by proving that he completely fulfilled the duties associated with his position, but that his superiors neglected – even refused – to follow his recommendations.

²⁸ *ibid*, no. 28, *sub* ba)

Opinions

“The way we invest creates the world in which we live”

**Amy Domini,
American founder of the Domini Social
Index (DSI 400) in 1990**

Traditionally management of stock exchange securities is based on financial criteria only, but for some years other criteria have been reviewed also. Some categories of investment have come to light that enable savers to invest “differently”.

Some people no longer look for profit at any price ...

The aim of ethical management is to allow the investor to make money without having to renounce his beliefs. Henceforth moral and environmental criteria, or the criteria of social responsibility, will be weighed in the balance.

Mention of the term “ethical” raises numerous questions from the outset...

It is thus indisputable that associating “ethics” with “finance” raises a complex network of delicate problems, the extent of which is difficult to define objectively. What in fact are the limits of ethics?

More and more financial groups wish to add an ethical dimension to their activities. Despite an undeniable gradual increase in public awareness of the need for sustainable development, the demand for specific products labelled “sustainable and ethical development” is still less noticeable where private investors are concerned, the latter

generally favouring the performance of financial assets. Maybe they have still not realised fully that in future it will be possible for these objectives to be reconciled?

On the other hand a multitude of more institutional players, such as religious congregations, trade unions, NGOs, various associations, pension funds, insurance companies... are requesting this type of product more and more frequently.

According to a study conducted by Deloitte & Touche in 2002²⁹, 50% of the surveyed managers had noticed that their institutional clients and pensions funds were showing an increasing interest in Socially Responsible Investment (SRI).

The capital involved is colossal: as of 1 June 2004 the European private investor SRI market was estimated at 19 billion euros³⁰, and in 2003 in particular, the institutional market for SRIs rose to 336 billion euros³¹.

Let's take the time to examine this alternative method of management more closely.

Does it represent just a fad, or a change of heart?

What is meant by “sustainable development”, “SRI”, “corporate social responsibility”...?

Where do these ideas come from? What developments in standards can we detect?

²⁹ Deloitte & Touche, Socially Responsible Investment Survey 2002.

³⁰ Source: SIRI Company, “Green, social and ethical fund in Europe 2004”.

³¹ Source: Eurosif 2003

I Sustainable Development

In the 1970s, experts worried about the fact that economic growth had a negative impact on the environment and that in the long term it could mortgage life on the planet.

Sustainable development is an alternative intended to preserve the future. It was defined in 1987 by the Brundtland Report (Norwegian Prime Minister, author of the World Council on Environment and Development's report) as "*a development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*"³²

For companies, sustainable development, or sustainability, assumes that they develop on the basis of three mainstays, social, environmental and economic sustainability.

There are two important themes in discussions about companies in the 21st century: corporate governance³³ and sustainable development, more especially "Corporate Social Responsibility" (CSR).³⁴

³² Source: www.novethic.fr, Repère – Développement Durable (Markers – Sustainable Development).

³³ "Good governance" as defined by the United Nations Development Programme: "*Governance may be regarded as exercise of economic, political or administrative powers to manage the countries' affairs on all levels. Good governance is inclusive, transparent and responsible. It is also effective and fair. It ensures that political, social and economic priorities are based on a wide consensus within society and the voices of the poorest and most vulnerable are at the heart of the decision-making process on allocation of development resources.*"

The Belgian code of corporate governance (Lippens code) of 9 December 2004 mentions "Corporate governance covers a body of rules and behaviours by which companies are managed and controlled. Good corporate governance will attain its objective by establishing an appropriate balance between entrepreneurial spirit and control, as well as between performance and compliance with these rules."

³⁴ Daniel Lebègue, President of the Institut du Développement Durable et des Relations Internationales (IDDRI), France (www.iddri.org),

The first deals with the manner in which a company is governed, which must be more transparent, more efficient and which must furthermore take into account the expectations of the various stakeholders: shareholders, employees, clients, ...

The second theme, to which this article is restricted, covers corporate behaviour; it being expected nowadays not only that it be economically effective, but also responsible with regard to the environment in its wider sense, and its partners.

Consequently it is an attempt to strike a balance between a company's functions and its responsibilities.

Corporate Social Responsibility (CSR)

This concept is linked to application of the idea of sustainable development to companies, the mainstays being economic, social and environmental sustainability, as mentioned previously.

Henceforth the company will no longer concern itself solely with its profitability and growth. Environmental and social impacts will be taken into consideration. It will pay more attention to "stakeholders" (employees, shareholders, suppliers, NGOs,...) and their concerns, especially as more and more of them are asking it to account for the consequences of its actions³⁵.

Companies are concerned by the wave of new public expectations. In the long run this will entail a risk to reputation, i.e. a risk that negative publicity regarding the way in which the company conducts its business

"Sustainable development must really be considered as an investment." May 2003.

³⁵ Source: www.novethic.fr, Repère – RSE (Markers – CSR).

Bulletin

and the relations that a company maintains will impair confidence in the institution's integrity, whether the accusations are justified or not.³⁶

If their image deteriorates rapidly, they suffer the commercial and financial backlash. Legal proceedings for liability (tobacco, oil slicks, ...) may cost them dear and this is the reason why companies must do everything in their power to prevent being sued.

Corporate social responsibility entails an inevitable cost, but the price paid for negligence is far higher.

Some companies have firmly grasped this new challenge and deal with it. They play the transparency card and apply the same thoroughness to corporate information as they do to financial information: their auditors verify the social and environmental indicators published in their annual reports.

Corporate commitment to sustainable development is largely voluntary. In the absence of regulations, standardisation is developing.

Rating agencies are proposing external evaluation of companies according to various environmental and social criteria for the future.

II From the point of view of standards and legislation:

1/ At international level³⁷

1- OECD guidelines

³⁶ Definition by the Swiss Federal Banking Committee.

³⁷ Sources: Orse, "Les attentes au niveau international" (Expectations at an international level); www.oecd.org; www.globalreporting.org; www.unglobalcompact.org.

The guidelines form a body of non-compulsory recommendations for multinational companies in all the major areas of corporate ethics, including employment and relations with social partners, human rights, the environment, divulging information, anti-corruption measures, consumer interests, science and technology, competition, and taxation.

If the companies are not obliged to comply with them, the signatory governments, on the other hand, have undertaken to promote application thereof and to bring their influence to bear on the behaviour of companies who do business on their territory or from it.

2- The Global Reporting Initiative

Since 1997, some companies follow the "GRI" – Global Reporting Initiative³⁸ – whose aim is to standardise sustainable development. Open to all organisations and any individual having an interest in CSR reporting, it now comprises almost 250 members across 35 countries.

The GRI is an international operation involving multiple players, whose role is to develop and distribute globally applicable guidelines for sustainable development reporting, for voluntary use by organisations preparing reports on the economic, social and environmental aspects of their businesses, products and services.

Companies issue an annual report according to principles of methodology and viability relating to all the information likely to enlighten readers of the report about the

³⁸ The Global Reporting Initiative (GRI) was drawn up towards the end of 1997 with the task of developing globally applicable directives to take account of economic, environmental and social performance, initially for companies and subsequently for any governmental or non-governmental organisation.

Bulletin

organisations' social, economic and environmental impact.

What is interesting about GRI is the more organisations that use it, the easier global comparison of the efforts that certain organisations are making to implement sustainable development becomes. Thus it is possible to talk of true international benchmarking.³⁹

3- The United Nations' Global Compact.

In 1999, at the World Economic Forum in Davos (Switzerland), the Secretary General proposed a "Global Compact" between the UN and corporations.

The aim of this compact is to allow everyone to benefit from the advantages of globalisation and to anchor global markets in the values and practices indispensable for meeting socio-economic needs. It also encourages trade union leaders and civilian representatives to become involved in the Compact and use it to create a platform for debate on the controversial aspects of globalisation and development.

The UN Secretary General asked private sector enterprises to adhere to ten principles⁴⁰ and to translate them into practice.

³⁹ Source: "UN: Global Reporting Initiative", 27 November 2003, www.tourisme-durable.net

⁴⁰ These ten principles dealt with the following topics:

- HUMAN RIGHTS

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;

Principle 2: Businesses should make sure they are not complicit in human rights abuses.

- LABOUR STANDARDS

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: Elimination of all forms of forced and compulsory labour;

Principle 5: Effective abolition of child labour;

In France today more than 400 companies have signed up to the Global Compact. Worldwide the figure is more than 2700, with over 1300 in Europe (Luxembourg companies: 2, Belgian: 17, Spanish: 277, British: 77, German: 61). As far as American companies are concerned, only 123 companies have signed up.⁴¹

2/ At European level

At European level the debate on CSR started in 1995, but it was only in March 2000, during the European Summit in Lisbon, that CSR became a political priority.

In July 2001, the Commission embarked on a period of review and consultation on CSR. It defined the concept of CSR as "voluntary integration of companies' social and environmental concerns in their business operations and in their interaction with their stakeholders."

In July 2002, the European Commission adopted a "New strategy in favour of corporate social responsibility intended to promote corporate contribution to sustainable development"; the aim being to complement the initiatives already adopted by companies themselves or by public institutions such as the OECD or UN.

The strategy provided for by the European Commission should allow an increase in the transparency of CSR (codes of conduct, social labelling,...) and thus increase credibility with consumers and investors.

Principle 6: Eliminate discrimination in respect of employment and occupation;

- ENVIRONMENT

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility;

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

- ANTI-CORRUPTION

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Bulletin

A consultation forum and a co-ordinating committee were established.

Two years later, in June 2004, the coordinating committee submitted a report that did not make it possible to arrive at firm proposals likely to meet the objectives set by the Commission.

The majority of companies were opposed to a European regulation that would standardise or regulate CSR because that “would compromise corporate commitment to CSR, whilst a voluntary approach would provide a firm and lasting anchor for good practice in a company”.⁴²

3/ At national levels

In the USA, in January 2003 the SEC (Securities Exchange Commission) approved new transparency standards for securities. They must reveal the policies and procedures used to determine the manner in which they use share portfolio proxy votes. The ballot results must be published.

The aim is to enable shareholders to be equipped to better understand and evaluate the extent to which the securities are involved in defending their interests when voting on vital questions of corporate governance and social or environmental impact.

In France, since 2001 the “NRE” law, or “New Economic Regulations” law has obliged listed companies to publish an annual report on the environmental and social consequences of their activities. And the law on pension funds makes reporting on the general direction taken by the investment policy and mentioning whether they have taken into consideration social, environmental or ethical criteria compulsory.

⁴² The position of UNICE (Union of Industrial and Employers’ Confederations of Europe) on the subject of the strategy of the European Commission.

In 2000, the British government introduced a law compelling pension funds to divulge the manner in which they take into account social, environmental and ethical information in their investment strategies.

In 2002, Germany, Sweden, Austria and Belgium adopted the same type of legislation.

Australia and Canada have also introduced standards encouraging investors to indicate the extent to which “ethical” criteria are taken into account in investment policy.

Spain has adopted an obligation to declare pension fund investment policies.

Italy is likely to introduce a regulation similar to that instituted in the United Kingdom.

III Socially Responsible Investment (SRI)

1/ History

“Responsible” investment is nothing new, because the first ethical funds appeared in the USA in the 1920s at the request of religious institutions that refused to invest in “vice” stocks, such as alcohol and tobacco.

Until the 1990s, the tendency was to rule out stock from so-called “sensitive” companies (arms, alcohol, nuclear industry, tobacco, ...). Nowadays, SRI has evolved towards a logic of positive choice and selection.⁴³

Initiatives have adopted a more professional approach, fund managers have emerged and “responsible” stock market indices have seen the light of day.

A growing number of managers are also committing themselves to the path of share activism.

⁴³ Orse, Finance and sustainable development, June 2005

Bulletin

Since the start of the new millennium, SRI has really been on the increase.

2/ The socially responsible investment universe:

1- Investors' ethical criteria are not always manifested in the same way and the objective, as well as the means used to achieve it, may be noticeably different⁴⁴.

CONVICTION INVESTMENT

The investor refuses to guarantee or contribute to activities, practices or systems of which he does not approve.

Ethical savings and investment products allow savers and investors to rest assured that their assets will not be invested in companies regarded as "no go".

There are 3 types of investment in funds enabling the investor to achieve his desired objective⁴⁵:

- *First generation* funds are based exclusively on exclusion criteria ("negative screening"). According to this approach managers of these funds exclude from their investment universe companies implicated in certain business sectors, or products and services. The exclusion will either be global (all of a business sector or a geographical zone), or differentiated, for example, exclusion of companies having more than 10% of turnover stemming from arms sales, exclusion of the company if it conducts animal testing for non-medical purposes, etc.

⁴⁴ See in this regard "Les fondements éthiques de l'investissement responsable" (The ethical foundations of responsible investment), J-M Bonvin, P.Dembiski, E. Dommen, F-M. Monnet, Observatoire de la finance (www.obsfin.ch).

⁴⁵ Source: Socially responsible investment in Belgium, 2005 report, Réseau Alternatif (www.rfa.be).

- *Second generation* funds include in their company selection a series of positive

criteria specific to a sector or theme ("positive screening"). These funds invest their capital in companies that perform well in a very precise area of socially responsible management such as implementation of a suitable social policy or implementation of more ecologically responsible production processes. For these funds the companies are thus analysed according to one or more aspects of socially responsible management ("sustainable entrepreneurship").

- *Third generation* funds are based on a very wide body of criteria covering all aspects of socially responsible management. These funds invest in businesses which try to apply a socially responsible or sustainable strategy on different levels: social, environmental and economic (three P approach: People, Planet, Profit).

THE SEARCH FOR CONSEQUENCES OR SHAREHOLDER ACTIVISM

It is no longer a question of balancing your capital against your principles, but of using this capital as a weapon, a lever to force or encourage businesses to comply with their shareholders' principles. This is what is also known as shareholder activism, which tries to use voting rights or access to a new fraction of the capital market in order to influence corporate behaviour.⁴⁶

But to do this it is necessary to achieve a rate of dividend that is big enough to apply leverage effectively.

The current liability of socially responsible funds is still very low in proportion to total liability. Furthermore, OPC dispersion and

⁴⁶ "L'investissement socialement responsable" (Socially responsible investment), Alexandre Mistoffe, 9 March 2004.

Bulletin

dilution of investments noticeably reduce the influential power of this capital. These investments are far from having achieved a sum which will enable them to put pressure on the directors of a major corporation.

Funds invested in SRI represent only a tiny part of the major capitalisations that are, however, criticised for their environmental or social policy such as for example Exxon (\$265 billion) or Nike (€9 billion).

SELECTIVE INVESTMENT

The investor sees ethics as a selection criterion for his investment portfolio.

He starts from the premise that businesses adhering to a certain number of values are more likely to achieve better economic performance.

In this case ethics are perceived as a factor that reduces the investment risk; it is used as a pure means of performance.

2- Gradual spread of sustainable development objectives among generalist managements⁴⁷

This trend is less easy to understand than the growth of specialised funds, but a certain number of indications make it clear that it is a growing trend.

Thus financial rating agencies are taking into account sustainable development criteria, the most integrated of which is without doubt the “quality of corporate governance”. Generally speaking, agencies try to take into consideration anything that enables them to determine a company’s financial capacity.

3/ European liabilities

⁴⁷ Source: “Synthèse des réunions de la commission de l’Orse” (Summary of Orse Commission meetings), Orse, December 2003.

1- The European “retail” SRI market (private investors).

*Study of SiRi Company and Avanzi SRI Research (2004)*⁴⁸

On 1 June 2004, the study established a total SRI fund liability in Europe of 19 billion euros, compared with 12 billion euros in June 2003. The total liability had risen by 57% mainly because of good stock fund performance on the financial markets.

In terms of mapping national markets, the British SRI market remains the foremost European market with a total SRI liability which constitutes almost 36.2% of total liability for funds of this type in Europe. Italy and Sweden come in second and third place respectively, each with more than 10% of SRI funds offered on the European market. They are followed by France, the Netherlands, Belgium, Switzerland, Austria, Germany and Spain.

In terms of weight in overall asset management, on 30 June 2004, European SRI funds represented around 0.47% of the total European collective fund market.

In terms of number of funds, the SRI market has also grown, jumping from 313 registered funds in June 2003, to 354 funds in June 2004. The United Kingdom, Sweden, France and Belgium account for more than 64% of funds available on the European SRI market, with British funds being in the majority, representing 21% of European SRI funds.

⁴⁸ The study of the SiRi Company and Avanzi SRI Research concerned itself specifically with the open SRI fund market, aimed at private investors. It considered funds whose composition is based on a selection of securities based on the three criteria: social, environmental and ethical (SEE). It should be noted that it did not take into account distribution funds, investment funds specialising in the environment, SRI funds available to institutional investors only, and SRI funds not available on the market.

Bulletin

Where availability of SRI funds is concerned, the Austrian and French markets are the most dynamic; the number of funds offered on these markets has risen by more than 25% from June 2003 to June 2004.

2- The European institutional SRI market
*Eurosif study (2003)*⁴⁹,

The market is largely dominated by Great Britain (148 billion euros) and the Netherlands (181 billion euros), which represent more than 95% of European institutional funds. It is worth distinguishing, however, between the approaches adopted: the commitment is mainly entered into by British investors, whereas almost all Dutch pension funds favour negative screening only⁵⁰.

Germany comes next (1.4 billion euros), France and Italy.

IV Evaluation of socially responsible companies

There are two opposing trends: either it is promoters of products themselves (banks, fund managers) who select socially responsible companies using their own research unit, mostly accompanied by an Ethical Committee, whether it is made up of external parties or not, or they resort to the services of an independent specialist consultancy.

1/ Specialist consultancy

⁴⁹ "The European Investment Forum" is a network of stakeholders who work to encourage and develop responsible investment and good governance. www.eurosif.org

⁵⁰ Negative screening consists of excluding companies according to ethical criteria of religious belief or ideology.

Most institutions have access to specialist consultancies. There are more than thirty around the world.

The main European reference consultancies are Stock at Stake/Ethibel (Belgium), Dutch Sustainable Research (Holland), EIRIS (UK), SAM (SWITZERLAND), VIGEO (France), IMUG (Germany), Avenzi (Italy) and others, of course.

These consultancies have created socially responsible stock market indices, such as the Dow Jones Sustainability Global Index (DJSI), and the FTSE4GOOD.

The methodologies used, the criteria applied, and the services offered vary considerably from one institution to another. The selection methods are varied, from sole rating of businesses by the consultancy, which leaves the final choice of whether or not to invest in a company that has a bad ethical rating to the financial manager, to screening that restricts this choice to a very specific investment universe, demarcated by the consultancy.

In principle there is no standardised tool which facilitates measurement of companies' level of commitment to sustainable development. How should the different social/ecological/economic considerations be weighted? Which aspect is the most important?

Based on questionnaires sent to companies, the independent agencies gather varying information.

Once the data has been collected, it is collated and filtered to obtain the company profile. Each agency then has its own evaluation method.

Where Ethibel is concerned, for example, its evaluation scheme covers five fields, four of which are subjected to evaluation. The first

Bulletin

field describes the company's background in general terms. The other fields cover internal social policy, environmental policy, external social policy, and ethico-economic policy. The same importance is attached to each, there is no weighting.

2/ In-house research unit – Ethical Committee

1- General remarks

Some financial Groups have a team dedicated to screening companies in which they invest on the basis of various criteria: counterparty and country rating, corporate governance, sector, ... In addition they form an Ethical Committee. The latter is tasked with assessing the company's different activities with regard to its ethical values recognised as such by the management (respect for human rights, social rights, environmental protection, respect for political rights, taking into account reputation in terms of ethics, ...).

It advises, warns and draws the attention of directors to compliance with the ethical nature of areas recognised as falling within the scope of its activities. The directors remain in charge of decisions; in principle the Committee does not have decision-making power *per se*.

The Ethical Committee may intervene from two points of view:

1. communicating the financial Group's values to third parties (shareholders, investors, employees, rating agencies, ...) through the channels that it deems appropriate;
2. definition of selection criteria for stocks that may form part of the investment universe.

It offers the periodic, objective guarantee of an evaluation conducted by the banking institution (comprehensive, in-depth and accurate examination of profiles for the countries and companies concerned

according to the selected criteria and indicators).

The Committee is made up of members from departments within the bank that are affected (especially Asset Management, Financial Markets, Compliance, ...), and/or independent members (university professors, sectoral experts, ...) in order to further increase the said Committee's credibility.

Apart from appointment of its members, the "terms of reference" of this Committee will usefully cover the basic philosophy or applied school of thought, the Committee's roles and responsibilities, the banking activities covered, the location and frequency of meetings, the necessary quorum, etc.

2- Definition of the investment universe

Each company will decide on the *modus operandi* of selection that allows an investment universe to be formed.

The criteria taken into consideration may differ depending on the values that the company regards as its own and wants to promote, but also depending on more standardised criteria, or the wishes of customers. The criteria favoured by the responsible investors reflect the socio-cultural context particular to each country or geographical zone.⁵¹

In the United States, for example, the damaging effects of tobacco occupy first place in considerations, whilst in Switzerland and generally in the Scandinavian countries, it is mainly environmental criteria which guide investors' choices.

More generally, there are three approaches to investment:

⁵¹ Orse, Finances et développement durable (Finance and sustainable development), June 2005

Bulletin

“do well”: this method consists of investing exclusively in companies which work for the good of mankind. It is not always the easiest to put into practice;

“make them do well”: in his role as a shareholder the investor seeks to directly influence the ethical direction of the company in which he holds shares;

“do no harm”: approach according to which the manager tries to invest in companies whose products and practices do not conflict with his principles and ethical values.

V The compliance aspect of sustainable development

The aim of the compliance function is to protect the organisation from any harm that could arise from failure to comply with the prevailing standards, and in the wider sense contribute to effective management of the ensuing risks.⁵² The risk to reputation that may possibly ensue from the total absence of policy and, a fortiori, failure to comply with the policy which the credit institution has adopted in the case in question should be at the heart of the Compliance Officer's concerns. He is the guardian of ethics and the person par excellence ideally placed to address these problems. Thus his duties also include dealing with these considerations that may be decisive in increasing customer numbers. If an Ethical Committee has been established, he obviously has a role to play in it.

Furthermore CSSF circular 04/155 does not rule out the possibility of a credit institution's compliance department covering fields of business that are not directly part of the banking sector, such as the rules relating to employment law, social law, company law or environmental law.⁵³ These topics correspond to the three mainstays of sustainable development.

⁵² CSSF circular 04/155 §3

⁵³ CSSF circular 04/155 § 12

In collaboration with the bank's concerned departments and management, the Compliance Officer could thus draw up a policy and guidelines in this area, as well as terms of reference for the Ethical Committee, update them regularly, ensure compliance with them, vet diffusion of information made public in this field, report, as applicable, incidents which are within the scope of the Ethical Committee and the managerial bodies, suggest the necessary corrective measures, and in this way contribute as always to further increasing awareness of practical interpretation of a certain concept of ethics, which will be that favoured and supported by the originating institution.

CONCLUSION

Socially Responsible Investment has developed because a certain number of financiers have become convinced that taking into account social and environmental criteria allows improved identification of companies that perform well in the medium and long term.

If application of the criteria selecting companies on their social or environmental performance can prove the economic and financial relevance of SRI, even more institutional or private investors will be inclined to take these considerations into account by opting for investment choices offering not only a satisfactory financial return, but which also accord with their values.

In any case it is no longer a matter of a simple marketing effect intended to recruit new investors, but rather a profound change in thinking which is beginning to gain ground. Some are already talking in terms of the socially responsible approach spreading to institutional fund management in its entirety.

Bulletin

The pursuit of conformity with laws and regulations, as well as with ethical values defined by a credit institution, allows the Compliance view to be projected onto the latter's commercial sphere; one method among many to marry Compliance and performance and to further promote the culture of compliance.

Nancy Carabin

Vie associative/Association activities

VIE ASSOCIATIVE

ASSOCIATION ACTIVITIES

GROUPES DE TRAVAIL ACTUELS:

CURRENT WORKING GROUPS:

A. SECTEUR TRANSVERSAL:

A. CROSS-SECTOR:

Groupe de travail 16

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Groupe de travail 28

MiFID

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Groupe de travail 10

Contrôles compliance

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C. SECTEUR FONDS:

Groupe de travail 18

Compliance relativement aux investissements alternatifs

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Groupe de travail 20

Transposition de la directive anti-blanchiment (à mettre en place en coopération avec l'ALFI)

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Groupe de travail 21

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D. SECTEUR ASSURANCE:

Groupe de travail 12

Lutte contre le blanchiment dans le secteur des assurances

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Groupe de travail 14

B. BANKING SECTOR:

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Working group 10

Compliance controls

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C. FUNDS SECTOR:

Working group 18

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Working group 20

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Working group 21

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D. INSURANCE SECTOR:

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Working group 14

Statut du compliance officer dans le secteur des assurances

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Status of the compliance officer in insurance

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Working group 13

Compliance and intermediaries

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Coordinateur groupes de travail / Working groups coordinator:

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 E-mail r.sonnenschein@vanlanschot.lu

MEMBRES ET VIE ASSOCIATIVE:**MEMBERS AND ASSOCIATION ACTIVITIES:****Nombre de membres (au 31/03/2006):**

Banques	113
Fonds	73
Fonds / Banques	38
Assurances	38
Consultants / Réviseurs	28
Admin. et domiciliation de sociétés	9
Avocats	6
PSF	9
Gestion de fortune	6
Autres	7

Effectif total: 327

Membres effectifs	260
Membres d'honneur	67

Effectif total: 327

Number of members (as per 31/03/2006):

Banking sector	113
Funds sector	73
Funds / Banking sector	38
Insurance sector	38
Consultants / Auditors	28
Admin. and company domiciliation	9
Law firms	6
SFP	9
Asset management	6
Other	7

Total number: 327

Active members	260
Honorary members	67

Total number: 327

Réunions et activités:

Mensuel Réunions du conseil d'administration
 Réunion amicale 19 septembre 2006
 Visite du Parlement européen 26 octobre 2006
 Visite de la Bourse de Luxembourg le 28 septembre 2006

Meetings and activities:

Monthly Board meetings
 Meeting on 19 September 2006
 Visit of the European Parliament on 26 October 2006
 Visit of the Luxembourg Stock Exchange on 28 September 2006

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