

Decision 2011-02 of 24 October 2012 (warning and EUR 500,000 fine; decision in which the institution was not publicly named)

This proceeding, concerning the supervision of compliance risk and anti-money laundering and terrorist financing arrangements within a credit institution's private banking business, provided an opportunity to clarify the interpretation of a number of provisions of the Monetary and Financial Code:

(a) On general matters and procedural exceptions

- The unconstitutionality of texts allowing the former Commission bancaire (Banking Commission) to combine powers of inspection, prosecution and enforcement does not prevent the ACP from sanctioning violations committed before it was established.
- Published international or bilateral agreements, to which the Monetary and Financial Code (Articles L.612-26 and L.632-13) makes an international extension of on-site inspections subject, cannot be reduced to a mere exchange of correspondence between the ACP General Secretariat and the staff of the supervisor in question, without rendering the inspection unlawful.
- Article 19 of the Ordinance of 30 January 2009 (transposing the Third Money Laundering Directive), instructs institutions to comply with their new due diligence obligations "in a timely fashion, as assessed on the basis of the risks and no later than one year from the publication of the last of the implementing decrees" (which happened on 4 September 2009). In the absence of more specific regulatory provisions, the Committee judged that while inadequate due diligence with respect to these provisions would entitle the ACP General Secretariat to issue comments on preventive grounds, disciplinary measures could not be taken unless the offence continued after the deadline.

(b) On obligations relating to compliance control and anti-money laundering and terrorist financing arrangements

Two points in particular are worthy of mention:

- In the event of a disagreement between operational and compliance managers within an entity of the group, the only way to establish an oversight system comprising measurement, supervision and control of compliance risk at consolidated level, without obliging the competent central entity to decide whether new business relationships should be entered into in these individual cases, is to have in place a procedure for reporting information on individual files, within the applicable limits of local legislation.
- The Monetary and Financial Code does not require that the member of the management committee who has oversight of anti-money laundering and counter-terrorist financing arrangements have operational responsibilities in this area, such as that of the Tracfin correspondent, nor does it require that such oversight be that person's sole responsibility.