

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 7 June 2011

To all credit institutions

CIRCULAR CSSF 11/514

Re: Cooperation of the professionals of the financial sector with the Luxembourg office of the investigating judge (*juge d'instruction*)

Ladies and Gentlemen,

We are pleased to draw your attention to the new provisions of Article 66-2 et seqq. of the Code of Criminal Procedure (C.C.P.), quoted in full in the Annexe. Article 66-2(1) of the C.C.P. thus provides that the investigating judge (*juge d'instruction*) may, under restrictive conditions and in specific circumstances, order a credit institution to provide information on whether a specific indicted person has or had a business relationship with the institution concerned.

Moreover, Articles 66-3 to 66-5 of the C.C.P. govern the request to monitor banking transactions, the request for information on the execution of banking transactions and procedural questions relating to the various requests.

By virtue of these provisions and in order to ensure an efficient application of the procedure, **we ask you to transmit to the office of the investigating judge the following information and data relating to your institution:**

- the fax number(s) for the notification of the orders (*ordonnance*);
- the phone number(s) in case of problems, with the names of the person(s) to contact in such a case;
- an email address that is constantly checked by the person(s) responsible within your institution.

If, instead of a specific department, you indicate a person in charge of handling these requests, please also indicate the name of the replacement in case he/she is absent.

Should there be any change with respect to this information, you are required to immediately inform the office of the investigating judge and the judiciary police (*police judiciaire*) and to provide them with up-to-date information.

All this information must be sent within two weeks to the following address: cabinet.lux@justice.etat.lu.

Please note that this procedure for the notification of orders will remain in place until a secured means of electronic exchange has been implemented by the judicial authorities. Therefore, institutions are currently not allowed to transmit nominative data in response to orders *via* non-secured emails.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Claude SIMON
Director

Andrée BILLON
Director

Simone DELCOURT
Director

Jean GUILL
Director General

Annexe: excerpt from the C.C.P.

EXERPT from the Code of Criminal Procedure

Art. 66-2. (L. 27 October 2010) (1) If required by the preliminary investigation and in the event that ordinary investigative methods prove inadequate due to the nature of the conduct in question or circumstances specific to the case at issue, the investigating judge responsible for carrying out the investigation may, on an exceptional basis, in respect of one or more of the acts listed below, order credit institutions that he or she designates to reveal whether or not the defendant holds, controls or has power of attorney over one or more accounts of any type or has held, controlled or had power of attorney over such an account in relation to one or more of the acts listed below:

1. felonies and misdemeanours against the national security as defined in Articles 101 to 123 of the Penal Code
2. acts of terrorism and terrorist financing as defined in Articles 135-1 to 135-8 of the Penal Code
3. violations of the Law of 15 March 1983 on arms and ammunition, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
4. human trafficking, procuring, prostitution and the exploitation of human beings as defined in Articles 379 to 386 of the Penal Code
5. homicide and assault and battery through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 392 to 417 of the Penal Code
6. theft and extortion through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 461 to 475 of the Penal Code
7. violations of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
8. money laundering and receiving and concealing of stolen property as defined in Articles 505 and 506-1 of the Penal Code
9. bribery and corruption as defined in Articles 246 to 252, Article 310 and Article 310-1 of the Penal Code
10. facilitation of unauthorised entry and residence as defined by the Law of 29 August 2008 on the free movement of persons, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
11. counterfeiting as defined in Articles 162 to 170 of the Penal Code
12. abduction of minors as defined in Articles 368 to 371-1 of the Penal Code.

(2) If the response is affirmative, the credit institution shall communicate the account number and its balance, and shall forward to the investigating judge all account identification details, and in particular the account opening documents.

(3) The decision is recorded in the proceedings file upon the conclusion of the proceedings.

Art. 66-3. (L. 27 October 2010) (1) If required by the preliminary investigation and in the event that ordinary investigative methods prove inadequate due to the nature of the conduct in question or circumstances specific to the case at issue, the investigating judge responsible for carrying out the investigation may, on an exceptional basis, in respect of

one or more of the acts listed below, order a credit institution to provide notification during a specified period of any transactions to be executed or planned to be executed in connection with the account of a defendant specified by the investigating judge:

1. felonies and misdemeanours against the national security as defined in Articles 101 to 123 of the Penal Code
2. acts of terrorism and terrorist financing as defined in Articles 135-1 to 135-8 of the Penal Code
3. violations of the Law of 15 March 1983 on arms and ammunition, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
4. human trafficking, procuring, prostitution and the exploitation of human beings as defined in Articles 379 to 386 of the Penal Code
5. homicide and assault and battery through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 392 to 417 of the Penal Code
6. theft and extortion through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation as defined in Articles 461 to 475 of the Penal Code
7. violations of the Law of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction, as amended, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
8. money laundering and receiving and concealing of stolen property as defined in Articles 505 and 506-1 of the Penal Code
9. bribery and corruption as defined in Articles 246 to 252, Article 310 and Article 310-1 of the Penal Code
10. facilitation of unauthorised entry and residence as defined by the Law of 29 August 2008 on the free movement of persons, through participation in a conspiracy (*association de malfaiteurs*) or a criminal organisation
11. counterfeiting as defined in Articles 162 to 170 of the Penal Code
12. abduction of minors as defined in Articles 368 to 371-1 of the Penal Code.

(2) The measure is ordered for a period indicated in the order. It shall automatically lapse one month following the date of the order. Nevertheless, this period may be extended by one month at a time, with the understanding that the total duration may not exceed three months.

(3) The decision is recorded in the proceedings file upon the conclusion of the proceedings.

Art. 66-4. (L. 27 October 2010) When it is deemed useful with a view to discovering the truth, the investigating judge may order a credit institution to provide information or documents concerning accounts or transactions that have been carried out during a specified period involving one or more accounts specified by the investigating judge.

Art. 66-5. (L. 27 October 2010) (1) The order provided for in Articles 66-2, 66-3 and 66-4 is brought to the attention of the credit institution concerned by way of a notification made either by a police officer, by registered letter with acknowledgement of receipt, by fax or by electronic mail.

(2) The credit institution notified of the order shall communicate the information or documents requested by electronic mail to the investigating judge within the time period indicated in the order. The investigating judge shall acknowledge receipt by electronic mail.

(3) Any refusal to provide assistance in the execution of orders based on Articles 66-2 and 66-3 shall be punishable by a fine of between €1,250 and €25,000.