

Laying the puzzle collectively to keep dirty money out of the system

By Helene de Bruin

The timing of the interview with Wim Mijs, Chief Executive Officer of the European Banking Federation could not be better. During the interview, the European Commission is at this moment examining the EBF's report Lifting the Spell of Dirty Money. Together with Mr Mijs, we look back on, and ahead, to see the development of the compliance profession and the efforts to ban criminal money from the financial system. "With risk-averse behaviour you also report harmless parties and thereby clog up the system. It can and must be done differently."

You have been CEO of the European Banking Federation since 2014. How did you experience the switch from the NVB to the EBF?

"It felt natural for a number of reasons. After all, I had already worked for ABN Amro in Brussels for five years. And two years before my move to the EBF, I was appointed Chairman of the Executive Committee. When the position of Chief Executive Officer of the EBF became vacant, I was asked to apply. By then I knew the organisation quite well. This said, it is quite different when you actually start working for an organisation. What mainly changed for me was the role that the different cultures played. If you are in a national association, you are dealing with the directors of the banks. That entails close contact, and one where personalities come out very strongly. At the EBF you deal with different countries; there, I noticed and still notice, that cultures play a strong role. One must learn to deal with that, dare to play with it – which I really enjoy! – as well as being able to use it to take the sharp edges off a discussion or to settle a disagreement; for example, by simply asking: "Are we dealing with a cultural element at the moment?"

Your report 'Lifting the Spell of Dirty Money' was published in March (see box, ed.). Where does your enthusiasm come from, regarding this theme?

"In recent years we have seen, on the one hand, several scandals, on the other hand, a number of criminal networks being discovered. Since I was involved in the fight against money laundering at ABN Amro, and that now, I am seeing the issue from another angle, I can conclude that certain approaches simply do not work. For instance, we ask the bankers to report, and they give feedback in vast amounts. However, banks rarely receive feedback from supervisors. We focus too much on quantity. Around August 2019, I suddenly realised our approach was no longer acceptable. Supervisors impose fines - on banks - while criminals, unpunished, go laughing all the way to the bank. It is

European Banking Federation aisbl

Brussels / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu
Frankfurt / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany
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exasperating but also motivating, and not only for me. During that summer I realised that the European Commission was also dissatisfied; it had completed many good quality regulations, but they lacked effectiveness. This said, we noticed that the United States (USA) was very actively involved in implementing our regulations. Last summer these reflections all came together, and we felt that we had to think carefully about a new approach: building on what we did well, and at the same time setting out to solve a number of problems”

How did this report come to fruition?

“This report is intended to propose better measures to combat and detect money laundering and provide new insights on how to do so and to highlight the prospects for improvement from the banking side as well. If you ask international banks, they indicate that they are implementing the 5th AML Directive differently in each country, albeit with shared, well-meaning intentions. We must harmonise the rules and remove the hurdles which prevent us from doing so, because even if money laundering guidelines are the same for each country they are interpreted differently everywhere. At the same time, we see that criminal organisations are taking advantage of the regulatory fragmentation. The task we have given ourselves is to harmonise guidelines and reduce fragmentation. Meanwhile, of course, the banks must simply comply with the law. We do not question the reporting obligation, but we do find that it is sometimes very difficult for banks to meet the expectations of that law; for this reason, we wanted to have a discussion between public and private parties. What can we do better to achieve the common goal? To lay hands on criminal money and to keep it out of the system?”

You are the driving force behind the report, but certainly not the only one who has contributed.

“We have our own experts, but we thought it especially important that there should be a Europe-supported report. That is why I have brought together the EBF Board members, the specialists from the banking associations and the bank staff who see the transactions come by every day. We have set up a strategy group for this purpose with seven members of the Executive Committee, the Chairman of the AML working group, and a number of specialists from large banks in the various Member States. This way you get involvement at the highest level very quickly. Moreover, through the banking associations, you create support with the large and smaller banks. As a result, we received very direct feedback from the field, from people who are involved in transaction monitoring on a daily basis.”

How did the European Commission react to your report?

“Until this interview, I had been following the internal responses. They are positive. Of course, I had close contact with many people beforehand. What we absolutely did not want, was for banks and European institutions to confront one another, which would be absurd as we are all working 100% towards the same goal: combatting criminal money. We wanted the report to be read, and a number of politically viable matters to be addressed during the month of May. Fragmentation is widely recognised and people want to work more with regulations. Now, there is still of course the ‘game’ with the Parliament and the Member States: what will be a directive? And what will be in a regulation? I cannot say anything about this debate yet. What I understand now is that the European Commission wants a risk-based approach. That is an important development. Because if you work with the rule-based approach, there is still a certain threat for banks: “If it's not in the law you can do it, and if it's in the law and you don't, you go to jail.” Such an approach leads to excessive reporting, because nobody wants to run the risk of not reporting something. This leads to risk-averse behaviour; you will also

report harmless parties and thereby run the danger of overloading the system with too much data, making it impossible for the investigative authorities to decipher the data.”

You do not make recommendations in your report for the establishment of a single European FIU. If there is no separate agency, what will the supervision look like from an organisational dimension?

“We have deliberately remained vague in the report about this matter. Investigation and surveillance are essentially the primacy of politics. We have been consciously vague as this is a very sensitive issue for the Member States. Before the corona crisis, we had intensive discussions about the EU budget. We felt that no Member State would be willing to increase the budget for a news agency, although that would be better from the perspective of detection and efficiency. Had we been explicit, we would have run the risk of conveying the impression that the issue in Europe is about money and institutional relations only, rather than what it really is all about: catching crooks! But beyond a shadow of doubt, an independent supervisor would be best. Then you can bring experts together with your own mandate. We also believe that banks are not the only ones that can help, other sectors can too, such as accountants, notaries, lawyers and luxury brands: these can help keep criminal money out of the system.”

Why do you emphasise the collaboration between public and private in your report?

“In some countries these two parties work well together, but in other countries the distance between public and private is too big. This is not only counterproductive, but it is also extremely demotivating for all those thousands of people who work in banks to fight money laundering and terrorism. All newspapers will report when a fine is given due to a failure, whereas there is no publicity for the tens of thousands of times that a transaction is stopped in time. When the Netherlands implemented money laundering legislation in the early 1990s, it was done in the spirit of collaborating to keep the financial system free of criminal influences. That same mentality must return. The battle against criminal money can only be won with a public-private partnership. Banks and investigative authorities must each cooperate, each in its respective role.”

To what extent can we use "machines" to help with detection?

“I haven't heard the European Commission on this topic yet, but we need more cloud-based solutions, and tools, driven by artificial intelligence. If you have all the data in the cloud, you can - without violating privacy - use algorithms that search for certain patterns. For example, the fact that criminals quickly channel a large amount into very small parts. Direct payment requests, popular among young people, also known as *instant payments*, are a handy tool for criminals. Instant payment fraud also makes detection difficult. Banks would be helped by an algorithm that detects a large amount being divided into hundreds of small amounts within ten minutes. After such an observation, a human can look at whether this transaction is meant for the local sports club or whether an illicit construction is behind it. We really need to do something about this issue. We previously had 24 hours to grab someone; now we have a few seconds.”

Your report focuses on improved cooperation within the EU. Research shows that money laundering in the Netherlands mainly comes from the US, Canada and China. Do you consider it possible to cooperate on a global level?

“This is a fundamental question. We already partly cooperate via the Financial Action Task Force (FATF) and within the G7, G20 and the Financial Stability Board. Until now, the US has been leading the way. Based on the fact that we live in a dollar economy, the US also claims global jurisdiction. I expect and foresee more international cooperation,

but we must first have our own European 'house' in order. Because I too attach great importance to the risk-based approach. I also believe that we should make more use of banking expertise and intelligence, but that requires a regulatory framework in Europe. This will prevent the Americans from knocking on the door every time there is a problem."

When will we have that European house in order?

"Today (May 7, ed.) we took another decisive step! We are now also looking at AML and Covid-19. What economic changes this entails and what this means for the criminal players. The report and its handling by the committee are a very good start. We must now maintain this momentum and not let ourselves be held back. We must exchange data at an international police level, someone has to connect the dots and start putting the puzzle together. We now have the opportunity to take a major step forward at European and international levels and we must do it! We must not just fight money laundering on paper, but also in a practical way, together, as one European collective.

What is the biggest challenge for EBF and the financial sector in Europe at present?

"Covid-19 is an incredible challenge, with banks being a truly tangible part of the solution. The recovery of the economy will be the biggest challenge for the next three years. If you had asked me this question in March 2020, my answer would have been the sustainable transition of the economy. Now it is Covid-19. This said, I still think the sustainable transition of the economy is a huge political priority to help us recover from this crisis."

A question aside from your current role and function: how do you view the developments of the compliance profession in the coming years?

"My answer will be very much my own opinion rather than that of the EBF CEO. I have seen the compliance profession grow. For me it started with the fight against money laundering. Clearly, there was also a role for new public players inside banks. It was AML that triggered the professionalisation of compliance. If you look at the hundreds of thousands of supervisors and the number of rules in place, a group of specialists was indispensable, and not only to look at the legal implication and interpretation of rules. A department too was needed to ensure that the rules and codes of conduct were properly implemented and adhered to. That is how the compliance profession began to grow. This initially led to scepticism among lawyers and internal auditors. The compliance department was generally seen as a connector of several elements: partly legal, partly audit. But in addition, it comes with a unique add-on: the human dimension. Compliance officers are also good at stakeholder management, a skill which is now appreciated. It is not surprising that you see many directors nowadays bringing their heads of compliance to meetings along with their supervisors. It is also remarkable to see - certainly after the crisis in 2008 - how the human factor is becoming more deeply anchored within the compliance field. Behaviour, organisational psychology, sociology etc. There are no rules or laws that can fix a broken organisational culture, I think many people are aware of this fact."

Compliance used to play a facilitating role for integrity and supervision of conduct. Today compliance in supervised banks means supervising all laws and regulations on top of the facilitating role. What do you think of this development?

"Not everyone will agree with me, but I think that a Head of Compliance should be a member of the Board. Either that, or, there should be a Board member who reports

directly on behalf of the Head of Legal Affairs and the Head of Compliance. Their judgment plays more than just an advisory role. If you want to deviate from their judgment as a Board, then that decision must be motivated by substantial arguments. Compliance and Legal experts are not appointed for no reason! The general authority of your compliance staff and of your legal profession must be guaranteed by the Board. And it is the Chairman of the Board who must enforce this culture. *(This last remark comes from Wim Mijs, rather than in his Chief Executive Officer of the EBF).*