



**THE FIGHT AGAINST MONEY LAUNDERING**  
**AND THE FINANCING OF TERRORISM**

**THE CARPA SYSTEM**

The CARPA was created by the French Bar Association more than sixty years ago to ensure the representation of funds received by lawyers on behalf of their clients.

It is not a financial institution, but a control body placed under the responsibility of the Bar Associations within the framework of the self-regulation of the profession for which they are responsible.

**The controls** that it exercises are, in particular, of an ethical nature. Being carried out under the authority of the President of the Bar Association, they **protect the professional secrecy owed by the lawyer to his client, of which the President of the Bar Association is the guarantor.**

**The CARPA plays an essential role in the fight against money laundering and the financing of terrorism.** It is subject to the provisions of the Monetary and Financial Code applicable in this area and TRACFIN thereby benefits from a specific right of communication guaranteeing the banking traceability of all the financial flows verified by the CARPA.

## **I - THE BASIC RULES OF THE CARPA SYSTEM**

**First rule: Any handling of funds carried out by a lawyer is necessarily the accessory of a legal or judicial act.**

A lawyer is not entitled to handle funds on behalf of his client other than as an accessory to a legal or judicial transaction that he executes for this client.

**Second rule: Any handling of funds carried out by a lawyer on behalf of his clients must imperatively go through the CARPA.**

The lawyer can never receive funds from or on behalf of his clients in his own bank accounts or in those of his law firm (except for the collection of his costs and fees).

He has the obligation to collect these funds through the CARPA to which he will then give his instructions to make the payment thereof to the beneficiaries.

It is strictly **forbidden** for a lawyer to handle funds outside of the CARPA.

The Court of Cassation has ruled that the fact that a lawyer handled funds outside the CARPA constituted the offense of breach of trust.

*There is only one exception to this principle; a trust does not fall within the scope of the CARPA's intervention in the current state of the law.*

***NB:** On the other hand, nothing prohibits the clients of lawyers, either at the end of a trial or in the framework of a legal transaction, from making the corresponding payments directly between them through their respective banks, without going through the lawyer and therefore without going through the CARPA.*

**Third rule: The bank account in which the funds received by the lawyer on behalf of his clients are deposited is opened in the name of the CARPA.**

The lawyer who receives funds on behalf of a client, as already stated, has the obligation to deposit them with the CARPA.

The latter registers the case in its accounting entries (each firm is the subject there of a sub-account in which each case is separately identified), **while the bank account in which funds are deposited is that opened in the name of the CARPA (and not in the name of the lawyer) with its bank.**

The lawyer cannot therefore freely dispose of his clients' funds.

Lawyers can only execute transactions in the bank account of the CARPA by delegation since the lawyer is not the account holder; it is the President of the Bar Association who authorises a delegation of signature to the lawyer and who can at any time have it suspended or withdrawn.

Moreover, to guarantee to clients that their funds will not be used fraudulently or misappropriated by the lawyer, the deductions of fees in favour of the lawyer himself can only be made with the authorisation of the client verified by the CARPA.

**Fourth rule: The lawyer cannot receive funds or give instructions to transfer them to the beneficiaries without a prior verification of the CARPA exercised under the authority and responsibility of the Bar Association and President of the Bar Association.**

The control exercised by the CARPA is, in particular, of an ethical nature; it is exercised under the authority of the President of the Bar Association, and the lawyer has the obligation to answer the questions of the CARPA when it requests explanations or supporting documents concerning a transaction for which he has received or should receive funds, without being able to invoke professional secrecy.

It is thus a **control and regulation system** placed under the responsibility of the professional authority and **applicable to all handling of funds carried out by lawyers**.

The action of the CARPA falls within the framework of Articles 53-9° and Articles 17-9° and 17-13° of the Law of 31 December 1971, entrusting to the Bar Association the responsibility for verifying the keeping of lawyers' accounts and compliance with their anti-money laundering obligations.

Under the terms of Article L. 561-36 of the Monetary and Financial Code, the verification of compliance by lawyers with their obligations stipulated concerning the fight against money laundering and, where applicable, the power to sanction for breach of the latter are indeed ensured by the Bar Association, which may be assisted in its supervisory role by the National Council of Bar Associations in accordance with Article 21-1 of the Law of 31 December 1971.

**So there is no cash inflow or outflow from the CARPA without prior control. It is an a priori control and the CARPA thus ensures a role of prevention against fraud (Article 241 of the Decree of 27 November 1991).**

#### **Principle of shared professional secrecy between the lawyer and the President of the Bar Association:**

The Court of Cassation confirmed in a 2003 ruling (*Civ. 1<sup>st</sup> 21 October 2003 no. 01-11-16*) that the internal regulations about the handling of funds adopted by the Bar Association could legitimately "*notwithstanding professional secrecy*" allow the Bar Association to require that the lawyer should provide explanations to the CARPA.

**The control made by the CARPA thus falls within the framework of professional secrecy shared between a lawyer and the President of his Bar Association**, the principle of which was highlighted by the European Court of Human Rights in the Michaud decision of 6 December 2012 (*ECHR 6 December 2012 no 12323/11 Michaud/France*). This decision concerned the problem of the declaration of suspicion and the "*filter of the President of the Bar Association*" stipulated by French legislation, with the declarations of suspicion of lawyers not being made directly to TRACFIN but to the President of the Bar Association who verifies that the declaration falls properly within the scope of application of the Law and who then forwards the declaration of suspicion to TRACFIN.

The European Court of Human Rights has considered that this "*filter of the President of the Bar Association*" was appropriate and consistent with the requirements of the Directive in this sense that **the President of the Bar Association being the guarantor of confidentiality**, the application of this filter **ensures a balance between the imperative of protecting public order (the declaration of suspicion) and that of protecting professional secrecy.**

## **II - THE CONTROLS CARRIED OUT BY THE CARPA**

### **1- Purpose and scope of the controls**

An Order of 5 July 1996 (Article 8) lists the checks to be carried out. The controls relate in particular to:

- *the nature and the title of the cases,*
- *the source of the funds,*
- *the destination of the funds,*
- *the actual beneficiary of the transaction,*
- *the link between the financial payment and the legal or judicial transaction executed by the lawyer in the framework of his professional practice.*

If a transaction poses a difficulty in terms of one or more of these checks, the CARPA can reject the transaction.

**The various control points thus examined by the CARPA perfectly overlap, on the one hand the vigilance obligations in the fight against money laundering and on the other hand make it possible to prevent all forms of fraud.**

It should be noted that Article 8 of 5 July 1996 predates the LCB-FT Directives of the European Union and their transposition into French domestic law applicable to lawyers.

The legal profession has thus built, on its own initiative, a system providing for controls identical to those which lawyers today are obliged to carry out pursuant to the AML-CFT legislation.

Furthermore, all fund handling is organised and controlled by the CARPA by applying the risk approach method recommended by the FATF.

**For the implementation of its controls, the CARPA is an essential actor in the self-regulation system established by the Bar Association in the framework of the fight against money laundering and the financing of terrorism.**

## **2- Organisation of the checks made by the CARPAs.**

### **a) Software for the management and control of the handling of funds**

The CARPAs all have specific software for management and assistance in controlling the handling of funds.

The *E-CARPA* system used by the Paris CARPA allows lawyers to work online with the CARPA and to transmit to it their instructions and any supporting documents relating to their files in a dematerialised manner.

This process facilitates the control of operations.

Furthermore, it makes it possible to automatically read the documents communicated by searching for keywords and thus greatly contributes to the implementation of the LCB-FT controls.

Moreover, the correspondence of the data entered by the CARPA with the monitoring lists of the databases is examined systematically, allowing the actual beneficiaries and potential risk factors to be identified such as the natural persons or companies that are the subject of sanctions, the targeted financial sanctions (asset freeze) or countries at risk (gray or black list of the FATF, for example, or any other sources of information).

The system, which is being extended to all the CARPAs, contributes to the strengthening of controls by allowing systematic and instantaneous communication of the documents necessary to justify transactions and by facilitating the analysis thereof.



**b) Complementarity between the controls carried out by the CARPA and those of the bank**

It should be stressed here that **the CARPA is not itself a bank or a financial institution, and that it is backed by a bank with which it works.**

- **The CARPA bank also exercises its own controls.**

It thus verifies itself the source of the funds entering the CARPA bank account, as well as the destination of the funds withdrawn.

In the event of an anomaly, it can make a statement of suspicion to TRACFIN without being able to inform the CARPA thereof.

- **The professional secrecy to which the lawyer is strictly bound prohibits him from providing a bank with the elements contained in his file. It is not to be confused with banking secrecy.**

**On the other hand, and as indicated previously, the lawyer cannot oppose this professional secrecy to the CARPA, which carries out its controls under the authority of the President of the Bar Association.**

The ethical control of the parts of the lawyer's brief, the financial flow of which processed by the CARPA is necessarily the accessory, is thus ensured by the CARPA, which may request the documents, unlike the bank.

- **The controls exercised by the CARPA, on the one hand, and its bank, on the other hand, are exercised in a complementary manner.**

### 3- Volume of controls exercised by the CARPAs

All of the CARPAs in France annually control financial flows of more than **€50 billion**, representing an average of **8,500 transactions controlled per working day**.

There are currently 122 CARPA in France (*on 1<sup>st</sup> January 2020*) for 164 Bar Associations, some of which are common to several Bar Associations.

They are always placed under the responsibility of the Bar Association or Bar Associations which constitute them.

#### *Focus on the CARPA of Paris*

The Paris Bar Association represents **almost half of French lawyers**, the handling of whose funds **is thus controlled by the services of the Paris CARPA**.

In 2019, financial flows of **€22.10 billion** were subject to control by the sole Paris CARPA, representing **466,966 transactions**.

To carry out its mission, the Paris CARPA employs **30 people who thus control around 1,800 operations per working day**.

The services are structured into several levels of control:

- \* account officers
- \* account managers
- \* representatives of the President of the Bar Association

under the direction of a Director of Fund Handling and under the responsibility of the Secretary General of the CARPA, of which the President of the Bar Association is himself President.

### **III - THE ASSISTANCE PROVIDED BY THE CARPA TO LAW FIRMS CONCERNING VIGILANCE**

- For its controls, **the CARPA assists the lawyer in checking the compliance of handling funds accessory to the transactions that he executes.**

In this regard, it constitutes a partner of the law firm in the exercise of its duty of vigilance. It encourages the lawyer actively, in fact, to exercise this vigilance by its requests for information and communication of documents.

- The CARPA also uses systems which many firms do not have individually, in particular a subscription to information databases permitting the comparison of the transactions entrusted to him with the lists of persons subject to targeted financial sanctions (asset freeze), companies owned/controlled by sanctioned persons or entities, countries at risk, sanctioned vessels or even politically exposed persons.

The CARPA thus makes available to the lawyers a mutualised means of protection against the risk of manipulation for the purposes of money laundering.

At the Paris Bar, access to the database used by the CARPA is also made available to lawyers in the LCB-FT area open specifically on the Paris Bar site, allowing any Parisian lawyer to check the situation of a client with regard to asset freezing measures (LAB Lawyer service), even in the absence of handling of funds by the lawyer.

- **The CARPA intervenes often ahead of the transactions.**

Lawyers requested to execute a transaction will submit to the CARPA as early as possible the data concerning the financial flows that this transaction must generate, to analyse the compliance thereof.

If some points are a source of suspicion, the CARPA will ask its questions and assist the lawyer to clarify the dossier and if there is a problem in identifying the reasons that can lead to blocking of the transaction.

- **The fact that CARPA rejects the transaction allows the lawyer not to bear the responsibility for the refusal vis-à-vis his clients, which is not always easy and can be a source of danger.**

The CARPA also provides in this regard effective protection for the lawyer.

- **The lawyer can fully perform his duty of vigilance with the help of the CARPA by making sure of the financial flows accessory to the legal transactions that he executes.**

Lawyers who consider that they are less exposed to the risks of money laundering by refraining from assuming responsibility for the financial flows accessory to the transactions in which they are involved, are certainly making a mistake.

A lawyer has the same obligations of vigilance and declaration and the same responsibility attached to these obligations, whether or not he handles the financial flows corresponding to the legal transactions in which he assists.

**By ensuring the financial flows accessory to the legal transactions in which he lends his assistance (actual cash flows triggered for the purposes of carrying out a transaction), the lawyer verifies their reality and their consistency with the legal transaction in which he participates, which represents good practice.**

Thus, when a payment is discharged in a deed, the fact that this passes through the drafting lawyers represents for them the best way to make sure of its reality and to verify its conformity.

Nevertheless, the handling of funds belonging to clients is in itself identified by the "*guidance for a risk-base approach*" published by the FATF as regards the accounting and legal professions, as being risk-bearing (increased risk for the lawyer to be manipulated by being requested for a given legal transaction actually serving to support a fraudulent financial flow).

In this case precisely, the compulsory intervention of the CARPA (with the means at its disposal) will help the lawyer to decipher the financial flow accessory to the legal transaction and to check whether it is compliant or, on the contrary, trigger the alerts and encourage the lawyer to react pursuant to his anti-money laundering obligations and, in particular, to make the declaration of suspicion, the responsibility for which is incumbent on him.

**Thanks to the CARPA system, the lawyer can ensure the reality of the financial flow accessory to a legal transaction while being protected against the risks linked to the financial flow itself, the compliance of which is checked by the CARPA.**

For this reason, the Bar Associations encourage lawyers to ensure that the financial flows corresponding to the legal or judicial operations they carry out pass through the CARPA (even if, as stated above, clients may decide to make the corresponding financial payments directly between themselves).

*In this sense, the Director of TRACFIN was able to suggest during a conference in 2016 (Dalloz "The CARPA's assistance in the protection of economic public order" p. 88) that a transaction carried out by lawyers, without the funds going through the CARPA, can potentially be considered to present a particular risk, precisely because it does not benefit from the CARPA guarantees.*



#### **IV - THE REGULATORY ROLE OF THE CARPA**

A presentation of the control and self-regulation system that the CARPA establishes was performed at the invitation of the General Directorate of the Treasury (Direction générale du Trésor) (DGT) at the supervisors' forum organised by the FATF on 11 and 12 November 2019 in Sanya, China.

Following this intervention, the DGT published a press release in which it stated in particular:

*"With regard to the non-financial sector, the CNB was thus able to present the advantages of the CARPA (autonomous funds for the settlement of lawyers) mechanism, which make it possible to monitor financial flows, and thus ensure the proper application of LCB-FT vigilance (origin of funds, identification of beneficial owner, application of asset freeze measures) to which the accounting and law professions are subject in France, in full compliance with the requirements linked to professional secrecy, inherent to the exercising of the profession of lawyer".*

**Order no. 2020-115 of 12 February 2020 strengthening the national system for fighting money laundering and the financing of terrorism integrates the CARPA fully into the system stipulated in the matter by the Monetary and Financial Code.**

The CARPA constitutes for the Bar Association a real “operational arm” dedicated to the control and regulation of the handling of funds carried out by lawyers; **it is a key element of the anti-money laundering system of the legal profession and of the self-regulation ensured by the Bar Associations.**

**1- TRACFIN benefits from a right of communication guaranteeing the traceability of all financial flows passing through the CARPA**

**It should be stressed that this right of communication involves all the financial flows processed by the CARPAs, and not only those corresponding to the transactions for which lawyers are personally subject to the LCB-FT obligations.**

The banking traceability of the transactions processed by the CARPAs since 1<sup>st</sup> January 2017 has been completely assured since Article L. 561-25-1 of the Monetary and Financial Code provides that:

*"I. - The service mentioned in Article L. 561-23 can request from the Funds created pursuant to 9° of Article 53 of Law no 71-1130 of 31 December 1971, information relating to the amount, the source and destination of funds, effects or securities deposited by a lawyer, the identity of the lawyer concerned and an indication of the nature of the case recorded by the Fund. These Funds communicate the information requested to the service mentioned in Article L. 561-23 through the President of the Bar Association with which the lawyer concerned is registered."*

In its successive annual activity reports, TRACFIN praised the successful functioning and efficiency of this system.

In its activity report for 2017, TRACFIN thus stated that *"The rights of communication exercised in 2017 with the CARPAs helped, for example, to substantiate a suspicion of abuse of weakness in the context of insurance compensation, to know the destination of the funds within the framework of a transfer of property titles which could have given rise to a large-scale tax fraud, but also to determine the origin of the funds of a guarantee payment"*.

In the activity report concerning 2018, TRACFIN again noted: *"In 2018, the rights of communication addressed to the CARPAs led to promising results. In total, of the ten or so communication rights exercised, the typologies revealed are of a varied nature: tax fraud, organised crime, fight against the financing of terrorism, breach of trust, money laundering in real estate. If the CARPAs are to become even more reactive, these first results underline the relevance of the system and the predominant role of these structures in the fight against money laundering and the financing of terrorism. A deepening of this partnership must be consolidated before 2020"*.



## **2- The CARPA is itself subject to the obligations of vigilance and reporting**

Order no. 2020-115 of 12 February 2020 included the CARPAs in the list of persons subject to the obligations of vigilance and declaration stipulated by the Monetary and Financial Code.

The methods of this inclusion were, however, arranged by mutual agreement between the public authorities and the legal profession so as not to call into question the relationship of trust which characterises the relationship between the lawyer and his CARPA, and that, above all, the latter remains a partner of the law firm in the fight against money laundering and the financing of terrorism.

The scope of inclusion of the CARPA is thus the same as for lawyers, and when the CARPA is required to make a declaration of suspicion, it is authorised to inform the lawyer concerned thereof.

In general, the CARPA and lawyers are authorised to communicate to each other the information collected for the implementation of their duty of vigilance.

The declaration of suspicion made by CARPA must imperatively, like the declarations made by lawyers, be communicated to the President of the Bar Association, the guarantor of professional secrecy, who alone transmits it to TRACFIN if the conditions stipulated by law are fulfilled.

**3- Beyond its scope of application stipulated by Article L 561-3 of the CMF, the CARPA verifies the conformity of all the handling of funds carried out by the lawyers.**

The controls exercised pursuant to Article 8 of July 5, 1996 apply to all handling of funds processed by the CARPA, whether or not ancillary to a transaction falling within the scope of Article L 561-3-I of the Monetary and Financial Code.

The protection of lawyers against attempts to instrumentalise for the purpose of money laundering or the financing of terrorism is thus ensured, **in all matters**, as soon as they handle funds ancillary to the legal or judicial transactions they carry out.

#### 4- The CARPA is supervised by several controllers

Lastly, it should be specified that a "**CARPA Regulatory Commission**" ("**Commission de régulation des CARPA**") issues opinions and recommendations concerning checks on handlings of funds that must be made by the CARPAs. These standards apply to the CARPAs.

Furthermore, a "**CARPA Control Commission**" periodically audits all the CARPAs and is authorised to impose sanctions on them when a control reveals breaches. This Commission draws up an annual activity report which is, in particular, sent to the Keeper of the Seals, the Minister of Justice.

**The "CARPA Control Commission" is also responsible for monitoring compliance by the CARPAs with their obligations in the fight against money laundering and the financing of terrorism.**

Finally, each CARPA must be endowed with an **auditor charged with a specific mission of verifying the compliance by the CARPA with its obligations**, in particular with regard to the organisation and effectiveness of the control of the handling of funds carried out by lawyers; the annual report of this auditor is submitted to the CARPA Control Commission and the Public Prosecutor at the Court of Appeal in the jurisdiction of which the registered office of the CARPA is established.

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