

NATIONAL AND INTERNATIONAL
ANTI-MONEY LAUNDERING LAW



This book is complemented by a freely available, interactive version that can be accessed online. Visit www.intersentiaonline.com for more information.

NATIONAL AND INTERNATIONAL
ANTI-MONEY LAUNDERING LAW

Developing the Architecture of Criminal
Justice, Regulation and Data Protection

Edited by
Benjamin VOGEL
Jean-Baptiste MAILLART

 INTERSENTIA

Cambridge – Antwerp – Chicago

Intersentia Ltd
8 Wellington Mews
Wellington Street | Cambridge
CB1 1HW | United Kingdom
Tel: +44 1223 736 170
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and
Rest of the World (incl. Eastern Europe)*
NBN International
1 Deltic Avenue, Rooksley
Milton Keynes MK13 8LD
United Kingdom
Tel: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for Europe
Lefebvre Sarrut Belgium NV
Hoogstraat 139/6
1000 Brussels
Belgium
Tel: +32 (0)800 39 067
Email: mail@intersentia.be

Distribution for the USA and Canada
Independent Publishers Group
Order Department
814 North Franklin Street
Chicago, IL 60610
USA
Tel: +1 800 888 4741 (toll free) | Fax: +1 312 337 5985
Email: orders@ipgbook.com

National and International Anti-Money Laundering Law. Developing the
Architecture of Criminal Justice, Regulation and Data Protection
© The editors and contributors severally 2020

The editors and contributors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Artwork on cover: Seb Antoniou / sebantoniou.com

ISBN 978-1-78068-954-8
D/2020/7849/109
NUR 824

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

PREFACE

The present volume contains the fruits of a collaborative research project at the Max Planck Institute for Foreign and International Criminal Law. Led by Benjamin Vogel, the research group comprised three postdoctoral researchers at the Institute, Giovanna Amato, Ana Carolina Carlos de Oliveira and Jean-Baptiste Maillart. For the analysis of the United Kingdom's legal framework, the group was furthermore supported by Michael Levi at Cardiff University and by Liliya Gelemerova at the University of Manchester. The editors were fortunate to benefit from the rich insights of their colleagues who, through countless hours of discussion, built a highly stimulating collaborative research environment.

The project owes a particular debt of gratitude to Ulrich Sieber, director emeritus at the Max Planck Institute. All project collaborators greatly benefited from his generous advice and continuous guidance throughout the project. With his pioneering approach towards legal research into security law against the background of digitalisation, globalisation and the rising policy paradigm of risk prevention, Professor Sieber prepared the groundwork for this study both in terms of substance and methodology. Over the course of several decades of research, he was one of the first to highlight the profound changes which legal orders would increasingly undergo as a result of the rapid development of information technology, the rise of transnational crime and new associated risks. Resulting from those profound changes, he recognised the need, which also forged the design of the present study, to expand research on criminal policy beyond the confines of traditional criminal law and towards States' wider security architecture based on normative, empirical and comparative research.

The project furthermore owes an immense debt to numerous experts, including policymakers and competent authorities at supranational and national levels as well as the private sector, who – in the course of more than one-hundred hours of interviews – shared their experiences and allowed the authors to grasp the practical realities of today's efforts in the fight against money laundering. Without their commitment and generosity, and in light of the many uncodified and unreported practices of AML, it would have been simply impossible to attempt the following study. The collaborators are indeed profoundly thankful for the open and engaging atmosphere that marked the interviews. In fact, this experience demonstrates both the need for and the feasibility of greater mutual engagement between academic research institutions and competent authorities when inquiring into future challenges of criminal and wider security policy.

Particular thanks is due to Jürgen Storbeck, former director of Europol, who was not only of invaluable help in organising interviews but who also, through numerous discussions, challenged the collaborators and thereby allowed them to further refine their understanding of the many pitfalls as well as the opportunities brought about by transnational cooperation in criminal matters. A special debt is also owed to Alexandra Schenk, who provided crucial methodological assistance in the conduct and evaluation of interviews. Obviously, this book would not have been possible without the diligent work of the outstanding team of Intersentia, in particular Ann-Christin Maak, Rebecca Moffat and Ahmed Hegazi.

Last but not least, thanks is also due to the material support that allowed the project's scope and depth to adapt to the size of the challenges encountered in today's AML frameworks. The collaborators are grateful to Philip Morris Germany for supporting the research on anti-money laundering at the Max Planck Institute. To the extent that the study inquires into public-private partnerships for the sharing of information by competent authorities with the private sector, the collaborators furthermore extend their gratitude to the European Commission. In this regard, this research was funded by the European Union's Internal Security Fund – Police.* Statements about the law in this book aspire to reflect the state of affairs on 31 January 2020, though some subsequent developments of particular relevance have also been included.

Benjamin Vogel and Jean-Baptiste Maillart
Freiburg, July 2020

* The content of this study represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

CONTENTS

<i>Preface</i>	v
<i>List of Cases</i>	ix
<i>List of Abbreviations</i>	xvii
<i>List of Contributors</i>	xxv
<i>Questionnaire</i>	xxvii
Introduction	
Benjamin VOGEL	1
Financial Action Task Force	
Jean-Baptiste MAILLART	11
European Union	
Jean-Baptiste MAILLART	71
Germany	
Benjamin VOGEL	157
Italy	
Giovanna AMATO	303
Spain	
Ana Carolina CARLOS DE OLIVEIRA	399
Switzerland	
Jean-Baptiste MAILLART	533
United Kingdom	
Michael LEVI and Liliya GELEMEROVA	641
Comparative Analysis	
Jean-Baptiste MAILLART	793
Conclusions and Recommendations	
Benjamin VOGEL	881
<i>Index</i>	1029

LIST OF CASES

EUROPEAN COURT OF HUMAN RIGHTS

ECtHR, <i>Klass and others v. Germany</i> , judgment of 6 September 1978, app. no. 5029/71	914
ECtHR, <i>Malone v. United Kingdom</i> , judgment of 2 August 1984, app. no. 8691/79,	914
ECtHR, <i>Edwards v. United Kingdom</i> , judgment of 6 December 1992, app. no. 13071/87	955
ECtHR (Grand Chamber), <i>Chahal v. United Kingdom</i> , judgment of 15 November 1996, app. no. 22414/93	962
ECtHR (Grand Chamber), <i>Jasper v. United Kingdom</i> , judgment of 16 February 2000, app. no. 27052/95	955
ECtHR (Grand Chamber), <i>Rotaru v. Romania</i> , judgment of 4 May 2000, app. no. 28341/95	913–914
ECtHR (Grand Chamber), <i>Amann v. Switzerland</i> , judgment of 16 February 2000, app. no. 27798/95	910
ECtHR, <i>P.G. and J.H. v. United Kingdom</i> , judgment of 25 September 2001, app. no. 44787/98	910
ECtHR, <i>Sidabras and Džiautas v. Lithuania</i> , judgment of 27 July 2004, app. nos. 55480/00 and 59330/00, para. 56	934
ECtHR, <i>Weber and Saravia v. Germany</i> , judgment of 29 June 2006, app. no. 54934/00	907, 912–914
ECtHR, <i>Dumitru Popescu v. Romania</i> , judgment of 26 April 2007, app. no. 71525/01	914
ECtHR, <i>Taliadorou and Stylianou v. Cyprus</i> , judgment of 16 October 2008, app. nos. 39627/05 and 39631/05	935
ECtHR, <i>Iordachi and others v. Moldova</i> , judgment of 10 February 2009, app. no. 25198/02	914
ECtHR, <i>Kennedy v. United Kingdom</i> , judgment of 18 May 2010, app. no. 26839/05	914–915
ECtHR, <i>Uzun v. Germany</i> , judgment of 2 September 2010, app. no. 35623/05	910–912, 914
ECtHR (Grand Chamber), <i>Kotov v. Russia</i> , judgment of 3 April 2012, app. no. 54522/00	968–969
ECtHR, <i>Michaud v. France</i> , judgment of 6 December 2012, app. no. 12323/11	426, 901
ECtHR, <i>de la Flor Cabrera v. Spain</i> , judgment of 27 May 2014, app. no. 10764/09	969
ECtHR, <i>R.E. v. United Kingdom</i> , judgment of 27 October 2015, app. no. 62498/11	912–915
ECtHR, <i>Navalnyy v. Russia</i> , judgment of 17 October 2017, app. no. 101/15	924

ECtHR, <i>Vukota-Bojic v. Switzerland</i> , judgment of 18 October 2017, app. no. 61838/10	909–912, 968
ECtHR, <i>Zschüschen v. Belgium</i> , decision of 2 May 2017, app. no. 23572/07	901
ECtHR, <i>Ben Faiza v. France</i> , judgment of 8 February 2018, app. no. 31446/12	910, 914
ECtHR, <i>Big Brother Watch and others v. United Kingdom</i> , judgment of 13 September 2018, app. no. 58170/13, 62322/14 and 24960/15	912

COURT OF JUSTICE OF THE EUROPEAN UNION

ECJ, judgment of 24 September 2009 (<i>Commission v. Spain</i>), C-504/08.....	405
ECJ (Grand Chamber), judgment of 3 September 2008 (<i>Kadi v. Al Barakaat</i>), C-402/05 and C-415/05.....	948
ECJ (Grand Chamber), judgment of 9 January 2010 (<i>Seda Küçükdevec v.</i> <i>Swedex GmbH & Co. KG</i>), C-555/07.....	969
ECJ (Grand Chamber), judgment of 18 July 2013 (<i>Kadi II</i>), C-584/10	948
ECJ (Grand Chamber), judgment of 4 April 2013 (<i>ZZ</i>), C-300/11	962
ECJ (Grand Chamber), judgment of 8 April 2014 (<i>Digital Rights Ireland</i>), C-293/12 and C-594/12.....	902–904, 936–938, 953
ECJ (Grand Chamber), judgment of 15 January 2014 (<i>Association de Médiation Sociale v. Hichem Laboubi</i>), C-176/12	969
ECJ (Grand Chamber), judgment of 21 April 2015 (<i>Anbouba v. Council</i>), C-630/13 P	1018
ECJ (Grand Chamber), judgment of 21 December 2016 (<i>Tele2 Sverige</i>), C-203/15 and C-698/15.....	902–904, 913–914, 936–938
ECJ, judgment of 10 March 2016 (<i>Safe Interenvíos v. Liberbank et al.</i>), C-235/14)	433, 444
ECJ, judgment of 20 December 2017, C 434/16 (<i>Nowak/Data Protection Commissioner</i>).....	242
ECJ (Grand Chamber), judgment of 17 April 2018 (<i>Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV</i>), C-414/16.....	969

GERMANY

BVerfGE 56, 37.....	259–260
BVerfGE 57, 250 = BVerfG NJW 1981, 1719	209–210
BVerfGE 65, 1.....	241
BVerfGE 107, 299 = BVerfG NJW 2003, 1787.....	251, 259
BVerfGE 109, 279	251
BVerfGE 110, 226 = BVerfG NJW 2004, 1305.....	169, 211
BVerfGE 112, 284	255
BVerfGE 115, 320 = BVerfG NJW 2006, 1939.....	236–237, 253, 255
BVerfGE 133, 277 = BVerfG NJW 2013, 1499.....	235, 237, 250, 252–255, 259

BVerfGE 141, 220 = BVerfG NJW 2016, 1781	247, 263–264
BVerfGK 14, 177 = BVerfG NJW 2008, 3627, 3628	170
BVerfGK 17, 253	259–260
BVerfG NJW 1981, 1719	266
BVerfG NJW 2004, 279	254
BVerfG NJW 2005, 352	259
BVerfG NJW 2005, 2766	267
BVerfG NJW 2006, 1048	208
BVerfG NJW 2007, 2464	243, 245
BVerfG, NJW 2008, 3489	259
BVerfG NJW 2010, 925	266
BVerfG NJW 2015, 2949	211
BVerfG NJW 2018, 2385	210
BVerfG NStZ 1994, 349	207
BVerfG NStZ-RR 2013, 379	208
BGH NJW 1965, 1817	171
BGH NJW 1979, 1556	263
BGH NJW 1996, 2940, 2941	238
BGH NJW 1999, 436	164
BGH NJW 2000, 297	282
BGH NJW 2001, 2891	164–165
BGH NJW 2004, 1259	266
BGH NJW 2005, 763	259
BGH NJW 2006, 925	260
BGH NJW 2007, 237	266
BGH NJW 2007, 3010	209
BGH NJW 2008, 2245	205
BGH NJW 2008, 2516 = BGH NStZ 2009, 326	163, 169–170, 285
BGH NJW 2009, 326	162
BGH NJW 2010, 925	266
BGH NJW 2010, 3730	161
BGH NJW 2015, 3254	166
BGH NJW 2018, 2742	161, 172
BGH NJW 2019, 2182	281
BGH NJW 2019, 533	165, 281
BGH NStZ 1992, 229	170
BGH NStZ 1992, 540	287
BGH NStZ 1997, 597	287
BGH NStZ 2000, 653	165
BGH NStZ 2008, 453	168
BGH NStZ 2010, 222	164
BGH NStZ 2016, 538	280
BGH NStZ 2017, 28	164–166
BGH NStZ 2019, 271	282
BGH NStZ 2019, 533	165
BGH NStZ-RR 1999, 208	165
BGH NStZ-RR 2004, 242	259
BGH NStZ-RR 2009, 13	168
BGH NStZ-RR 2010, 109	166
BGH NStZ-RR 2011, 43	287
BGH NStZ-RR 2011, 373	170

BGH NStZ-RR 2013, 253	161, 164, 172
BGH NStZ-RR 2014, 246	266
BGH NStZ-RR 2015, 13.....	286
BGH NStZ-RR 2016, 15.....	177
BGH NStZ-RR 2019, 22.....	281
BGH NStZ-RR 2019, 145	169, 285
BGH Order of 26 July 2018 – 3 StR 626/17	168
BGH Judgment of 15 August 2018 – 5 StR 100/18	166, 280
BGH Judgment of 23 January 2019 – 5 StR 143/18	281
BVerwG NVwZ 2010, 905	209
BVerwG NVwZ 2017, 967	203
BVerwG NJW 2018, 590.....	239
BFHE 91, 351	242
BFH DStR 2000, 1511	243
BFH DStR 2002, 993	243
BFH DStRE 2003, 1287.....	259
BFH DStR 2007, 2009	259
BFH DStRE 2009, 625.....	243, 245
BFH DStRE 2013, 1068.....	243, 245
BFH DStR 2015, 2846	243, 245
BFH DStR 2016, 1862	243, 245
BFH Judgment of 29 June 2005 – II R 3/04	242
BFH Judgment of 29 October 1986 – VII R 82/85.....	242–243, 245
OLG Karlsruhe NJW 2005, 767	166
OLG Frankfurt NJW 2005, 1727	164, 167
OLG Hamburg NStZ 2005, 584.....	282
OLG Karlsruhe NStZ 2009, 269.....	164, 286
OLG Hamm NStZ-RR 2010, 90.....	280
OLG Hamburg NStZ 2011, 523.....	285
OLG Köln Order of 20 October 2010 – 6 AuslS 101/09, 95.....	263
KG, NStZ-RR 2013, 13.....	168, 279
OVG Bautzen, Order of 11 April 2017 – 5 B 262/16	239

ITALY

C. Cass., sentence no. 34511, 29 April 2009, RV 246561.....	315
C. Cass., sentence no. 49427, 17 November 2009, RV 246469	310
C. Cass., sentence no. 546, 7 January 2011, RV 249446	315, 389
C. Cass., sentence no. 6061, 17 January 2012, RV 252701	310
C. Cass., sentence no. 43534, 24 April 2012, RV 253796.....	314
C. Cass., sentence no. 42120, 9 October 2012, RV 253830	310, 316
C. Cass., sentence no. 44837, 11 October 2012, RV 254968	316
C. Cass., sentence no. 29452, 17 May 2013, RV 256468.....	310, 313, 392
C. Cass., sentence no. 13085, 3 October 2013, RV 259486	316
C. Cass., sentence no. 7795, 19 November 2013	389
C. Cass., sentence no. 8330, 26 November 2013, RV 259010	312
C. Cass., sentence no. 6001, 4 February 2014, RV 258633.....	316
C. Cass., sentence no. 6151, 5 February 2014, RV 258634.....	316
C. Cass., Sez. Un., 27 February 2014, no. 25191, RV 259587.....	311

C. Cass., sentence no. 43881, 9 October 2014, RV 260694	315
C. Cass., sentence no. 52645, 20 November 2014, RV 261624	315
C. Cass., sentence no. 10746, 21 November 2014, RV 263156	389
C. Cass., sentence no. 20188, 4 February 2015, RV 263521	389
C. Cass., sentence no. 9392, 18 February 2015, RV 263301	358
C. Cass., sentence no. 24785, 12 May 2015, RV 264282	358
C. Cass., sentence no. 15804, 25 March 2015, RV 263391	358
C. Cass., sentence no. 9472, 14 January 2016	313, 393
C. Cass., sentence no. 13901, 25 February 2016, RV 266669	389
C. Cass., sentence no. 33074, 14 July 2016, RV 267459	312
C. Cass., sentence no. 527, 13 September 2016, RV 269017	389
C. Cass., sentence no. 56391, 23 November 2017, RV 271553	310
C. Cass., sentence no. 975, 17 January 2018, RV 646913	384

SPAIN

STS 1637/1999, of 10 January 2000	416
STS 2545/2001, of 4 January 2002	417
STS 1822/2001, of 10 October 2001	416
STS 157/2003, of 5 February 2003	416
STS 1070/2003, of 22 July 2003	416
STS 1501/2003, of 19 December 2003	420
STS 308/2004 of 12 March 2004	416
STS 1113/2004, of 9 October 2004	416
STS 33/2005, of 19 January 2005	416
STS 1034/2005, of 14 September 2005	408, 416–417
STS 6284/2006, of 9 May 2006	416
STS 4947/2007, of 15 June 2007	428
STS 2754/2008, of 4 June 2008	428
STS 16/2009, of 27 January 2009	433
STS 2591/2010, of 26 February 2010	428
STS 801/2010, of 23 September 2010	406, 512
STS 961/2010, of 11 November 2010	416
STS 279/2012, of 9 April 2012	416
STS 557/2012, of 9 July 2012	416
STS 974/2012, of 5 December 2012	413, 416, 422, 512
STS 228/2013, of 22 March 2013	416–417
STS 910/2014, of 2 January 2014	512
STS 83/2014, of 13 February 2014	408
STS 245/2014 of 24 March 2014	409
STS 350/2014, of 29 April 2014	409
STS 809/2014, of 26 November 2014	409
STS 37/2015, of 6 February 2015	424
STS 265/2015, of 29 April 2015	408, 415
STS 506/2015, of 27 July 2015	417
STS 161/2015, of 29 October 2015	415
STS 5782/2015, of 13 November 2015	417
STS 699/2015, of 17 November 2015	512
STS 238/2016, of 29 March 2016	416, 512

STS 974/2016, of 23 December 2016	420
STS 362/2017, of 19 May 2017.....	512
STC 292/2000, of 30 November.....	489
Sentence of the Court of Appeal of Balearic Islands n. 2677/2008.....	418
Sentence of the Court of Appeal of Huelva n. 31/2009, of 5 March 2009.....	406

SWITZERLAND

ATF 110 IV 24.....	544
ATF 112 IB 608.....	583
ATF 116 IV 319.....	548
ATF 117 IV 63.....	548
ATF 119 IV 242.....	543
ATF 119 IV 59.....	541, 544
ATF 120 IV 323.....	545, 549, 628
ATF 122 IV 211.....	543–546
ATF 124 IV 274.....	544–545
ATF 125 IV 139.....	561
ATF 126 I 97.....	546
ATF 126 IV 255.....	544–555
ATF 127 IV 20.....	544
ATF 128 IV 117.....	544
ATF 129 II 453.....	546
ATF 129 IV 188.....	548
ATF 129 IV 238.....	545
ATF 129 IV 253.....	548
ATF 129 IV 271.....	544, 547
ATF 129 IV 329.....	632
ATF 132 II 103.....	582–583
ATF 134 IV 328.....	548
ATF 136 IV 179.....	549
ATF 136 IV 188.....	547, 632
ATF 137 IV 59.....	548
ATF 137 IV 79.....	545–546
ATF 138 IV 1.....	628, 632
ATF 142 IV 333.....	629
TF 6P.125/2005 of 23 January 2006.....	548
TF, 6S.399/2005 of 23 January 2006.....	548
TF, 6S.426/2006 of 28 December 2006.....	545–546
TF, 6B_141/2007 of 24 September 2007.....	628
TF, 4A_313/2008 of 27 November 2008.....	575
TF, 6B_900/2009 of 21 October 2010.....	546
TF, 6B_91/2011 of 26 April 2011.....	628
TF, 6B_729/2010 of 8 December 2011.....	547, 571, 632
TF, 6B_879/2013 of 18 November 2013.....	546
TF, SK.2014.14 of 18 March 2015.....	575
TF, SK.2017.54 of 19 December 2017.....	575

TF, 1B_433/2017 of 21 March 2018	575
TF, 6B_461/2018 of 25 January 2019	544
TF, 6B_31/2019 of 12 December 2019.....	629

UNITED KINGDOM

<i>R v Allen</i> [2001] UKHL 45	659
<i>R v G & R</i> [2003] UKHL 50	660, 744
<i>R v Da Silva</i> [2006] EWCA Crim 1654.....	660, 687
<i>K Ltd v National Westminster Bank Plc</i> [2007] 1 WLR 311	660
<i>Stanford International Bank Ltd v Serious Fraud Office</i> [2010] EWCA Civ 137	708
<i>Shah and another v HSBC Private Bank (UK)</i> [2012] EWHC 1283.....	660, 697, 709
<i>R v Rogers & ors</i> [2014] EWCA Crim 1680.....	664
<i>N Bevan Limited v HMRC</i> [2016] TC 05404.....	753
<i>Lonsdale v National Westminster Bank</i> [2018] EWHC 1843 (QB)	697, 705, 709, 724

LIST OF ABBREVIATIONS

4AMLD	Directive 2015/849/EU
5AMLD	Directive 2018/843/EU
AEOI	Automatic Exchange of Information
AktG	Aktiengesetz
AML	Anti-money laundering
AMLA	Anti-Money Laundering Act (RS 955.0)
AMLD	Anti-Money Laundering Directive
AMLO	Anti-Money Laundering Ordinance (RS 955.01)
AMLO-CFMJ	Federal Gaming Board Anti-Money Laundering Ordinance (RS 955.021)
AMLO-DFJP	Federal Department of Justice and Police Anti-Money Laundering Ordinance (RS 955.022)
AMLO-FINMA	Swiss Financial Market Supervisory Authority Anti-Money Laundering Ordinance (RS 955.033.0)
AO	Abgabenordnung
Art.	Article
ASA	Association suisse des assurances
ASSL	Association suisse des sociétés de leasing
AsylG	Asylgesetz
AT	Austria
ATF	Arrêt du Tribunal fédéral
AufenthG	Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet
AUPER	Automated Registration System of Persons
AWG	Außenwirtschaftsgesetz
AZRG	Gesetz über das Ausländerzentralregister
Bafin	Bundesanstalt für Finanzdienstleistungsaufsicht
BayZustV	Bayerische Zuständigkeitsverordnung
BE	Belgium
BFH	Bundesfinanzhof
BFHE	Entscheidungen des Bundesfinanzhofs
BG	Bulgaria
BGB	Bürgerliches Gesetzbuch
BGBI.	Bundesgesetzblatt
BGH	Bundesgerichtshof

BGHSt	Entscheidungen des Bundesgerichtshofes in Strafsachen
BI	Banca d'Italia
BKAG	Bundeskriminalamtgesetz
BMG	Bundesmeldegesetz
BNDG	Gesetz über den Bundesnachrichtendienst
BR	Bundesrat
BT	Bundestag
BtMG	Gesetz über den Verkehr mit Betäubungsmitteln
BVerfG	Bundesverfassungsgericht
BVerfGE	Entscheidungen des Bundesverfassungsgerichts
BVerfGK	Kammerentscheidungen des Bundesverfassungsgerichts
BVerfSchG	Bundesverfassungsschutzgesetz
BVerwG	Bundesverwaltungsgericht
BZRG	Bundezentralregistergesetz
C. Cass.	Corte di Cassazione
CAP	Codice delle Assicurazioni Private
CC	Criminal Code
CDB	Agreement on the Swiss Banks' code of conduct with regard to the exercise of due diligence
CDD	Customer due diligence
CEO	Chief Executive Officer
CFMJ	Federal Gaming Board
CFT	Countering the financing of terrorism
CITCO	Intelligence Center against Terrorism and Organized Crime
CNCA	Centre for Counter Terrorism Coordination
CNI	Centro Nacional de Inteligencia
CNMV	Comisión Nacional del Mercados de Valores
CO	Code of Obligations (Switzerland)
CO	Compliance Officer (Spain)
Confidi	Consorzio di garanzia collettiva dei fidi
Consob	Commissione Nazionale per le Società e la Borsa
CPS	Crown Prosecution Service
CRAB	Centro Registral Anti-blanqueo de Capitales del Colegio de registradores de la Propiedad, mercantiles y bienes Inmuebles
CRR	Capital Requirements Regulation (EU) No. 575/2013
CTF	Counter-terrorist financing
CY	Cyprus
CZ	Czech Republic
D.L.	Decreto legge

D.P.R.	Decreto del Presidente della Repubblica
DAML	Defence Against Money Laundering
DB-AMLA	Draft bill amending the Anti-Money Laundering Act
DB-Terr	Draft bill on the fight against terrorism
DE	Germany
Decree	Real Decreto 304/2014
DK	Denmark
DNFBP(s)	Designated Non-Financial Businesses and Profession(s)
DStR	Das deutsche Steuerrecht
EBA	European Banking Authority
EC	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDD	Enhanced Due Diligence
EE	Estonia
EEA	European Economic Area
EEAS	European External Action Service
EGMLTF	Expert Group on Anti-Money Laundering and Countering Terrorist Financing
EIOPA	European Insurance and Occupational Pensions Authority
EL	Greece
ES	Spain
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
EU	European Union
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FDF	Federal Department of Finance
FedPol	Federal Office of Police
FF	Feuille fédérale
FFA	Forensic Financial Analysis
FI	Finland
FINMA	Swiss Financial Market Supervisory Authority
FIU	Financial Intelligence Unit
FKAustG	Finanzkonten-Informationsaustauschgesetz
FR	France
FSMA	Financial Services and Markets Act
FSRBs	FATF-style regional body
G 10	Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses

G20	Group of Twenty
G7	Group of Seven
GCMF	Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism
GDPR	General Data Protection Regulation
GenG	Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften
GEWA	MROS' data processing system
GewO	Gewerbeordnung
GmbHG	Gesetz betreffend die Gesellschaften mit beschränkter Haftung
GWG	Geldwäschegesetz
HGB	Handelsgesetzbuch
HMRC	HM Revenue & Customs
HR	Croatia
HU	Hungary
IBAN	International Bank Account Number
ICO	Initial coin offering
ICRG	International Co-operation Review Group
IE	Ireland
INDEX SRC	Federal Intelligence Service's indexing system
ISIL	Islamic State in Iraq and the Levant
IT	Italy
IVASS	Istituto per la vigilanza sulle assicurazioni
JMLIT	Joint Money Laundering Intelligence Taskforce
JMLSG	Joint Money Laundering Steering Group
KAGB	Kapitalanlagegesetzbuch
KWG	Kreditwesengesetz
KYC	Know Your Customer
L.	Legge
L.D.	Decreto legislativo
LEA	Law enforcement agencies
LPP	Legal Professional Privilege
LT	Lithuania
LU	Luxembourg
LV	Latvia
MADG	Gesetz über den militärischen Abschirmdienst
MER	Mutual Evaluation Report
ML	Money laundering
ML/TF	Money laundering/Terrorism financing
MLCP	Money laundering compliance principal

MLRO	Money Laundering Reporting Officer
MoU(s)	Memorandum(s) of understanding
MPC	Ministère public de la Confédération
MROS	Money Laundering Reporting Office Switzerland
MT	Malta
NCA	National Crime Agency
NCIS	National Criminal Intelligence Unit
NDIU	National Drugs Intelligence Unit
NGO(s)	Non-governmental organisation(s)
NJW	Neue Juristische Wochenschrift
NL	Netherlands
NRA	National risk assessment
N-SIS	Schengen Information System's National Part
NStZ	Neue Zeitschrift für Strafrecht
NStZ-RR	NStZ Rechtsprechungsreport
NVwZ	Neue Zeitschrift für Verwaltungsrecht
OAG	Office of the Attorney General
OAR-G	Organisme d'Autorégulation des Gérants de Patrimoine
OCP- Notars	Organo Centralizado de Prevención de blanqueo de capitales del Colegio Notarial
OECD	Organisation for Economic Cooperation and Development
OLG	Oberlandesgericht
O-MROS	Ordinance on MROS (RS 955.23)
OPBAS	Office for Professional Body Anti-Money Laundering Supervision
OWiG	Gesetz über Ordnungswidrigkeiten
P.D.	Decreto Presidenziale
PEP(s)	Politically exposed person(s)
PL	Poland
PNC	Police National Computer
POCA	Proceeds of Crime Act 2002
PrüfV	Verordnung über die Prüfung der Jahresabschlüsse der Kreditinstitute und Finanzdienstleistungsinstitute sowie über die darüber zu erstellenden Berichte
PrüfV	Verordnung über den Inhalt der Prüfungsberichte zu den Jahresabschlüssen und den Solvabilitätsübersichten von Versicherungsunternehmen
PSC	Persons with Significant Control
PT	Portugal
RCE	Central Register of Foreigners

RIPOL	Police Computerised Research System
RO	Romania
RPS	Revue pénale suisse
RS	Recueil systématique
RUMACA	Customs' database
SAAM	Swiss Association of Asset Managers
SächsGwGZustVO	Sächsische Geldwäschegesetz-Zuständigkeitsverordnung
SAR(s)	Suspicious activity report(s)
SARAs	Segnalazioni antiriciclaggio aggregate
SAV/SNV	Selbstregulierungsorganisation des Schweizerischen Anwaltsverbandes und des Schweizerischen Notarenverbandes
SBA	Swiss Bankers Association
SchwarzArbG	Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung
SE	Sweden
SEPBLAC	Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias
SFO	Serious Fraud Office
SI	Slovenia
SK	Slovakia
SPC	Spanish Penal Code
SRA	Solicitors Regulation Authority
SRO(s)	Self-regulatory organisation(s)
SRO-SVV	Selbstregulierungsorganisation des Schweizerischen Versicherungsverbandes
StGB	Strafgesetzbuch
StPO	Strafprozessordnung
STR(s)	Suspicious transaction report(s)
STS	Sentencia del Tribunal Supremo
StVG	Straßenverkehrsgesetz
SYMIC	Central Migration Information System
SYSC	The Senior Management Arrangements, Systems and Controls sourcebook
TF	Terrorist financing
TUB	Testo Unico Bancario
TUF	Testo Unico della Finanza
UCITS	Undertakings for Collective Investments in Transferable Securities
UIF	Unità di Informazione Finanziaria
UK	United Kingdom

UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UTR(s)	Unusual transaction report(s)
VAG	Gesetz über die Beaufsichtigung der Versicherungsunternehmen
VAT	Value added tax
VOSTRA	Computerised Criminal Records Database
VQF	Verein zur Qualitätssicherung von Finanzdienstleistungen
WpHG	Gesetz über den Wertpapierhandel
ZAG	Zentrale Aufbereitung Geldwäschereverdachtsmeldung (Switzerland)
ZAG	Gesetz über die Beaufsichtigung von Zahlungsdiensten (Germany)
ZFdG	Gesetz über das Zollkriminalamt und die Zollfahndungsämter
ZollVG	Zollverwaltungsgesetz

LIST OF CONTRIBUTORS

Giovanna Amato

Research fellow at the Max Planck Institute. She graduated and obtained her PhD from the University of Bologna, where she received numerous scholarships and was an assistant professor. She is currently working towards qualifying as an associate professor and her work focuses on organised crime, corporate criminal liability, AML and, more generally, crime prevention. She is also a practicing lawyer and has acted as compliance officer for various companies.

Ana Carolina Carlos de Oliveira

Research fellow at the Max Planck Institute. She is also an assistant professor, member of the research group on corporate and economic crime and PhD candidate at the Pompeu Fabra University, Barcelona. She graduated and received a first PhD from the University of Sao Paulo, where, among other awards, she was distinguished by the Instituto Brasileiro de Ciencias Criminais. She also acts as a consultant specialised in the prevention of financial crimes.

Liliya Gelemerova

Holds a PhD from Tilburg University and is honorary senior lecturer at the University of Manchester. Her specialism is anti-financial crime which she has developed working in various roles across the public and private sectors, starting with the Bulgarian FIU in the late 1990s. She currently works in financial crime compliance in the banking industry in London.

Michael Levi

Professor of Criminology at the School of Social Sciences, Cardiff University. He has been researching economic crime since 1972 and money laundering since 1988. In 2019, he received lifetime achievement awards from the American Society of Criminology, the British Society of Criminology, and for Tackling Economic Crime.

Jean-Baptiste Maillart

Research fellow at the Max Planck Institute. He holds law degrees from the University of Paris I Pantheon-Sorbonne, the Geneva Academy of International Humanitarian Law and Human Rights, and the University of Geneva. His PhD thesis analysed the challenges of the territoriality principle in the context of cybercrime. He is a former fellow of the Swiss National Science Foundation.

Benjamin Vogel

Head of the research group on illicit financial flows at the Max Planck Institute and, since 2013, in charge of the Institute's desk on English criminal law. He holds law degrees from the Universities of Potsdam, Paris X and Cambridge. He is currently working on his habilitation; his research focuses on comparative law, criminal law theory, financial crime, and supranational security law.

QUESTIONNAIRE

I. INTRODUCTION

A. HISTORY OF ANTI-MONEY LAUNDERING

Please provide a brief overview of the history of AML efforts in your country.

FATF	11	Spain	401
European Union	71	Switzerland	533
Germany	157	United Kingdom.....	641
Italy	303	Comparative Analysis.....	793

B. CURRENT CONCERNS AND REFORM AGENDA

Which specific concerns currently arise in your jurisdiction regarding AML (e.g. regarding its effectiveness, constitutional law concerns, implementation of international instruments)? Which proposals/demands currently surface in the AML reform debate?

FATF	12	Spain	407
European Union	75	Switzerland	537
Germany	158	United Kingdom.....	647
Italy	306	Comparative Analysis.....	795

II. AIMS AND SCOPE OF AML SYSTEM

A. AIMS OF AML REGIME

The precise objectives of AML are sometimes somewhat unclear, in particular when political statements at the international and national levels and actual enforcement practice differ. How then would you describe the purpose of AML instruments in your country? Please refer both to legislation and political statements as well as the known practice of competent authorities.

FATF	15	Spain	411
European Union	81	Switzerland	541
Germany	160	United Kingdom.....	654
Italy.....	307	Comparative Analysis.....	796

B. SCOPE OF MONEY LAUNDERING

FATF	16	Spain.....	413
European Union.....	81	Switzerland	543
Germany	161	United Kingdom.....	655
Italy.....	308	Comparative Analysis.....	797

1. Definition of Money Laundering in Criminal Law

FATF	16	Spain.....	413
European Union.....	81	Switzerland	543
Germany	161	United Kingdom.....	655
Italy.....	308	Comparative Analysis.....	797

a. Actus Reus

FATF	16	Spain.....	413
European Union.....	81	Switzerland	543
Germany	161	United Kingdom.....	655
Italy.....	308	Comparative Analysis.....	797

i. PREDICATE OFFENCES

Please specify the predicate offences under your money laundering offence. Please also indicate whether/to what extent these offences must fulfil a certain threshold of seriousness in order to be considered predicate offences (e.g. depending on the potential or actual length of the custodial sentence of the predicate offence).

FATF	16	Spain.....	413
European Union.....	81	Switzerland	543
Germany	161	United Kingdom.....	655
Italy.....	308	Comparative Analysis.....	797

ii. DEFINITION OF MONEY LAUNDERING ACTS

How is the act of money laundering described in your criminal law (e.g. concealment, possession)? Is the laundering of the proceeds of one's own criminal activity ("self-laundering") covered, and how is this defined? What objective link must there be between the property that was generated by the predicate offence and the act of money laundering (e.g. only direct link, or also laundering of substitutes for illicit gains)? How does your law treat property that partially originates from illicit gains and partially from legitimate income (e.g. when only 10% of the purchase price of real estate originates from illicit sources)? How does the law treat the gains originating from tax evasion?

FATF	17	Spain	413
European Union	83	Switzerland	544
Germany	163	United Kingdom.....	657
Italy	309	Comparative Analysis.....	798

b. *Mens Rea*

Which *mens rea* is required by your general money laundering offence (intent, negligence, wilful blindness, recklessness)? Please briefly explain how your law defines these mental states. To what extent must the respective *mens rea* cover the predicate offence (e.g. knowledge of the exact details of the predicate offence or only awareness of any illicit origin)?

FATF	19	Spain	416
European Union	84	Switzerland	546
Germany	168	United Kingdom.....	659
Italy	312	Comparative Analysis.....	799

2. *Money Laundering by Omission*

Does your law provide for criminal liability for money laundering by omission? Where appropriate, how is this defined, in particular, what circumstances give rise to such responsibility (e.g. being a compliance officer)? If your law provides for negligent money laundering, to what extent does this produce delimitation problems between negligence and omission?

FATF	20	Spain	418
European Union	84	Switzerland	547
Germany	169	United Kingdom.....	660
Italy.....	313	Comparative Analysis.....	799

3. *Aggravated Forms of Money Laundering*

Does your law provide for aggravated forms of money laundering, and how are these defined?

FATF	20	Spain	419
European Union	84	Switzerland	547
Germany	170	United Kingdom.....	663
Italy.....	313	Comparative Analysis.....	800

4. *Statutes of Limitation*

What statute of limitation applies to money laundering? Please also indicate how this issue is addressed with regard to continued forms of money laundering (in particular, laundering through possession or tax evasion).

Are there temporary limits regarding the predicate offence that precludes criminal liability for money laundering? Do the statutes of limitation of the predicate offences impact on the criminal liability for money laundering?

FATF	21	Spain	419
European Union	85	Switzerland	548
Germany	171	United Kingdom.....	663
Italy.....	314	Comparative Analysis.....	800

5. *Jurisdictional Rules*

To what extent can acts of money laundering committed abroad, in whole or in part, be punished in your jurisdiction? To what extent does your money laundering offence apply to predicate offences committed abroad?

FATF	21	Spain	419
European Union	85	Switzerland	549
Germany	171	United Kingdom.....	664
Italy.....	315	Comparative Analysis.....	801

C. NON-CRIMINAL DEFINITION OF MONEY LAUNDERING

Does your legal system have a separate money laundering definition outside criminal law? If so, please specify the difference to the criminal law definition and to what extent this definition is relevant.

FATF	21	Spain	421
European Union	86	Switzerland	549
Germany	173	United Kingdom.....	665
Italy	316	Comparative Analysis.....	802

D. SCOPE OF OBLIGED ENTITIES

FATF	21	Spain	422
European Union	87	Switzerland	550
Germany	173	United Kingdom.....	665
Italy	317	Comparative Analysis.....	803

1. *Financial and Banking Institutions*

Which financial institutions are designated as obliged entities under your law?

FATF	21	Spain	422
European Union	87	Switzerland	550
Germany	173	United Kingdom.....	668
Italy	317	Comparative Analysis.....	803

2. *Virtual Currency System Participants*

To what extent are virtual currency system participants (e.g. virtual currency exchange platforms, custodial wallet providers) considered to be obliged entities?

FATF	22	Spain	424
European Union	87	Switzerland	553
Germany	175	United Kingdom.....	668
Italy	320	Comparative Analysis.....	804

3. *Legal Profession and Tax Advisors*

To what extent are members of the legal profession and tax advisors designated as obliged entities?

FATF	23	Spain	425
European Union	88	Switzerland	554
Germany	176	United Kingdom.....	669
Italy.....	321	Comparative Analysis.....	804

4. *Informal Value Transfer Systems*

To what extent are informal value transfer system (e.g. *hawala* providers) considered as obliged entities?

FATF	23	Spain	427
European Union	89	Switzerland	555
Germany	177	United Kingdom.....	669
Italy.....	322	Comparative Analysis.....	805

5. *Non-Profit Sector*

To what extent are non-profit entities (in particular NGOs) considered as obliged entities?

FATF	24	Spain	428
European Union	89	Switzerland	555
Germany	177	United Kingdom.....	669
Italy.....	323	Comparative Analysis.....	805

6. *Overview of Other Obligated Entities*

Please provide a brief overview of the other professions that are designated as obliged entities under your law.

FATF	24	Spain	428
European Union	89	Switzerland	555
Germany	178	United Kingdom.....	670
Italy.....	323	Comparative Analysis.....	806

E. RELATIONSHIP BETWEEN AML AND ANTI-TERRORISM FINANCING FRAMEWORK(S)

AML and counter-terrorism financing (CTF) are often addressed with the same instruments. Are there any particularities/differences in the treatment of AML and CTF in your country? Is there any debate on whether these two issues should be more clearly separated, due to differences between the two phenomena (CTF often involving legally acquired property) or to differences in the applicable constitutional law standards (particularly with regard to proportionality) or to differences in their objectives (e.g. CTF might be more focused on financial intelligence than on the suppression of cash flows)?

FATF	24	Spain	429
European Union	90	Switzerland	557
Germany	179	United Kingdom.....	670
Italy	325	Comparative Analysis.....	806

III. THE SYSTEM OF MONEY LAUNDERING PREVENTION

A. CUSTOMER DUE DILIGENCE

FATF	25	Spain	432
European Union	91	Switzerland	559
Germany	180	United Kingdom.....	672
Italy	326	Comparative Analysis.....	807

1. *Standard CDD Rules*

FATF	25	Spain	432
European Union	91	Switzerland	559
Germany	180	United Kingdom.....	672
Italy	326	Comparative Analysis.....	807

a. Triggers and Timing

When do obliged entities have to apply CDD measures? Where necessary, please differentiate between different types of obliged entities.

FATF	25	Spain	432
European Union	91	Switzerland	559
Germany	180	United Kingdom.....	672
Italy.....	326	Comparative Analysis.....	807

b. CDD Measures

What CDD measures does your law require? Where necessary, please differentiate between different types of obliged entities (especially financial industry institutions, real estate agents, dealers in goods).

FATF	27	Spain.....	435
European Union.....	92	Switzerland	560
Germany	184	United Kingdom.....	673
Italy.....	377	Comparative Analysis.....	809

c. Individual Responsibility

Is there any executive position at the obliged entities' senior/most senior level (e.g. board members, directors) who, according to the law, bear overall responsibility for the company's AML, even if this person is not operationally involved in day-to-day AML compliance?

FATF	29	Spain.....	436
European Union.....	93	Switzerland	562
Germany	191	United Kingdom.....	675
Italy.....	329	Comparative Analysis.....	809

d. Further CDD Guidance

Please provide a brief overview of the most relevant binding guidance issued by supervisory authorities (e.g. the financial market authority, the bar association) or other public authorities (e.g. FIUs) to specify the law's standard CDD requirements, in particular guidance for risk assessment.

FATF	29	Spain	437
European Union	93	Switzerland	562
Germany	191	United Kingdom.....	675
Italy	330	Comparative Analysis.....	810

2. *Simplified CDD*

FATF	29	Spain	440
European Union	93	Switzerland	565
Germany	192	United Kingdom.....	676
Italy	331	Comparative Analysis.....	810

a. Scope

In which cases does your law allow for simplified CDD measures, i.e. for a simplification of standard CDD requirements? Where necessary, please differentiate between different types of obliged entities.

FATF	29	Spain	440
European Union	93	Switzerland	565
Germany	192	United Kingdom.....	676
Italy	331	Comparative Analysis.....	810

b. Requirements

How are the applicable requirements for simplified CDD under your law simplified compared to standard CDD? Where necessary, please differentiate between different types of obliged entities.

FATF	29	Spain	445
European Union	95	Switzerland	566
Germany	193	United Kingdom.....	676
Italy	332	Comparative Analysis.....	811

c. Further Simplified CDD Guidance

Please provide a brief overview of the most relevant binding guidance issued by supervisory authorities (e.g. the financial market authority, the bar association) or other public authorities (e.g. FIUs) to specify the law's simplified CDD

requirements, in particular guidance for risk assessment. Are these authorities under a legal duty to provide such guidance?

FATF	29	Switzerland	566
European Union	95	United Kingdom.....	677
Italy.....	332	Comparative Analysis.....	812
Spain	442		

3. *Enhanced CDD*

FATF	31	Spain	442
European Union	98	Switzerland	567
Germany	193	United Kingdom.....	667
Italy.....	333	Comparative Analysis.....	812

a. Scope

In which cases does your law require enhanced CDD measures, i.e. measures that are more ambitious than the standard requirements? Where necessary, please differentiate between different types of obliged entities.

FATF	31	Spain	442
European Union	98	Switzerland	567
Germany	193	United Kingdom.....	677
Italy.....	333	Comparative Analysis.....	812

b. Requirements

How are the applicable enhanced requirements under your law more demanding than standard CDD? Where necessary, please differentiate between different types of obliged entities.

FATF	31	Spain	445
European Union	99	Switzerland	567
Germany	194	United Kingdom.....	678
Italy.....	334	Comparative Analysis.....	813

c. Further Enhanced CDD Guidance

Please provide a brief overview of the most relevant binding guidance issued by supervisory authorities (e.g. the financial market authority, the bar association) or other public authorities (e.g. FIUs) to specify the law's enhanced CDD requirements, in particular guidance for risk assessment.

FATF	32	Spain	446
European Union	100	Switzerland	567
Germany	196	United Kingdom.....	679
Italy	335	Comparative Analysis.....	814

4. Rules on Politically Exposed Persons

FATF	33	Spain	446
European Union	101	Switzerland	570
Germany	197	United Kingdom.....	680
Italy	336	Comparative Analysis.....	815

a. Definition

How does your law define “politically exposed persons”? Where applicable, please specify differences in the definition between domestic/foreign PEP and other categories (e.g. “international” PEPs).

FATF	33	Spain	446
European Union	101	Switzerland	570
Germany	197	United Kingdom.....	680
Italy	336	Comparative Analysis.....	815

b. Requirements

How do CDD rules for PEPs differ from the aforementioned enhanced CDD?

FATF	34	Spain	448
European Union	102	Switzerland	571
Germany	198	United Kingdom.....	682
Italy	336	Comparative Analysis.....	816

c. Further Enhanced CDD Guidance on PEPs

Please provide a brief overview of the most relevant binding guidance issued by supervisory authorities (e.g. the financial market authority, the bar association) or other public authorities (e.g. FIUs) to specify the law's enhanced CDD requirements applicable to business relationships and occasional transactions involving PEPs.

FATF	35	Switzerland	571
European Union	103	United Kingdom.....	683
Italy.....	337	Comparative Analysis.....	816
Spain	449		

5. *Rules on High-Risk Third Countries*

FATF	35	Spain.....	449
European Union.....	103	Switzerland	572
Germany	199	United Kingdom.....	683
Italy.....	338	Comparative Analysis.....	817

a. Scope

Certain countries pose a particularly high money laundering risk, leading the international community to call for precautions when dealing with such countries. How does your law define “high-risk third countries”? Does this definition refer to relevant international, regional or national “blacklists” or other authoritative designation mechanisms?

FATF	35	Spain.....	449
European Union	103	Switzerland	572
Germany	199	United Kingdom.....	683
Italy.....	338	Comparative Analysis.....	817

b. Requirements

How do CDD rules for high-risk third countries differ from the aforementioned enhanced CDD?

FATF	36	Spain	450
European Union	105	Switzerland	572
Germany	199	United Kingdom.....	684
Italy	338	Comparative Analysis.....	817

c. Further Enhanced CDD Guidance on High-Risk Third Countries

Please provide a brief overview of the most relevant binding guidance issued by supervisory authorities (e.g. the financial market authority, the bar association) or other public authorities (e.g. FIUs) to specify the law's enhanced CDD requirements applicable to business relationships and occasional transactions involving high-risk third countries.

FATF	36	Spain	450
European Union	106	Switzerland	572
Germany	199	United Kingdom.....	685
Italy	339	Comparative Analysis.....	818

6. *Private Sector CDD Guidance*

Are there any private sector standards/rules that provide further guidance for the exercise of CDD, in particular risk assessment? Please provide a brief overview of such instruments.

FATF	36	Switzerland	572
European Union	107	United Kingdom.....	685
Italy	340	Comparative Analysis.....	818
Spain	453		

B. PRELIMINARY RISK ANALYSIS

To what extent does your law impose an obligation on obliged entities to carry out a risk analysis of their business operations prior to the conduct of any

client-specific or transaction-specific CDD measures in order to identify/assess its risk exposure and adapt its CDD practice accordingly?

FATF	36	Spain	453
European Union	107	Switzerland	573
Germany	200	United Kingdom.....	685
Italy.....	340	Comparative Analysis.....	819

C. REPORTING AND ASSET FREEZING

FATF	37	Spain	454
European Union	108	Switzerland	573
Germany	201	United Kingdom.....	686
Italy.....	340	Comparative Analysis.....	819

1. *First-Time Reporting*

FATF	37	Spain	454
European Union	108	Switzerland	573
Germany	201	United Kingdom.....	686
Italy.....	340	Comparative Analysis.....	819

a. Trigger for/Degree of Suspicion

When do obliged entities have to file a suspicious activity report (SAR)? What degree of suspicion is required? Please specify when such reporting is mandatory and when it is at the discretion of the obliged entity. If necessary, please differentiate between the types of obliged entities.

FATF	37	Spain	454
European Union	108	Switzerland	573
Germany	201	United Kingdom.....	686
Italy.....	340	Comparative Analysis.....	819

b. Content and Direct Addressee(s) of SARs

Who is the direct addressee of the SAR (e.g. FIU, police, prosecutor, bar association)? What information must it contain?

FATF	37	Spain	455
European Union	108	Switzerland	577
Germany	203	United Kingdom.....	688
Italy	341	Comparative Analysis.....	821

c. Duty not to Disclose

To what extent is the obliged entity under an obligation not to disclose to its customer the fact that it filed a SAR?

FATF	37	Spain	455
European Union	108	Switzerland	579
Germany	204	United Kingdom.....	688
Italy	342	Comparative Analysis.....	821

d. Power or Duty to Freeze

To what extent is the obliged entity under an obligation, or at least authorised, to temporarily suspend its business relationship with the customer concerned, to stop transactions, or to freeze property? For how long can such measures be imposed?

FATF	38	Spain	456
European Union	109	Switzerland	579
Germany	205	United Kingdom.....	689
Italy	342	Comparative Analysis.....	821

e. Instant Collateral Duties

Is the obliged entity under any collateral obligations when filing a SAR (e.g. further monitoring of the client's business activities)?

FATF	38	Spain	457
European Union	109	Switzerland	580
Germany	206	United Kingdom.....	689
Italy	343	Comparative Analysis.....	822

2. Follow-Up

FATF	38	Spain	457
European Union	109	Switzerland	580
Germany	207	United Kingdom.....	690
Italy.....	343	Comparative Analysis.....	823

a. Duty to Provide FIU with Additional Data

To what extent is the obliged entity under an obligation to provide the FIU or other addressees of the SAR with further information?

FATF	38	Spain	457
European Union	109	Switzerland	580
Germany	207	United Kingdom.....	690
Italy.....	343	Comparative Analysis.....	823

b. Continued Duty not to Disclose SAR to Client

To what extent is there a continued duty on the part of the reporting obliged entity not to disclose to the client the filing of the SAR, even if it has not led to a discovery of illegal conduct?

FATF	38	Spain	458
European Union	109	Switzerland	581
Germany	207	United Kingdom.....	690
Italy.....	343	Comparative Analysis.....	823

c. Continued Collateral Duties

After having filed a SAR, is the obliged entity under any collateral obligations, even if the initial suspicion has not been confirmed (e.g. further monitoring of the client's business activities)?

FATF	39	Spain	458
European Union	110	Switzerland	581
Germany	209	United Kingdom.....	690
Italy.....	343		

3. *Special Rules for Privileged Professions*

FATF	39	Spain	458
European Union	110	Switzerland	582
Germany	210	United Kingdom.....	690
Italy	344	Comparative Analysis.....	823

a. Trigger for/Degree of Suspicion

Do special rules on the degree of suspicion or other triggering factors required for a SAR apply to privileged professions (e.g. lawyers, tax advisors)? Where relevant, please differentiate between types of professions.

FATF	39	Spain	458
European Union	110	Switzerland	582
Germany	210	United Kingdom.....	690
Italy	344	Comparative Analysis.....	823

b. Content and Addressee(s) of SARs

Are there special rules regarding the addressees, procedure and content of SARs filed by privileged professions? Where applicable, please differentiate between professions.

FATF	39	Spain	459
European Union	111	Switzerland	583
Germany	211	United Kingdom.....	692
Italy	344	Comparative Analysis.....	824

c. Duty not to Disclose to Client

Are there special rules for privileged professions on the disclosure of a SAR filing?

FATF	40	Spain	460
European Union	111	Switzerland	583
Germany	211	United Kingdom.....	692
Italy	345	Comparative Analysis.....	825

4. *Protection of SAR's Source*

Does your law provide special rules for the protection of a SAR's source (e.g. anonymity of the obliged entity that filed the SAR, anonymity of the individual employee that filed the SAR)? If so, please specify.

FATF	40	Spain	460
European Union	111	Switzerland	584
Germany	211	United Kingdom.....	693
Italy.....	345	Comparative Analysis.....	825

D. RECORD KEEPING

To what extent does your law provide for record keeping obligations of CDD information, records of transactions and/or SAR-related information?

FATF	40	Spain	461
European Union	112	Switzerland	584
Germany	212	United Kingdom.....	693
Italy.....	346	Comparative Analysis.....	826

E. COMPLIANCE OFFICERS

To what extent are obliged entities under a legal obligation to appoint compliance officers or create a similar position to ensure respect for AML regulations? What competences and powers must such a compliance officer have? Which rules ensure the independence of the compliance officer vis-à-vis the obliged entity?

FATF	41	Spain	461
European Union	112	Switzerland	584
Germany	214	United Kingdom.....	693
Italy.....	347	Comparative Analysis.....	826

F. INTERNAL COMPLAINT MECHANISM

Is an obliged entity under an obligation to put in place an internal complaint mechanism that allows employees or third persons to inform senior management about AML CDD violations committed within the obliged entity? If so, please

specify the scope of such an obligation, the design of such a mechanism, and possible safeguards that serve to protect the complainant (e.g. by insuring his anonymity).

FATF	41	Spain	462
European Union	112	Switzerland	584
Germany	215	United Kingdom.....	695
Italy	348	Comparative Analysis.....	827

G. ADDITIONAL PREVENTIVE MEASURES

Are any further obligations applicable to obliged entities in order to ensure effective CDD (especially training of staff, background screening of employees)? In this respect, are there any obligations on the part of the FIU to support the obliged entities?

FATF	41	Spain	464
European Union	112	Switzerland	585
Germany	215	United Kingdom.....	696
Italy	349	Comparative Analysis.....	827

H. RULES ON OBLIGED ENTITIES' CIVIL LIABILITY TOWARDS CLIENT

If a client suffers economic damage from CDD measures (e.g. by the sudden disruption of banking services) or the freezing of assets after the filing of an unjustified SAR, under what conditions can an obliged entity be held responsible and forced to compensate the client?

FATF	42	Spain	467
European Union	113	Switzerland	586
Germany	219	United Kingdom.....	697
Italy	350	Comparative Analysis.....	828

I. SUPERVISORY AUTHORITIES' ROLE

FATF	42	Spain	467
European Union	113	Switzerland	586
Germany	220	United Kingdom.....	697
Italy.....	350	Comparative Analysis.....	828

1. *Supervisory Measures to Ensure Application of CDD and Other AML-Related Obligations*

Briefly describe the preventive functions of supervisory authorities, or other competent authorities, to ensure the application of AML CDD and related AML obligations by obliged entities.

FATF	42	Spain	467
European Union	113	Switzerland	586
Germany	220	United Kingdom.....	697
Italy.....	350	Comparative Analysis.....	828

2. *Complaint Mechanism*

Does your law provide for a mechanism (at the level of supervisory authorities or other competent authorities) that allows individuals (in particular employees of obliged entities) to report violations of CDD and related obligations by an obliged entity? If so, please specify. To what extent does special protection exist for the person who made such a complaint (e.g. the right to remain anonymous)?

FATF	43	Spain	469
European Union	115	Switzerland	592
Germany	222	United Kingdom.....	698
Italy.....	352	Comparative Analysis.....	829

J. STATISTICS ON SARs BY OBLIGED ENTITIES

Are any statistics available on the number of SARs and the value of transactions associated with them, as well as on the number of follow-up reports filed by obliged entities and the outcome of such reports?

FATF	43	Spain	469
European Union	115	Switzerland	592
Germany	223	United Kingdom.....	699
Italy	352	Comparative Analysis.....	830

IV. THE SYSTEM OF FINANCIAL INTELLIGENCE UNITS

A. INSTITUTIONAL AND FUNCTIONAL CHARACTERISTICS

FATF	44	Spain	470
European Union	119	Switzerland	596
Germany	224	United Kingdom.....	700
Italy	354	Comparative Analysis.....	830

1. *Organisational Position*

Is the FIU situated within or connected to the organisational structure of another authority (e.g. supervisory authority, other administrative authority, criminal justice, police, customs)?

FATF	44	Spain	470
European Union	119	Switzerland	596
Germany	224	United Kingdom.....	700
Italy	354	Comparative Analysis.....	830

2. *Purpose and Tasks*

How are the FIU's purpose and its tasks defined?

FATF	44	Spain	471
European Union	119	Switzerland	596
Germany	224	United Kingdom.....	700
Italy	355	Comparative Analysis.....	831

3. *Independence*

To what extent is the FIU independent from political actors and other authorities? Can other authorities give instructions to the FIU (e.g. prosecutor, police, supervisory authorities, ministers)? If so, in which cases?

FATF	44	Spain	473
European Union	119	Switzerland	597
Germany	225	United Kingdom.....	701
Italy.....	357	Comparative Analysis.....	831

4. Powers

Which investigative and which coercive powers are given to the FIU (e.g. freezing of assets, giving instructions to and requesting information from other authorities, telecommunications interceptions, search and seizure of documents, interrogations)?

FATF	45	Spain	473
European Union	120	Switzerland	597
Germany	225	United Kingdom.....	702
Italy.....	358	Comparative Analysis.....	832

B. TREATMENT OF SARs

FATF	45	Spain	474
European Union	121	Switzerland	599
Germany	226	United Kingdom.....	703
Italy.....	359	Comparative Analysis.....	834

1. Data Processing

How does the FIU proceed with SARs filed by obliged entities and other authorities? How and to what end are the SARs analysed by the FIU? When and how are SARs forwarded to other authorities (e.g. to the prosecution)?

FATF	45	Spain	474
European Union	121	Switzerland	599
Germany	226	United Kingdom.....	703
Italy.....	359	Comparative Analysis.....	834

2. *Special Procedures for Privileged Professions*

Do special procedures for the processing of SARs exist for privileged professions (e.g. lawyers, tax advisors)? If so, please specify (e.g. SAR screening by a profession's self-governing body).

FATF	46	Spain	475
European Union	122	Switzerland	601
Germany	226	United Kingdom.....	704
Italy	361	Comparative Analysis.....	836

3. *Feedback Obligations*

FATF	46	Spain	476
European Union	122	Switzerland	601
Germany	226	United Kingdom.....	705
Italy	361	Comparative Analysis.....	836

a. *Obligation of the FIU*

Is the FIU under an obligation to inform the reporting entity about the outcome of the SAR? If so, what information will be provided to the reporting entity?

FATF	46	Spain	476
European Union	122	Switzerland	601
Germany	226	United Kingdom.....	705
Italy	361	Comparative Analysis.....	836

b. *Obligation of Investigative Authorities*

In the event that the FIU or a reporting entity communicates a SAR to a law enforcement authority (e.g. police, prosecutor, tax authorities), is this law enforcement authority under an obligation to inform the FIU about the outcome of the SAR? If so, what information will be provided to the FIU?

FATF	46	Spain	476
European Union	123	Switzerland	602
Germany	227	United Kingdom.....	706
Italy	362	Comparative Analysis.....	837

4. *Disclosure Obligations Towards “Suspect”*

To what extent is the FIU entitled or obliged to inform the “suspect” about the investigation conducted by the FIU following a SAR?

FATF	47	Spain	476
European Union	123	Switzerland	602
Germany	227	United Kingdom.....	706
Italy.....	362	Comparative Analysis.....	837

C. PROACTIVE INVESTIGATIONS

Does the FIU have the power to initiate an investigation even in the absence of a SAR? If so, please specify the conditions of initiation of such investigations, as well as the powers the FIU has to this end. Is such an investigation necessarily directed against a particular suspect? To what extent is an obliged entity under an obligation not to disclose to its client that the FIU has requested information with regard to this client?

FATF	47	Spain	476
European Union	123	Switzerland	603
Germany	228	United Kingdom.....	706
Italy.....	362	Comparative Analysis.....	838

D. ACCESS TO DATA

FATF	47	Spain	477
European Union	124	Switzerland	603
Germany	230	United Kingdom.....	706
Italy.....	363	Comparative Analysis.....	839

1. *Design and Content of FIU’s Own Data Banks*

To what extent does the FIU collect SARs? What other data can be collected and/or stored by the FIU?

FATF	47	Spain	477
European Union	124	Switzerland	603
Germany	230	United Kingdom.....	706
Italy	363	Comparative Analysis.....	839

2. Access to Other Public Data Banks

Which other data banks of public authorities does the FIU have access to, and under what conditions (e.g. criminal justice, tax office)?

FATF	48	Spain	478
European Union	124	Switzerland	604
Germany	230	United Kingdom.....	706
Italy	365	Comparative Analysis.....	839

3. Access to Private Data Banks

Which data banks of private entities does the FIU have access to, and under what conditions?

FATF	48	Spain	479
European Union	126	Switzerland	607
Germany	234	United Kingdom.....	707
Italy	365	Comparative Analysis.....	841

4. Data Analytics

To what extent is the FIU authorised to conduct data analytics (data mining, data matching) in or between the aforementioned data banks, in particular to automatically process the content of such data banks in order to identify possible suspects?

FATF	48	Spain	480
European Union	126	Switzerland	608
Germany	234	United Kingdom.....	707
Italy	366	Comparative Analysis.....	841

5. *International Cooperation*

Does your FIU have any special cooperation agreements with foreign authorities?
If so, please briefly summarise their main content.

FATF	49	Switzerland	608
European Union	127	United Kingdom.....	708
Italy.....	366	Comparative Analysis.....	842
Spain	480		

E. PARTICIPATION OF “SUSPECTS”

FATF	49	Spain	481
European Union	127	Switzerland	608
Germany	238	United Kingdom.....	708
Italy.....	368	Comparative Analysis.....	843

1. *Defence Rights*

To what extent are “suspects” involved in the FIU process? Which defence rights apply (e.g. legal privilege, right against self-incrimination, access to file, right to be heard)?

FATF	49	Spain	481
European Union	127	Switzerland	608
Germany	238	United Kingdom.....	708
Italy.....	368	Comparative Analysis.....	843

2. *Judicial Review or Other Remedies*

Are there ways for the “suspect” to apply for judicial review of the FIU’s action?
Are there review mechanisms other than judicial ones?

FATF	49	Spain	481
European Union	127	Switzerland	609
Germany	239	United Kingdom.....	710
Italy.....	368	Comparative Analysis.....	843

F. SIMILAR POWERS OF SUPERVISORY BODIES

FATF	49	Spain	482
European Union	127	Switzerland	609
Germany	239	United Kingdom.....	710
Italy	369	Comparative Analysis.....	844

1. *Financial Supervision*

Do supervisory bodies of financial markets (e.g. the financial market authority) have the right to investigate a suspicion of money laundering on their own? If so, please specify the competent supervisory body, and when and how such investigations are conducted.

FATF	49	Spain	482
European Union	127	Switzerland	609
Germany	239	United Kingdom.....	710
Italy	369	Comparative Analysis.....	844

2. *Non-Financial Sector Supervision*

Do other supervisory bodies (e.g. the bar association) have the right to investigate a suspicion of money laundering on their own? If so, please specify the competent supervisory authority, when, and how such investigations are conducted as well as which coercive measures can be applied by the supervisory body to prevent money laundering.

FATF	49	Spain	483
European Union	127	Switzerland	609
Germany	239	United Kingdom.....	711
Italy	369	Comparative Analysis.....	844

G. REPORTING OBLIGATIONS OF SUPERVISORY AUTHORITIES

Which supervisory authorities (e.g. the financial market authority, the bar association) have to file reports about suspicious activities to the FIU? Please specify whether and to what extent reporting requirements differ from those applicable to obliged entities.

FATF	49	Spain	483
European Union	128	Switzerland	609
Germany	240	United Kingdom.....	712
Italy.....	370	Comparative Analysis.....	844

H. REPORTING BY OTHER AUTHORITIES

Do other authorities have to file reports about suspicious activities to the FIU (e.g. tax authorities, customs, prosecutors)? If not, are they allowed to do so? If yes, please specify. Do they report to the FIU or to other bodies?

FATF	49	Spain	484
European Union	128	Switzerland	610
Germany	240	United Kingdom.....	713
Italy.....	370	Comparative Analysis.....	845

I. STATISTICS

FATF	50	Spain	485
European Union	128	Switzerland	610
Germany	240	United Kingdom.....	714
Italy.....	370	Comparative Analysis.....	845

1. *Number of Reports by Supervisory Authorities and Other Authorities*

Are there statistics on the number of reports about suspicious activities filed by supervisory authorities and other authorities?

FATF	50	Spain	485
European Union	128	Switzerland	610
Germany	240	United Kingdom.....	714
Italy.....	370	Comparative Analysis.....	845

2. *FIU Analysis*

Are there statistics on the number of FIU investigations and the value of transactions associated with these investigations? If available, please differentiate between investigations following a SAR and investigations on the FIU's own initiative.

FATF	50	Spain	485
European Union	128	Switzerland	611
Germany	240	United Kingdom.....	714
Italy	370	Comparative Analysis.....	845

3. *Communications to Law Enforcement Authorities*

Are there statistics on the number of communications by the FIU to other authorities, in particular regarding the forwarding of SARs (e.g. to the prosecution, police)?

FATF	50	Spain	486
European Union	128	Switzerland	611
Germany	240	United Kingdom.....	714
Italy	371	Comparative Analysis.....	846

V. DATA FLOW AND DATA PROTECTION

A. DATA EXCHANGE BETWEEN FIU AND PRIVATE SECTOR

FATF	50	Spain	487
European Union	129	Switzerland	613
Germany	241	United Kingdom.....	714
Italy	371	Comparative Analysis.....	846

1. *From FIU to Private Sector*

Which data protection restrictions exist for the transfer of personal data from the FIU to obliged entities?

FATF	50	Spain	487
European Union	129	Switzerland	613
Germany	241	United Kingdom.....	714
Italy.....	371	Comparative Analysis.....	846

2. *From Private Sector to FIU*

Which data protection restrictions exist for the transfer of personal data from obliged entities to the FIU?

FATF	51	Spain	488
European Union	129	Switzerland	613
Germany	242	United Kingdom.....	715
Italy.....	373	Comparative Analysis.....	847

B. DATA EXCHANGE BETWEEN FIU AND CRIMINAL JUSTICE SYSTEM

FATF	51	Spain	489
European Union	130	Switzerland	613
Germany	246	United Kingdom.....	716
Italy.....	374	Comparative Analysis.....	847

1. *From FIU to Criminal Justice System*

Which data protection restrictions exist for the transfer of personal data from the FIU to the criminal justice system?

FATF	51	Spain	489
European Union	130	Switzerland	613
Germany	246	United Kingdom.....	716
Italy.....	374	Comparative Analysis.....	847

2. *From Criminal Justice System to FIU*

Which data protection restrictions exist for the transfer of personal data from the criminal justice sector to the FIU?

FATF	52	Spain	491
European Union	131	Switzerland	614
Germany	251	United Kingdom.....	716
Italy.....	375	Comparative Analysis.....	849

C. DATA EXCHANGE BETWEEN FIU AND INTELLIGENCE AGENCIES

FATF	52	Spain	491
European Union	132	Switzerland	615
Germany	256	United Kingdom.....	717
Italy.....	376	Comparative Analysis.....	849

1. *From FIU to Intelligence Agencies*

Which data protection restrictions exist for the transfer of personal data from the FIU to intelligence agencies?

FATF	52	Spain	491
European Union	132	Switzerland	615
Germany	256	United Kingdom.....	717
Italy.....	376	Comparative Analysis.....	849

2. *From Intelligence Agencies to FIU*

Which data protection restrictions exist for the transfer of personal data from intelligence agencies to the FIU?

FATF	52	Spain	492
European Union	132	Switzerland	615
Germany	258	United Kingdom.....	717
Italy.....	377	Comparative Analysis.....	850

D. DATA EXCHANGE BETWEEN FIU AND TAX AUTHORITIES

FATF	52	Spain	493
European Union	132	Switzerland	615
Germany	258	United Kingdom.....	718
Italy.....	377	Comparative Analysis.....	850

1. From FIU to Tax Authorities

Which data protection restrictions exist for the transfer of personal data from the FIU to tax authorities?

FATF	52	Spain	493
European Union	132	Switzerland	615
Germany	258	United Kingdom.....	718
Italy.....	377	Comparative Analysis.....	850

2. From Tax Authorities to FIU

Which data protection restrictions exist for the transfer of personal data from tax authorities to the FIU?

FATF	53	Spain	493
European Union	132	Switzerland	616
Germany	259	United Kingdom.....	718
Italy.....	377	Comparative Analysis.....	851

E. DATA EXCHANGE BETWEEN FIU AND CUSTOMS AUTHORITIES

FATF	53	Spain	494
European Union	133	Switzerland	616
Germany	260	United Kingdom.....	719
Italy.....	378	Comparative Analysis.....	852

1. From FIU to Customs Authorities

Which data protection restrictions exist for the transfer of personal data from the FIU to customs authorities?

FATF	53	Spain	494
European Union	133	Switzerland	616
Germany	260	United Kingdom.....	719
Italy	378	Comparative Analysis.....	852

2. From Customs Authorities to FIU

Which data protection restrictions exist for the transfer of personal data from customs authorities to the FIU?

FATF	53	Spain	495
European Union	133	Switzerland	616
Germany	261	United Kingdom.....	719
Italy	378	Comparative Analysis.....	853

F. INFORMATION FLOW BETWEEN FIU AND FOREIGN COUNTERPARTS

FATF	53	Spain	495
European Union	134	Switzerland	616
Germany	261	United Kingdom.....	719
Italy	379	Comparative Analysis.....	853

1. Restrictions on Data Transfer from FIU to Foreign FIUs

Which data protection restrictions exist for the transfer of personal data from the FIU to a foreign FIU?

FATF	53	Spain	495
European Union	134	Switzerland	616
Germany	261	United Kingdom.....	722
Italy	379	Comparative Analysis.....	853

2. *Restrictions on Use of Data Obtained from Foreign FIUs*

Which data protection restrictions exist for the use of personal data the FIU received from a foreign FIU?

FATF	54	Spain	496
European Union	135	Switzerland	618
Germany	264	United Kingdom.....	723
Italy.....	379	Comparative Analysis.....	855

G. INFORMATION FLOW BETWEEN FIU AND FOREIGN NON-COUNTERPARTS

FATF	55	Spain	497
European Union	135	Switzerland	619
Germany	264	United Kingdom.....	723
Italy.....	380	Comparative Analysis.....	856

1. *Restrictions on Data Transfer from FIU to Other Foreign Authorities*

Which data protection restrictions exist for the transfer of personal data from the FIU to other foreign authorities?

FATF	55	Spain	497
European Union	135	Switzerland	619
Germany	264	United Kingdom.....	723
Italy.....	380	Comparative Analysis.....	856

2. *Restrictions on Use of Data Obtained from Other Foreign Authorities*

Which data protection restrictions exist for the use of personal data the FIU received from other foreign authorities?

FATF	56	Spain	498
European Union	135	Switzerland	619
Germany	264	United Kingdom.....	724
Italy.....	380	Comparative Analysis.....	856

H. EVIDENTIAL VALUE OF FIU-GENERATED DATA IN COURT PROCEEDINGS

Are there special rules on the admissibility of FIU-generated information as evidence in court proceedings?

FATF	56	Spain	498
European Union	135	Switzerland	620
Germany	266	United Kingdom.....	724
Italy	381	Comparative Analysis.....	857

I. USE OF CDD DATA FOR PROFIT MAKING

To what extent can personal data gathered by obliged entities for the purpose of CDD, or received by them from the FIU, be used for profit-oriented purposes, i.e. for purposes not directly related to the prevention of financial crime? In particular, to what extent are obliged entities authorised to use data mining systems?

FATF	56	Spain	498
European Union	136	Switzerland	620
Germany	267	United Kingdom.....	725
Italy	381	Comparative Analysis.....	857

J. DATA SHARING BETWEEN OBLIGED ENTITIES REGARDING SARs AND FIU REQUESTS

FATF	56	Spain	499
European Union	136	Switzerland	620
Germany	267	United Kingdom.....	725
Italy	381	Comparative Analysis.....	858

1. *Data Sharing Inside a Group*

To what extent are obliged entities authorised to share information regarding the filing of SARs or regarding requests by the FIU with other obliged entities within the same group of companies?

FATF	56	Spain	499
European Union	136	Switzerland	620
Germany	267	United Kingdom.....	725
Italy.....	381	Comparative Analysis.....	858

2. *Data Sharing with Similar Professions*

To what extent are obliged entities authorised to share information regarding the filing of SARs or regarding requests by the FIU with other obliged entities outside the group, but within a similar profession?

FATF	57	Spain	500
European Union	136	Switzerland	621
Germany	268	United Kingdom.....	725
Italy.....	382	Comparative Analysis.....	859

3. *Data Sharing with Obligated Entities Outside the EU*

To what extent are obliged entities authorised to share information regarding the filing of SARs or regarding requests by the FIU with other obliged entities in third countries?

FATF	57	Spain	501
European Union	136	Switzerland	621
Germany	269	United Kingdom.....	727
Italy.....	383	Comparative Analysis.....	860

K. DATA SHARING BETWEEN OBLIGED ENTITIES REGARDING POSSIBLE CASES OF MONEY LAUNDERING

FATF	58	Spain	501
European Union	137	Switzerland	622
Germany	269	United Kingdom.....	727
Italy.....	383	Comparative Analysis.....	860

1. *Data Sharing Inside a Group*

To what extent are obliged entities authorised to share information regarding suspicious transactions or similarly unusual events with other obliged entities within the same group of companies?

FATF	58	Spain	501
European Union	137	Switzerland	622
Germany	269	Comparative Analysis.....	860
Italy	383		

2. *Data Sharing with Similar Professions*

To what extent are obliged entities authorised to share information regarding suspicious transactions or similarly unusual events with other obliged entities outside the group, but within a similar profession?

FATF	58	Spain	502
European Union	138	Switzerland	622
Germany	270	Comparative Analysis.....	861
Italy	383		

3. *Data Sharing with Obligated Entities Outside the EU*

To what extent are obliged entities authorised to share information regarding suspicious transactions or similarly unusual events with other obliged entities in third countries?

FATF	59	Spain	502
European Union	138	Switzerland	622
Germany	271	Comparative Analysis.....	862
Italy	383		

L. DATA MINING BY OBLIGED ENTITIES

To what extent are obliged entities authorised to conduct data mining (instead of mere data matching) within their data banks in order to identify possible cases of money laundering?

FATF	59	Spain	502
European Union	138	Switzerland	622
Germany	271	United Kingdom.....	727
Italy.....	383	Comparative Analysis.....	862

VI. BENEFICIAL OWNERSHIP TRANSPARENCY

A. BENEFICIAL OWNERSHIP INFORMATION

FATF	59	Spain	503
European Union	138	Switzerland	623
Germany	271	United Kingdom.....	728
Italy.....	384	Comparative Analysis.....	863

1. *General Framework*

Does your country impose obligations on legal entities and trusts to disclose their beneficial ownership situation? If so, please specify who is subject to such obligations (e.g. citizens, residents, domestic entities, foreign entities operating in the country)? How are these categories defined?

FATF	59	Spain	503
European Union	138	Switzerland	623
Germany	271	United Kingdom.....	728
Italy.....	384	Comparative Analysis.....	863

2. *Definition of “Beneficiary” and “Effective Control”*

How does your country define the terms “beneficiary” and “effective control” or any other equivalent criteria for beneficial ownership?

FATF	60	Spain	504
European Union	139	Switzerland	625
Germany	273	United Kingdom.....	729
Italy.....	385	Comparative Analysis.....	864

3. *Definition of “Information”*

In the present context, how does your country define the term “information”?

FATF	60	Spain	506
European Union	140	Switzerland	625
Germany	274	United Kingdom.....	730
Italy	386	Comparative Analysis.....	865

4. *Special Rules for Entities with a Cross-Border Dimension*

Does the law provide for special requirements and mechanisms for the disclosure of foreign nationals, foreign entities or foreign trusts? If so, please specify who is covered and what information must be disclosed.

FATF	61	Spain	506
European Union	140	Switzerland	625
Germany	275	United Kingdom.....	730
Italy	386		

B. BENEFICIAL OWNERSHIP REGISTRIES

FATF	61	Spain	507
European Union	141	Switzerland	626
Germany	275	United Kingdom.....	730
Italy	386	Comparative Analysis.....	866

1. *Scope and General Procedure*

Does your country have centralised or decentralised mechanisms to disclose beneficial ownership information (e.g. a national registry)? If so, please specify who is covered by such mechanisms and which information they contain.

FATF	61	Spain	507
European Union	141	Switzerland	626
Germany	275	United Kingdom.....	730
Italy	386	Comparative Analysis.....	866

2. Ex Ante Verification of Accuracy

Are there procedures to verify the accuracy of the beneficial ownership information before it is fed into the aforementioned mechanism(s)? If so, please specify.

FATF	62	Spain	509
European Union	142	Switzerland	626
Germany	277	United Kingdom.....	730
Italy.....	387	Comparative Analysis.....	866

3. Ex Post Review of Accuracy

Are there procedures to verify the accuracy of beneficial ownership information after it has been fed into the aforementioned mechanism(s)? If so, please specify, in particular, the reasons that trigger such *ex post* verification.

FATF	62	Spain	509
European Union	142	Switzerland	626
Germany	277	United Kingdom.....	732
Italy.....	387	Comparative Analysis.....	867

C. ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

FATF	62	Spain	510
European Union	142	Switzerland	627
Germany	278	United Kingdom.....	732
Italy.....	387	Comparative Analysis.....	867

1. Access by FIU and Other Authorities

To what extent do the FIU and other authorities have access to beneficial ownership information and under which conditions?

FATF	62	Spain	510
European Union	142	Switzerland	627
Germany	278	United Kingdom.....	732
Italy.....	387	Comparative Analysis.....	867

2. Access by Obligated Entities

To what extent do obliged entities have access to beneficial ownership information and under which conditions?

FATF	62	Spain	510
European Union	143	Switzerland	627
Germany	278	United Kingdom.....	733
Italy	388	Comparative Analysis.....	868

3. Access by Interested Third Parties

To what extent do interested third parties or the public at large have access to beneficial ownership information and under which conditions?

FATF	63	Spain	511
European Union	143	Switzerland	628
Germany	279	United Kingdom.....	734
Italy	388	Comparative Analysis.....	868

VII. SANCTIONS

A. SANCTIONS FOR MONEY LAUNDERING

FATF	63	Spain	512
European Union	145	Switzerland	628
Germany	279	United Kingdom.....	734
Italy	389	Comparative Analysis.....	869

1. Requirement of a Conviction for a Predicate Offence

To what extent does the commission of a predicate offence have to be proven? Is a criminal conviction for the predicate offence a necessary prerequisite for a criminal conviction of money laundering?

FATF	63	Spain	512
European Union	145	Switzerland	628
Germany	279	United Kingdom.....	734
Italy	389	Comparative Analysis.....	869

2. *Forms of Sanctions*

Which types of sanctions can be applied following a criminal conviction for money laundering?

FATF	63	Spain	512
European Union	146	Switzerland	628
Germany	280	United Kingdom.....	735
Italy.....	389	Comparative Analysis.....	869

3. *Confiscation*

In addition to the aforementioned sanctions, what kinds of confiscation can be imposed in the context of money laundering (e.g. conviction-based confiscation, non-conviction-based confiscation)? Please specify the respective conditions.

FATF	64	Spain	515
European Union	147	Switzerland	630
Germany	281	United Kingdom.....	740
Italy.....	391	Comparative Analysis.....	871

4. *Statistics*

FATF	64	Spain	515
European Union	147	Switzerland	630
Germany	284	United Kingdom.....	740
Italy.....	391	Comparative Analysis.....	871

a. Number of Criminal Proceedings

Are statistics available on the number of criminal proceedings for money laundering and the value of transactions associated with these proceedings? If possible, please specify whether these proceedings are the result of a SAR or another origin.

FATF	64	Switzerland	630
European Union	147	United Kingdom.....	740
Italy.....	391	Comparative Analysis.....	871
Spain	515		

b. Number of Convictions

Are statistics available on the number of criminal convictions for money laundering and the value of transactions associated with these convictions? If possible, please specify whether they are the result of a SAR or another origin.

FATF	64	Spain	516
European Union	148	Switzerland	631
Germany	284	United Kingdom.....	741
Italy	392	Comparative Analysis.....	872

B. SANCTIONS FOR VIOLATIONS OF PREVENTIVE MEASURES

FATF	64	Spain	516
European Union	148	Switzerland	632
Germany	285	United Kingdom.....	744
Italy	392	Comparative Analysis.....	872

1. Money Laundering by Violating Preventive Obligations

Does your law allow for criminal convictions of money laundering for violations of omission in the course of preventive duties (e.g. due diligence, reporting obligations)?

FATF	64	Spain	516
European Union	148	Switzerland	632
Germany	285	United Kingdom.....	744
Italy	392	Comparative Analysis.....	872

2. CDD, Reporting and Other AML-Related Obligations

FATF	65	Spain	517
European Union	148	Switzerland	632
Germany	286	United Kingdom.....	745
Italy	393	Comparative Analysis.....	873

a. Special Criminal Laws against Individuals

Does your law provide for criminal sanctions against individuals for a violation of CDD, reporting and/or other AML-related obligations? If so, please specify, in particular, the type of obligations and the range of sanctions available.

FATF	65	Spain	517
European Union	148	Switzerland	632
Germany	286	United Kingdom.....	745
Italy.....	393	Comparative Analysis.....	873

b. Administrative Sanctions against Individuals

Does your law provide for administrative sanctions against individuals for a violation of CDD, reporting and/or other AML-related obligations? If so, please specify, in particular, the type of and the range of sanctions available? Who imposes these sanctions, and upon whose initiative are they imposed?

FATF	65	Spain	517
European Union	148	Switzerland	633
Germany	287	United Kingdom.....	746
Italy.....	393	Comparative Analysis.....	874

c. Sanctions against Legal Entities

Does your law provide for sanctions against legal entities for a violation of CDD, reporting and/or other AML-related obligations? If so, please specify, in particular, the type of obligations and the range of sanctions available? Who imposes these sanctions, and upon whose initiative are they imposed?

FATF	65	Spain	522
European Union	150	Switzerland	633
Germany	294	United Kingdom.....	746
Italy.....	394	Comparative Analysis.....	877

3. Statistics

FATF	66	Spain	525
European Union	151	Switzerland	635
Germany	294	United Kingdom.....	746
Italy	396	Comparative Analysis.....	877

a. Number of Investigations and Sanctions

Are statistics available on the number of criminal and administrative investigations launched against individuals and legal entities for the aforementioned offences? If so, please specify.

FATF	66	Spain	525
European Union	151	Switzerland	635
Germany	294	United Kingdom.....	746
Italy	396	Comparative Analysis.....	877

b. Number of Convictions

Are statistics available on the number of criminal or administrative convictions/sanctions imposed on individuals and legal entities for the aforementioned offences? If so, please specify.

FATF	66	Spain	526
European Union	151	Switzerland	636
Germany	294	United Kingdom.....	753
Italy	396	Comparative Analysis.....	877

C. CUMULATION OF MONEY LAUNDERING AND OTHER AML-RELATED SANCTIONS

To what extent can sanctions for money laundering be combined with sanctions for the violation of preventive obligations? For example, can one be held criminally responsible for money laundering and subjected to criminal or administrative sanctions for the same criminal conduct for violating reporting obligations?

FATF	66	Spain	526
European Union	151	Switzerland	636
Germany	295	United Kingdom.....	754
Italy.....	396	Comparative Analysis.....	878

VIII. THE USE OF CASH AS A MEANS OF PAYMENT

A. LIMITS

Are there legal limits on the use of cash as a means of payment, in particular any maximum amounts?

FATF	66	Spain	527
European Union	151	Switzerland	636
Germany	296	United Kingdom.....	755
Italy.....	397	Comparative Analysis.....	878

B. STATISTICS

Are there statistics on the use of cash in relation to the overall volume of (cash and non-cash) transactions conducted in the country?

European Union	152	Switzerland	637
Germany	296	United Kingdom.....	755
Italy.....	397	Comparative Analysis.....	878
Spain	527		

IX. SUMMARY, EVALUATION AND FUTURE PERSPECTIVES

FATF	66	Spain	527
European Union	152	Switzerland	637
Germany	296	United Kingdom.....	756
Italy.....	397	Comparative Analysis.....	878