



IBFD Journal Articles

IBFD's high-quality journal articles support your research and daily practice by helping you keep abreast with the latest developments in international tax. Selected and thoroughly reviewed by our team of editors, our journal articles form an integrated set with our worldwide news coverage and our in-depth analyses of tax systems and treaty networks across the globe.

IBFD's journal articles originate from the following well-respected journal titles: *Asia-Pacific Tax Bulletin*, *Bulletin for International Taxation*, *European Taxation*, *Finance and Capital Markets (formerly Derivatives & Financial Instruments)*, *International Tax Studies*, *International Transfer Pricing Journal*, *International VAT Monitor* and *World Tax Journal*.

European Union

**Khadija Baggerman-Noudari^[*] and
Anuschka Bakker^[**]**

An Effective and Efficient AML/CFT Framework, a Key Enabler for Protecting Our Financial System and Society as a Whole

Governments, businesses and organizations worldwide have increasingly fought against money laundering and terrorist financing. Money laundering and terrorist financing are serious issues with severe consequences for the financial system. An effective and efficient legislative framework for anti-money laundering (AML) and countering the financing of terrorism (CFT) is therefore essential.

The reality is that throughout the years the world has witnessed various (bank) scandals, the CumEx/CumCum files, Luxembourg leaks, Panama Papers, Paradise Papers, Pandora Papers, Wirecard scandal and Qatargate, to name a few incidents. Developments such as digitalization, cyber criminality and crypto currencies provide an extra challenge for organizations such as the European Commission and European Banking Authority, legislators, supervisory authorities, AML/CFT-regulated institutions and AML/CFT compliance officers. Due to the cross-border nature of crypto currencies, for example, it can be very complex to comply with varying AML/CFT rules across different jurisdictions, making it challenging to ensure compliance across an organization.

In order to improve the EU AML/CFT framework, the European Commission has presented a package of four legislative proposals^[1] to strengthen the EU AML/CFT framework. In March 2023, the EU adopted three pieces of draft legislation on provisions of the EU AML/CFT package, consisting of four legal initiatives:

- (1) the introduction of a new European supervisor, the AML Authority;
- (2) the introduction of a new regulation to create a single rulebook;
- (3) a new directive, the 6th Anti-Money Laundering Directive,^[2] replacing 5th Anti-Money Laundering Directive (2018/843) (AMLD5); and
- (4) a revision of the regulation on crypto assets.

On 28 March 2023, the proposed rules were approved to close existing gaps in the legislative framework, aiming to combat money laundering, terrorist financing and the evasion of sanctions in the European Union. It is envisaged that the entire EU AML/CFT package, including the AML/CFT regulation, will be in force in 2026. Being up to speed with the latest developments with respect to the EU AML/CFT package is essential for the entire AML/CFT-regulated sector and businesses alike. The articles included in this special issue are based on information available up to 1 October 2023.

The first article, *Navigating the Anti-Money Laundering Landscape – The Role Companies Play in Protecting the Financial System*, sets the scene and guides the reader through the world of money laundering and the three threats to society. These are the so-called “three Cs”, namely: (i) corporate compliance, which starts with good governance; (ii) cash (money laundering is about cash and about the transformation of illegal money into legal money); and (iii) cross-border transactions. To combat crime more effectively, legislation should be harmonized, and countries should cooperate at an international level. The role of ultimate beneficial owner (UBO) registers and the definition of the UBO at EU level and in some EU Member States are also addressed. Furthermore, attention is paid to PEPs (politically exposed persons), and the PEP definitions in EU Member States are provided.

The article *New European Legislation on Anti-Money Laundering* covers the aforementioned European Commission package of legislative proposals to strengthen the European Union’s AML/CFT framework. The article also provides a brief overview of the AML landscape in some of the EU Member States, such as France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom, since a lot of large financial institutions are located in these countries. There are differences to be noted in legislation between the EU Member States based on AMLD5.

The role of the AML/CFT or compliance officer in the fight against money laundering and terrorist financing is also essential and has been specified further in guidelines from the European Banking Authority (EBA). The EBA Guidelines clarify the role of the board and the compliance function, and give more detailed guidance on the role, tasks and performance of the compliance function in a financial institution. The article *New EBA Guidelines – Management Body and AML/CFT Compliance Officer* gives an overview of the new

* Editor *Finance and Capital Markets*, IBFD; Tax and Legal Counsel, Cape Investments, the Netherlands.

** Deputy Director Knowledge Centre and Manager VAT, Transfer Pricing and Specialist Knowledge Group, IBFD, the Netherlands.

1. European Commission, *Beating financial crime: Commission overhauls anti-money laundering and countering the financing of terrorism rules* (20 July 2021), available at https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3690 (accessed 7 Nov. 2023).

2. Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849, available at eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0423 (accessed 7 Nov. 2023).

requirements included in the EBA Guidelines and the results of these guidelines in France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom.

This special issue concludes with the article [UBO Register after ECJ's Preliminary Ruling](#). On 22 November 2022, the Court of Justice of the European Union (ECJ) decided that UBO registers no longer have to be accessible to all members of the public in all cases.^[3] According to the ECJ's ruling, the EU AML/CFT Directive was in this respect contrary to the provisions of the General Data Protection Regulation. This article deals with the ruling of the ECJ to prohibit unrestricted access to the UBO register to the public. EU Member States are obliged to amend national legislation accordingly. This article also provides an overview of the consequences of the ECJ's ruling in France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom.

National legislators, supervisors and AML/CFT-regulated institutions may need to change legislation and internal procedures to comply with the AML/CFT legislation. The editors hope that this special issue will provide financial institutions, management bodies at financial institutions, compliance officers and regulators with a clearer and more detailed insight in how to ensure an effective AML/CFT framework. At the same time, the editors anticipate that this special issue will help to investigate where possible gaps exist in their current applied governance.

Khadija Baggerman-Noudari and Anuschka Bakker

Editors Special Issue *Finance and Capital Markets*

3. Judgment by the Court (Grand Chamber), 22 Nov. 2022, Joined Cases C-37/20 and C-601/20, *WM (C-37/20), Sovim SA (C-601/20) v. Luxembourg Business Registers, The Court (Grand Chamber)*, ECLI:EU:C:2022:912, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62020CJ0037> (accessed 7 Nov. 2023).



About IBFD

The global source for accurate, independent tax publications.

The International Bureau of Fiscal Documentation (IBFD) is the world's foremost authority on cross-border taxation. We offer tax professionals high-quality information and education that enable them to work on the basis of up-to-date and accurate tax knowledge.

Our customers, ranging from multinational corporations to leading universities, tax advisories and government tax agencies, come to us for comprehensive international tax information that helps them achieve the best solutions to their taxation needs.

Interested in subscribing to our online Journal collections? Check our website (www.ibfd.org) or contact our Sales team (sales@ibfd.org).
