

LAW OF PUBLIC-PRIVATE COOPERATION
AGAINST FINANCIAL CRIME

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COOPERATION AGAINST
FINANCIAL CRIME

Developing Information Sharing
to Counter Money Laundering and
Terrorism Financing

Edited by
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PREFACE

Across the European Union (EU), recent years have seen the emergence of public–private partnerships to fight money laundering and terrorism financing through information sharing between competent authorities and the private sector. Consolidating and reinforcing this trend, the new EU Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) legal framework, which was adopted in May 2024, endorses partnerships for information sharing in the fight against financial crime, including information sharing between competent authorities and the private sector. These collaborative mechanisms are a promising innovation that can improve significantly upon conventional forms of law enforcement and intelligence-gathering. However, they can also raise profound fundamental rights issues, first of all because they put the separation between the public and private spheres – a central paradigm of the rule of law – into question. In fact, as highlighted by a US Supreme Court decision of June 2024, these issues’ relevance will in the future increasingly extend beyond anti-financial crime and appear also in the digital realm, chiefly in public–private cooperation with social media companies.¹

Despite its growing importance for criminal policy, public–private information sharing in the fight against financial or other crime is still rarely addressed by law or legal scholarship. This book therefore aims to fill a major gap. It contains the fruits of a collaborative research project – ‘Public–Private Partnerships on Terrorism Financing’ (ParTFin) – that, over the course of the last five years, has analysed the legal challenges posed by new forms of public–private cooperation in AML/CFT. Led by Benjamin Vogel at the Max Planck Institute for the Study of Crime, Security and Law, and in collaboration with the Tilburg Institute for Law, Technology and Society, the project united a group of colleagues from institutions across Europe who pursued interdisciplinary and comparative legal research with the ultimate aim of developing the contours of an adequate legal framework for public–private information sharing. The editors were fortunate to work with such a highly committed group of colleagues who, through several workshops and countless discussions, generously shared their knowledge and mutually supported each other’s work.

¹ *Murthy v. Missouri*, 603 U.S. ____ (2024).

The collaborators owe a particular debt of gratitude to numerous experts from competent authorities and financial institutions who provided in-depth insights into information-sharing partnerships and into the wider practice of joint public–private efforts in AML/CFT. Without their generosity, it would have been impossible to understand the various emerging forms of cooperation and, on this basis, translate them into legal concepts. The usually very open and constructive atmosphere of these interactions underscored the need for, as well as the feasibility of, greater engagement between legal scholars, authorities and the private sector in designing sustainable policies to respond to today’s challenging European security environment – that is, solutions that are both effective and not prejudicial to fundamental rights. In light of this experience, the editors believe that the differences that characterise often-antagonistic relationship between legal scholarship – first and foremost data protection lawyers – and security practitioners can and should be bridged by fostering constructive dialogue that allows each side to understand and accommodate the legitimate concerns of the other, thereby jointly contributing to a strengthening of the rule of law.

In addition, the editors are profoundly thankful to the many individuals who helped this project to come to fruition. Particular thanks are due to Jean-Baptiste Maillart for his contribution to the initial research concept, and to Bertil Vagnhammar and Petar Kovachev of the European Commission – DG Home Affairs and Migration, who were a constant and reliable help in the project management, especially during the difficult days of the Covid-19 pandemic. Furthermore, this book would not have been possible without the outstanding work of the copy editors Kiehlor Mack and Joe McClinton, as well as the wonderful team at Intersentia, in particular Francesca Ramadan, Rebecca Moffat and Rebecca Bryan.

Last but not least, the editors are grateful for the funding of ParTFin by the EU’s Internal Security Fund – Police,² which early on decided to support academic research on the emerging practices of public–private information sharing. The editors are equally grateful that they were given the opportunity to share and discuss the project’s findings and recommendations with policymakers and competent authorities from across the EU, notably through a workshop in Brussels in autumn 2021 and another in Rome in spring 2023. It is to be welcomed that the recently adopted new EU AML/CFT legal framework acknowledges the need to put information sharing on a sound legal basis. The editors hope that the present study will not only stimulate further research on these matters, but

² The content of this book 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.

also provide legislators, courts and competent authorities with a starting point for further developing and solidifying EU and national legal frameworks for public–private cooperation in AML/CFT, and possibly also with inspiration for developing the law in other areas, including the collaboration between the public sector providers of digital services.

Benjamin Vogel, Eleni Kosta and Maxime Lassalle
Freiburg/Tilburg/Dijon, July 2024

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