

Thematic dossier:
AML and Blacklisting of High-Risk Third Countries

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"The great idea of a United Europe - but recently still considered as Utopian - today emerges from the realm of aspiration into the phase of practical realisation"

Joseph Bech

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About this OER

About this OER

1. **Author:** This OER has been developed by Dr Georgios Pavlidis, Assistant Professor of International and EU law at NUP, Cyprus as part of the activities of the Jean Monnet Chair. You can find more information about this projects at <https://www.nup.ac.cy/jean-monnet-chair/>
2. **Methodology:** This OER was developed in accordance with the principles of the UNESCO Recommendation on Open Educational Resources, as well as the Cape Town Open Education Declaration and the Paris OER Declaration, which deal with the application of open licenses to educational materials.
3. **Target audience:** This OER is designed for undergraduate students in the fields of law, political sciences, social sciences, etc, as well as for lawyers, judges, prosecutors and practitioners who are interested in the EU action in the areas of asset recovery and AML.
4. **The topic of this OER:** This OER deals with the informal synergies between the FATF and EU blacklisting of high-risk third countries (see sections **Learning Objectives** and **Learning Outcomes**)



About this OER

5. **Navigation:** This OER is structured into several sections, including an introduction, main content, learning activities, and additional resources. Use the table of contents provided to navigate through the OER and locate specific sections of interest.
6. **Reading and Understanding:** Begin by reading the introduction to gain an overview of the OER's purpose and learning objectives. Proceed to the main content, where you will find in-depth information and key concepts related to the topic. Take your time to understand the presented information and ensure comprehension before moving forward.
7. **Learning Activities:** In this OER you will encounter learning activities designed to enhance your understanding and application of the concepts covered. Engage with these activities to reinforce your learning and test your knowledge. Feel free to discuss the activities with peers or seek additional resources to deepen your understanding further.
8. **Reflection and Critical Thinking:** As you progress through the OER, take the opportunity to reflect on the concepts presented and consider their implications. Encourage critical thinking by asking questions, analyzing examples, and connecting the information to real-world scenarios.



About this OER

9. **Additional Resources:** The OER provides a list of additional resources, such as books, articles, websites, or videos, that you can explore for further study or to delve deeper into specific topics covered. Take advantage of these resources to expand your knowledge and explore related areas of interest.
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11. **Continuous Learning:** The field of knowledge covered by this OER is continually evolving. Stay updated by seeking current research, publications, or news related to the topic. Consider engaging in discussions or attending relevant events to stay connected with advancements in the field.

We hope that this OER serves as a valuable resource for your learning journey. If you have any questions or require further assistance, please reach out to us at: g.pavlidis@nup.ac.cy

Enjoy your exploration and learning!

Georgios Pavlidis

Jean Monnet Chair, NUP



Learning Objectives

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Learning Objectives

1. Understand the concept of informality in the area of Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) and its implications.
2. Analyze the role of the Financial Action Task Force (FATF) in informal governance and law-making in the context of AML/CFT.
3. Examine the contributions of the European Union (EU) and its Member States to the development and implementation of FATF's informal standards.
4. Evaluate the informal arrangements and synergies between the EU's policy on high-risk third countries and the FATF listing process.

Learning Outcomes

A row of five lightbulbs hanging from above, with the central one slightly lower than the others. The slide background is dark grey with a torn paper effect at the bottom. On the right side, there are three white lightbulbs and one yellow lightbulb with radiating lines, suggesting it is turned on.

Learning Outcomes

1. Explain the concept of informality in AML/CFT and its significance in the establishment of standards beyond traditional norm-building processes.
2. Assess the role and influence of the FATF as an informal governance and law-making body in the field of AML/CFT.
3. Analyze the contributions of the EU and its Member States in shaping and implementing FATF's informal standards within their internal legal order.
4. Examine the informal arrangements and synergies between the EU's policy on high-risk third countries and the FATF listing process, highlighting their impact on international AML/CFT efforts.

Main Content

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Introduction

- EU policies in the Area of Justice, Freedom, and Security address security risks with both internal and external dimensions.
- The EU recognizes the importance of addressing distant threats beyond its external borders.
- Transnational risks such as organized crime, illicit trades, money laundering, terrorism, radicalization, and cybercrime contribute to the interdependence between internal and external security.
- The EU has strengthened its AML/CFT legal framework internally through directives and harmonization initiatives.

Introduction

- Externally, the EU aligns with and contributes to international AML/CFT initiatives, particularly the work of the Financial Action Task Force (FATF).
- This study aims to explore the EU's AML/CFT strategy as part of its external relations, where informal arrangements play a significant role.
- Informality has been on the rise in AML/CFT since the establishment of the FATF, which operates outside traditional norm-building processes.
- The EU and its Member States contribute to the development of FATF's informal standards and implement them internally, while also exporting them through informal synergies, such as the identification of high-risk third countries.

Key Components of AML

Component 1

preventive AML
measures

E.g. customer due diligence, record keeping, implementation of internal control measures, reporting of suspicious transactions (SARs)

Component 2

criminalization of
money laundering

E.g. conversion or transfer of property, concealment of the true nature, source or ownership of property; aiding and abetting, inciting and attempting such an offense

Component 3

international
cooperation

E.g. spontaneous and upon request exchanges of information. Safeguards with regard to confidentiality, respect of the purpose for information exchanges, etc.

Interdependence between the Internal and External Dimensions of the AML/CFT

- Criminal activities and security risks in non-EU states impact the EU territory.
- Drug trafficking, human trafficking, and illicit trade in firearms harm both the country of origin and European society, economy, and security.
- Illicit proceeds, including corruption and drug trafficking profits, can affect the EU economy and financial system.
- Financing of terrorism poses significant security risks, with funds collected in third countries being used for terrorist acts in the EU.
- International cooperation is crucial for preventing, investigating, and prosecuting crimes that impact the EU but are committed abroad.

Interdependence between the Internal and External Dimensions of the AML/CFT

- Strengthening partnerships with the United Nations, EU neighborhood, and key partners is essential for effective AML/CFT strategies.
- The EU monitors AML/CFT deficiencies in third countries through progress reports and threat assessments.
- The EU policy on high-risk third countries plays a significant role in monitoring AML/CFT deficiencies and pressuring third countries for reforms.
- The EU policy on high-risk third countries is influenced by the informal work of the FATF, the leading global forum for AML/CFT standards.
- Understanding informality in the external dimension of the AFJS is necessary to assess the impact of FATF's informal standards on EU external relations law.

Informality in the External Dimension of the AFJS

- The FATF serves as an example of the global trend towards informal law in the AML/CFT context.
- Soft law instruments in the EU, such as opinions, communications, and action plans, have legal effects and are taken into account by EU institutions and member states.
- The Court of Justice of the European Union recognizes the legal implications of EU soft law instruments in interpreting national measures.
- EU's external relations with third countries are increasingly influenced by soft international arrangements.
- Soft law instruments in EU external relations provide flexibility but also pose risks, such as circumventing safeguards and sidelining parliamentary influence.

Informality in the External Dimension of the AFJS

- Informal processes and arrangements occur within the European Council and involve the European External Action Service, shaping EU external relations.
- Informality plays a significant role in shaping EU external relations, including the post-Lisbon era's development of informal leadership practices and interest-based policies.
- The external dimension of the AFJS requires cooperation between the EU and third countries, which can be informal or formal based on multilateral or bilateral framework agreements.
- Action plans, strategies, progress reports, and memoranda of understanding shape cooperation between the EU and third countries.
- Informality allows for flexibility and adaptation to specific circumstances in EU cooperation with third countries, contrasting the standardized approach of formal clauses.

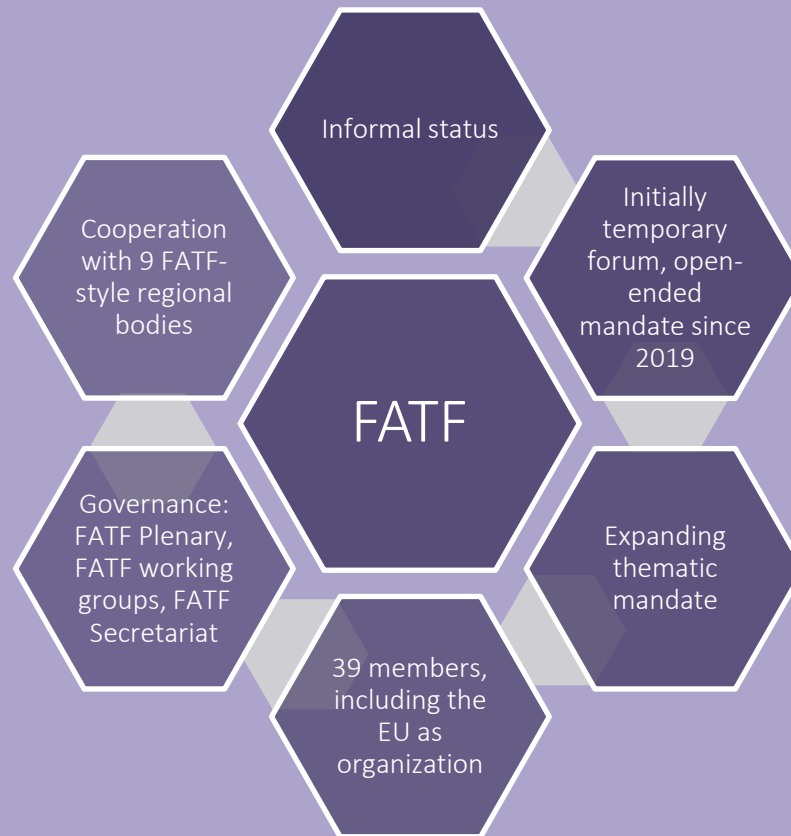
The FATF as a Laboratory of Informal Law-Making

- Each legal order has its doctrine of sources to determine the bindingness of norms.
- Legal effects can be generated through sources and the act of interpretation, blurring the distinction between them.
- Informal processes shape domestic and international policies and norms, with formal institutions endorsing informal rules.

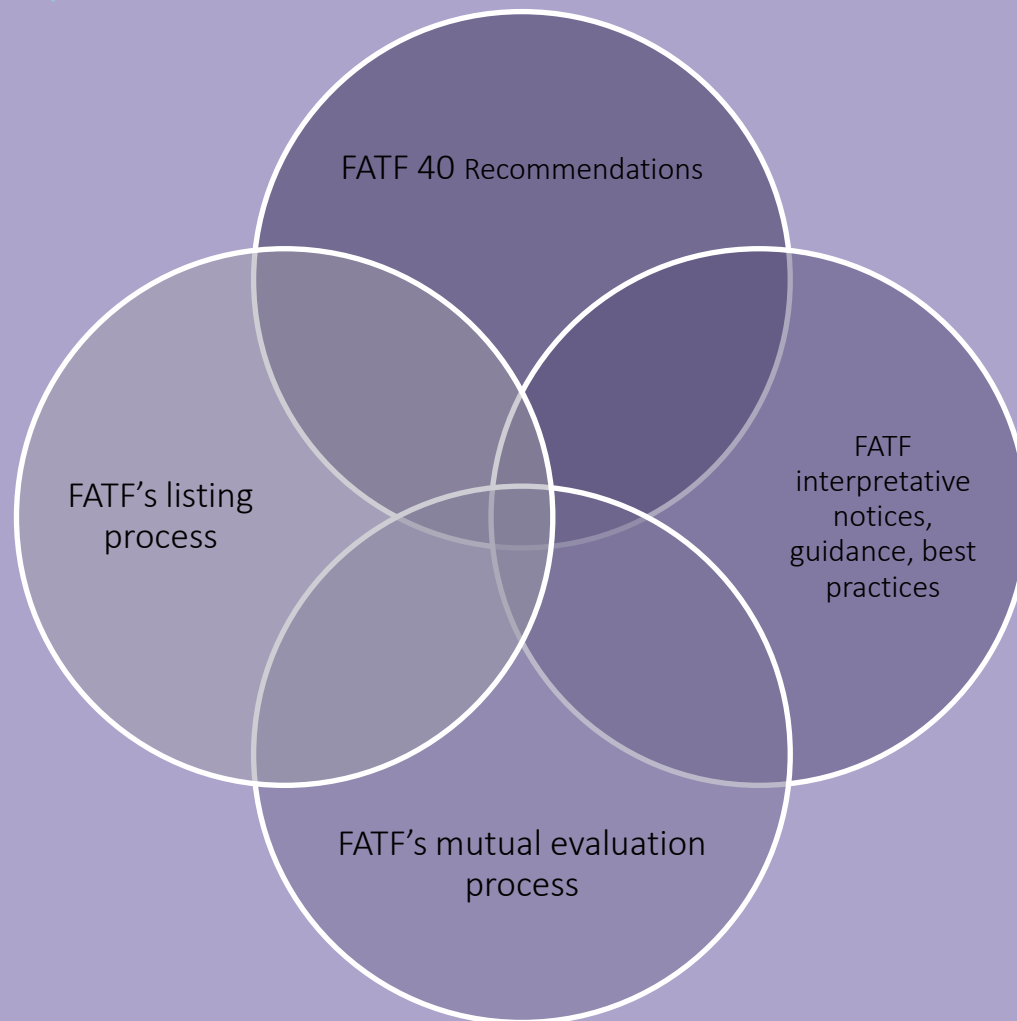
The FATF as a Laboratory of Informal Law-Making

- The FATF, an intergovernmental forum, started as a temporary body but evolved into a sustained commitment to combat money laundering and terrorism financing.
- The informal status of the FATF raises questions about its legitimacy and governance.
- FATF's adoption of the 40 Recommendations, complemented by interpretative notes and other informal documents, constitutes soft law.
- EU legislative initiatives in AML/CFT are heavily influenced by the FATF's work, incorporating informal rules into EU secondary law.

The FATF as a Laboratory of Informal Law-Making



The FATF as a Laboratory of Informal Law-Making



The FATF as a Laboratory of Informal Law-Making

- The flexibility of the FATF paradigm allows for prompt development and transposition of standards compared to traditional international law instruments.
- The informal law-making at FATF blurs the dichotomy between hard law and soft law in the AML/CFT context.
- The significance of FATF norms is evident at the EU level, with implementation and convergence of domestic norms with FATF standards.

The FATF as a Laboratory of Informal Law-Making

- Informality has allowed the FATF to gain legitimacy and promote itself as an expert body through a multidisciplinary approach and engagement with the private sector.
- The FATF has developed a broad informal network of organizations worldwide to promote the international implementation of its standards.
- Blacklists and grey lists are used as informal tools by the FATF to pressure jurisdictions into addressing deficiencies in AML/CFT.
- Compliance with FATF standards is often achieved through pre-emptive measures to avoid being blacklisted, even by non-members of the FATF.

FATF and the EU: The Policy on High-Risk Third Countries

- The interaction between the EU and the FATF is a two-way process.
- The EU incorporates FATF rules into its own law-making process.
- The transposition of FATF standards into EU law exemplifies the rise of informality in global governance.
- The EU's policy on high-risk third countries and its synergies with the FATF listing process illustrate this informality.
- The EU identifies high-risk third countries based on the FATF's evaluations and assessments.

FATF and the EU: The Policy on High-Risk Third Countries

- The EU 2020 AML Action Plan outlines the process for identifying high-risk third countries.
- The Commission's listing of high-risk third countries is subject to scrutiny and possible veto by the European Parliament and the Council.
- The EU's listings of high-risk third countries have practical implications and can affect capital flows and foreign direct investment.
- The process of blacklisting or grey-listing jurisdictions has been criticized for its lack of transparency and due process.
- The EU should strive for transparency, legal certainty, and avoidance of arbitrariness in its blacklisting process and consider supporting positive measures to address AML/CFT weaknesses in third countries.

FATF and the EU: The Policy on High-Risk Third Countries

- Securing cooperation from third countries in AML/CFT supports EU's internal objectives, reinforces its role in international relations, and enhances the visibility of the EU's collective approach.
- EU external action and that of its Member States serve as a means to export and impose FATF's informal law-making on third countries.
- The EU participates in FATF's meetings and initiatives, shaping its informal standards, which are subsequently incorporated into EU security policy.
- The EU's engagement with FATF should be seen as participation in a global organization for knowledge creation in AML/CFT, allowing the EU to optimize its external AML/CFT policy while ensuring fairness, due process, and transparency.

Key Takeaways

Key Takeaways

1. The rise of informality in AML/CFT, facilitated by organizations like the FATF, challenges traditional norm-building processes in international law.
2. The EU and its Member States play a significant role in shaping and implementing FATF's informal standards within their legal frameworks.
3. Informal arrangements and synergies between the EU's policy on high-risk third countries and the FATF listing process contribute to AML/CFT efforts.
4. Understanding informality in AML/CFT is crucial for comprehending the complex dynamics and interactions between formal and informal governance structures.
5. Effective cooperation and coordination between international and regional entities are essential for combating money laundering and the financing of terrorism.



Learning Activity

Learning Activity

Activity: Exploring the Opportunities and Challenges of AI in AML/CFT

In this interactive learning activity, you will have the opportunity to delve into real-life case studies that showcase the interactions between the European Union's (EU) policy on high-risk third countries and the Financial Action Task Force (FATF) listing process. Through peer-review and collaborative discussions, you will analyze the informal arrangements and synergies between these entities and their impact on Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) efforts.

Formation of Groups: You will be divided into small groups of 3-4 students, ensuring diverse perspectives and backgrounds within each group.



Learning Activity

Case Study Analysis: Each group will be assigned a different real-life case study that illustrates the informal arrangements and synergies between the EU's policy on high-risk third countries and the FATF listing process. You will be provided with resources such as reports, articles, or official documents related to the case studies to facilitate your analysis.

Case Study Presentation: Within your assigned groups, thoroughly analyze the provided case study, focusing on the key aspects that highlight the informal arrangements and synergies between the EU and FATF. Prepare a comprehensive presentation summarizing your analysis, including the challenges, opportunities, and impact on AML/CFT efforts.

Peer-Review and Feedback: Engage in a peer-review session where your group will present your case study analysis to another group. Receive constructive feedback from your peers, who will assess the strengths, identify areas for improvement, and provide additional insights based on your presentation. This process encourages critical evaluation and facilitates a collaborative learning environment.



Learning Activity

Presentation Revision: Based on the feedback received, revise your case study presentation, incorporating the valuable suggestions and refining your analysis. This ensures a comprehensive understanding of the informal arrangements and synergies between the EU and FATF, showcasing your commitment to continuous improvement.

Peer Discussion and Debate: Participate in a facilitated discussion with all groups, where you can engage in constructive debates and exchange diverse perspectives on the case studies presented. Challenge assumptions, ask probing questions, and critically evaluate the effectiveness of the informal governance structures in combating money laundering and the financing of terrorism. This active engagement fosters critical thinking and a deeper understanding of the subject matter.

Collaborative Analysis: Collaborate within your group to collectively analyze the strengths and weaknesses of the informal arrangements and synergies between the EU and FATF. Identify potential improvements or alternative approaches to enhance international cooperation in AML/CFT. Encourage open dialogue, leveraging the diverse expertise within your group to develop well-rounded insights.



Learning Activity

Peer-Review Evaluation: Each group provides a written evaluation of the case study presentation they reviewed, highlighting the strengths and areas for improvement. These evaluations are then shared with the respective presenting group, promoting a culture of peer-learning and continuous improvement.

Reflection and Individual Exploration: Take time for individual reflection, critically evaluating the overall findings, key insights, and the significance of understanding informality in AML/CFT. Further explore the topic individually through additional research, reading, or writing assignments, allowing you to delve deeper into specific aspects of informal governance and its impact on combating money laundering and the financing of terrorism.

Through this interactive learning activity, you will actively engage in case study analysis, peer-review, and collaborative discussions. By analyzing real-life examples, you will gain a comprehensive understanding of the informal arrangements and synergies between the EU and FATF. This will enable you to contribute to a collective evaluation of their effectiveness in addressing AML/CFT challenges and foster critical thinking skills that are essential in this complex field.



Self-Assessment Questions

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Self-Assessment Questions

How does informality in the area of AML/CFT challenge traditional norm-building processes in international law?

What role does the FATF play in informal governance and law-making in AML/CFT?

How do the EU and its Member States contribute to the development and implementation of FATF's informal standards?

What are the informal arrangements and synergies between the EU's policy on high-risk third countries and the FATF listing process, and how do they impact AML/CFT efforts?

Why is understanding informality in AML/CFT important for policymakers, legal practitioners, and professionals working in the field?

Additional Resources

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Additional Resources at EU level

Directive 2018/843/EU of the European Parliament and of the Council of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, OJ L 156/43, 19.6.2018 (Fifth AML Directive)

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127/39, 29.4.2014.

Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332/103, 18.12.2007.

Bibliography

Bibliography

- Jochen Rehl & Hans-Bernhard Weisserth (eds), Handbook on Common Security and Defense Policy, Austrian Federal Ministry 2007
- Judith Vorrath, Organized Crime on the UN Security Council Agenda, Stiftung Wissenschaft und Politik, SWP Comment n. 3, 2018
- Christine Kaddous, «Un nouveau cadre pour la dimension externe de l'espace de liberté, de sécurité et de justice», in: C. Kaddous & M. Dony, (eds), D'Amsterdam à Lisbonne: dix ans d'espace de liberté, de sécurité et de justice, Basel 2010, 61-79
- Tanja A. Börzel, Yasemin Pamuk & Andreas Stahn, «Fighting Corruption Abroad: The EU's Good Governance Export», in: S. Wolf & D. Schmidt-Pfister (eds), Anti-Corruption Regimes in Europe: Between Corruption, Integration and Culture, Baden-Baden 2010, 47-68

Bibliography

- Georgios Paylidis, «Asset Recovery: A Swiss Leap Forward?», 20 Journal of Money Laundering Control (2017), 150-158.
- Jörg Monar, The External Dimension of the EU's Area of Freedom, Security and Justice: Progress, Potential and Limitations after the Treaty of Lisbon, Swedish Institute for European Policy Studies, SIEPS Report 2012:1
- Linda Senden, Soft Law in European Community Law, London 2004
- Fabien Terpan, «Soft Law in the European Union: The Changing Nature of EU Law», 21 European Law Journal (2015), 68-96.
- Meijers Committee, Note on the use of soft law instruments under EU law, in particular in the area of freedom, security and justice, and its impact on fundamental rights, democracy and the rule of law, Note n. 1806, 9 April 2018

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Thank you once again for being part of our educational journey. We are grateful to have had the opportunity to inspire and empower you and we wish you success in all your future endeavors.

With gratitude,

Georgios Pavlidis

Jean Monnet Chair, NUP

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The Jean Monnet Chair at NUP

Since 2020, Neapolis University Pafos has the honor to be the host of a prestigious Jean Monnet Chair, which has been awarded to Dr. George Pavlidis to further promote his teaching and research into innovative methods for “Targeting Criminal Assets in the European Union”. The Jean Monnet Chair at NUP fosters the development of existing and new teaching, including Open Educational Resources (OER), while research activities and events give greater visibility to this field of study at national and regional level. The promotion of knowledge sharing through OERs, a working papers series and a knowledge database on asset recovery fall within the mission objective of the NUP School of Law, which aims to consolidate a strong contribution to the discussion on the future of the European integration.

