

Contents

1	Introduction	1
	References.	5
Part I Mapping the Boundaries of an Intricate Playing-Field		
2	Finding the Way in a Complex Multi-Level Legal Framework	9
2.1	The Definition of “Bank” and “Financial Institution”	10
2.2	Criminal Liability of Legal Persons: A Brief Overview	20
2.3	The Interaction Between Administrative and Criminal Matter	23
2.3.1	Managing the Risk of Transnational <i>Bis in idem</i> : Double Jeopardy Clause in the US Federal Legal System	31
2.3.2	<i>Ne Bis In Idem</i> Protection in the European Convention on Human Rights	41
2.3.3	Enforcing the Principle of <i>Ne Bis In Idem</i> in the EU.	49
2.3.4	Gathering Information Within Multi-Disciplinary Cooperation Networks	65
2.4	Methodology: Transversal Comparative Approach Applied to a Complex and Hybrid Legal Framework	71
	References.	74
3	Strengthening Financial Investigation and Supervision at the International Level	85
3.1	The Essential Role of Self-Regulatory Bodies	86
3.2	The Financial Action Task Force: Administrative Financial Supervision and Criminal Investigative Measures.	89
3.3	Financial Intelligence Units and the Egmont Group	93
3.4	Ensuring Common Standards Against Financial Crime at Regional Level: The Council of Europe.	98
3.5	Ensuring Effective Banking Oversight: The Basel Committee on Banking Supervision.	100
	References.	105

Part II Criminal Profiles in Banking Supervision

4	The Institutional Design of EU Banking Supervision	109
4.1	From the Financial Crisis to the Banking Union	110
4.2	The European Supervisory Authorities	115
4.3	Sanctioning Powers in the Single Rulebook: Relevant Provisions of the IV and V Capital Requirement Directive.	117
4.4	Banking Supervision in the Eurozone: The Single Supervisory Mechanism.	120
4.4.1	SSM Supervisory Powers	126
4.4.2	SSM Sanctioning Powers.	129
4.4.3	SSM Investigations and Procedures.	135
	References.	140
5	The US Regulatory Framework of Banking Supervision	145
5.1	Collapse of a System: Deregulation and Financial Crisis in a Complex Supervisory Framework	145
5.2	The Federal Reserve.	149
5.3	Other US Regulatory Agencies (FDIC, OCC, SEC)	151
5.4	The 2010 Dodd-Frank Act: Impact and Waves of Counter-Reform.	154
	References.	155
6	The Hybrid Nature of Banking Supervision.	159
6.1	Banking Supervision and the BCBS <i>Core Principles</i> : Defining Effective Supervisory Models?	160
6.1.1	Independence and Accountability of Banking Supervisors.	162
6.1.2	Dissemination of Collected Information and Investigative Overlapping in the US Regulatory Framework	171
6.1.3	Dissemination of Collected Information Within the Single Supervisory Mechanism: Overview of Main Critical Issues.	174
6.2	Banking Supervisory Sanctions in the EU: A New Field of Criminal Law?	182
6.3	Fair Trial Guarantees and Banking Supervision: The Right to an Independent Tribunal	194
6.3.1	The Right to an Impartial Tribunal	199
6.3.2	The Principle of Equality of Arms: Right to Be Heard, and Right of Access to Files.	204
6.3.3	Right to a Full Judicial Review	215
6.3.4	Right of Legal Assistance and Right to a Public Hearing.	226
6.3.5	The Privilege Against Self-Incrimination	230

6.3.6 The Right to Remain Silent in the SSM Legal Framework 253

6.3.7 The Protection from *Bis In Idem* 260

References 266

Part III Banking Criminal Investigations

7 Real-Time Monitoring of Banking Data: State of Play 279

7.1 Banking Investigative Techniques and the Residual Role of Bank Secrecy Law 280

7.2 Measures (i) and (ii): Access to Banking Information and Past Transactions 285

7.3 Measures (iii): Real-time Monitoring of Banking Data 289

7.4 Measures (iv): Freezing of Banking Accounts (Brief Overview) 293

7.5 Real-time Monitoring of Banking Data in the EU 294

7.6 Real-time Monitoring of Banking Data in the US 302

7.6.1 Court Order 303

7.6.2 Judicial or Grand Jury Subpoena 305

7.6.3 Administrative Subpoena or Summons 307

7.6.4 Probable Cause Search Warrant 308

References 315

8 Introducing a Regulation on (Banking) Data Surveillance in the EU: Some Proposals 321

8.1 Identifying the Fundamental Right(s) Affected by Real-Time Monitoring of Digital (Banking) Data 321

8.2 Defining Procedural Rules for the Surveillance of Personal (Banking) Data 333

8.2.1 Defined Objective Scope of Real-Time Monitoring: Offences 340

8.2.2 Defined Subjective Scope of Real-Time Monitoring: Potential Targets 341

8.2.3 Determined Duration of Surveillance Measures 342

8.2.4 Safeguards in the Storage of Data 342

8.2.5 Public Reporting Duties 343

8.2.6 Anti-Leaking Precautions 343

8.2.7 Technical Neutrality and Content-Based Approach 344

8.2.8 Exclusionary Rules and Destruction of Illegally Obtained Information 346

8.3 Right to an Effective Remedy: The Authority in Charge of Real-Time Monitoring of Banking Records 347

References 350

- 9 Conclusion** 353
 - 9.1 The Compliance with Fair Trial Rights in the Single Supervisory Mechanism..... 355
 - 9.2 The Protection of Fundamental Rights (Right to Privacy) in the Surveillance on Personal (Banking Digital) Data 359