# Contents

1 Introduction ............................................. 1  
References .................................................. 6

## Part I  Instructions for the Socio-Legal Research

2 The Socio-Legal Framework ................................. 9  
2.1 An Elastic Concept of Legal Effectiveness ............... 15  
2.1.1 The Political Plan ................................ 16  
2.1.2 The Symbolic Function of Law ..................... 18  
2.1.3 The Integration of the Law in the Existing Criminal  
      Justice System .................................... 21  
2.1.4 The Effects of the Implementation ................... 22  
2.2 Assessing the Variables ................................. 24  
2.3 Considerations ........................................ 28  
References .................................................. 28

## Part II  The Genesis of the Anti-Money Laundering Regime:  
Tracing Statements of Legislative Purposes

3 The International Law-Making Process ....................... 33  
3.1 Tracing the International Law-Making Process .......... 35  
3.1.1 The Genesis of the Money-Laundering Offence  
      in the Vienna Convention ......................... 37  
3.1.2 The Money-Laundering Offence: A Tool to Tackle  
      Organised Crime .................................... 40  
3.1.3 The FATF Recommendations ........................ 42  
3.1.4 Expanding the Definition of the Money-Laundering  
      Offence ............................................ 44
3.2 The EU’s Motivation for Criminalising Money Laundering ....... 45
  3.2.1 The Fourth EU Anti-Money Laundering Directive ....... 48
  3.2.2 New Developments: Organised Crime, Terrorism,
           Corruption and Economic Infringements of the Law .... 55
3.3 Considerations ........................................ 60
References ............................................... 65

4 The German Law-Making Process: Tracing Legislative
   Intents .................................................. 69
  4.1 The Parliamentarian Debate ................................ 71
  4.2 Following Significant Amendments to the Anti-Money
       Laundering Regime .................................... 77
  4.3 Considerations ........................................ 80
References ............................................... 80

Part III The Integration of Article 261 in the German Criminal Code

5 The Doctrinal Legal Debate on Article 261 of the German
   Criminal Code ........................................... 85
  5.1 The Interests Protected by the Law: All Interests
       or no Interest? ........................................ 86
    5.1.1 The Interests Protected by Predicate Offences ....... 89
    5.1.2 The Administration of Justice ........................ 91
    5.1.3 The Economic Interest ............................. 92
    5.1.4 Internal Security ................................... 95
  5.2 Too Broad or Too Narrow? ................................ 97
    5.2.1 The Catalogue of the Predicate Offences:
           A Wide Scope for a Limited Application .......... 98
    5.2.2 The mens rea Element: Punishing Reckless Bakers
           Instead of Mafia Bosses ........................... 99
    5.2.3 Defence Attorneys Under Threat ..................... 102
    5.2.4 Definitions of ‘Gegenstand’ and of ‘herrührt’ ..... 104
  5.3 Doctrinal Opinions on the (Symbolic) Effectiveness
       of the Money-Laundering Offence ....................... 106
  5.4 Considerations ........................................ 109
References ............................................... 110

Part IV The Implementation of the Anti-Money Laundering
   Regime: Between Law in Action and Law Inaction

6 Data on the Implementation of the Anti-Money Laundering
   Regime .................................................. 117
  6.1 General Information on Statistics Provided by the Federal
       Statistical Office, the Police and the Financial Intelligence
       Unit (FIU) ........................................... 120
6.2 Oswald’s Research of 1996: A Starting Point for a Further Theorisation ........................................ 121
6.3 (Preliminary) Investigations, Type of Charges, Convictions and Penalties ........................................ 126
6.4 The Co-operation Between FIU and Law Enforcement Agencies .................................................. 130
6.5 Typologies of STRs Filed to the FIU ........................................ 132
6.6 Critical Issues .......................................................... 133
6.7 The Volume of the Phenomenon of Money Laundering in Germany: Economic Estimates ......................... 135
6.8 Cost-Benefit Analyses .................................................. 137
6.9 Considerations .......................................................... 141
References ..................................................................... 146

7 Opinions on the Anti-Money Laundering Regime. The Implementation of the Law from the Perspective of Legal Actors and Experts ............................................... 149
7.1 Is Germany an Eldorado for Money Launderers? .............. 150
  7.1.1 What Is the Impact of Money Laundering? ............ 154
  7.1.2 Economic Stability, Rule of Law: A Fertile or Hostile Environment for Money Launderers? ................. 156
  7.1.3 Considerations .................................................. 158
7.2 Is the Current Policy Appropriate for Tackling Money Laundering? What Are the Legal Hindrances and Technical Strengths of the Policy? ............................. 159
  7.2.1 Legal Hindrances ........................................ 159
  7.2.2 Systematic Hindrances ................................. 164
  7.2.3 Considerations .................................................. 174
7.3 Perceived Conflicting Interests ........................................ 175
  7.3.1 The Law-Making Process .............................. 176
  7.3.2 Dirty Money Versus Capital Flight .................... 177
  7.3.3 Conducting Business Versus Persecuting and Preventing Crime ........................................ 179
  7.3.4 Expanding Criminal Law Versus Ultima Ratio  ...... 181
  7.3.5 Is It Possible to Tackle Illicit Financial Flows Without Conflicting with the Interests of a Free Market? .................................................. 183
  7.3.6 Considerations ........................................ 184
7.4 Perspectives on the Effectiveness of the Law ................. 187
  7.4.1 Is the Anti-Money Laundering (Law) Effective? ...... 187
  7.4.2 Is the Policy Effective in Deterring Organised Crime? . . . . . . . . . . . . . . . . . . . 194
  7.4.3 Is Article 261 of the German Criminal Code (GCC) an Example of Symbolic Legislation? .................. 197
  7.4.4 Considerations ........................................ 200
Anti-money Laundering Law: Socio-legal Perspectives on the Effectiveness of German Practices
Zoppe, V.
2017, XIV, 214 p. 1 illus., Hardcover
ISBN: 978-94-6265-179-1
A product of T.M.C. Asser Press