



# AML TENDER

JUST/2018/JACC/PR/CRIM/018

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Development and Organisation of Training for Lawyers  
on Anti-money Laundering and Counter Terrorist  
Financing (AML-CTF) Rules at EU Level

## TRAINERS' MANUAL

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22 February 2021

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# TRAINERS' MANUAL

## INTRODUCTION

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This training manual (the trainers' manual) has been prepared for those who train lawyers on anti-money laundering (AML) and counter terrorist financing (CTF) rules at EU level. There is a corresponding manual available (the users' manual) for those who are participating as students in the training.

Both manuals are products of a contract awarded by the European Commission to the European Lawyers Foundation (ELF) and the Council of Bars and Law Societies of Europe (CCBE) on the 'Development of organisation of training for lawyers on Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) Rules at EU level' (Service contract JUST/2018/JACC/PR/CRIM/0185).

The European Commission's objectives in putting this contract out to tender:

*'The general objective of the contract is to train, raise awareness and promote the dissemination among lawyers of the key principles and concepts of the EU AML/CTF rules. The purpose of the contract is to analyse, assess and support lawyers' needs by increasing their awareness on their role and obligations in the fight against money laundering and financing of terrorism under the Directive.*

*The specific objective is that the training programme reach the largest possible audience of lawyers throughout the Union. In particular, the training activities may help the lawyers concerned to answer how they can best:*

- *access and understand relevant AML/CTF obligations; reflect on the ways lawyers and law firms may be misused in the context of money laundering and terrorist financing;*
- *reflect on practices lawyers and law firms can adopt in their particular jurisdiction and in accordance with the relevant bar rules, to ensure the highest ethical standards of the profession are maintained;*
- *identify the problem that may arise in the interpretation of specific provisions in the light of hypothetical and actual cases and in view, in particular, of the continuity of their business relations with their clients and other considerations.'*

Prior to developing the training manuals, the consortium of partners developed a training needs assessment (TNA) and a training strategy based on answers to a questionnaire enquiring about each Member State's current practices in respect of training on AML/CTF rules at EU level for lawyers. The questionnaire was completed by all 27 EU member bars of the CCBE plus the UK.

It is worth recalling the [background to the AML/CTF directives](#) as they affect lawyers. Money laundering and terrorist financing represent serious threats to life and society and result in violence, fuel further criminal activity, and threaten the foundations of the rule of law. Given a lawyer's role in society and inherent professional and other obligations and standards, lawyers must at all times act with integrity, uphold the rule of law and be careful not to facilitate any criminal activity. This requires lawyers to be constantly aware of the threat of criminals seeking to misuse the legal profession in pursuit of money laundering and terrorist financing activities.

Lawyers and law firms must ensure that they are aware of and comply with their AML/CTF obligations, stemming from:

- (i) the essential ethics of the legal profession including an obligation not to support or facilitate criminal activity; and
- (ii) the requirements of EU law.

All EU lawyers must be aware of and continuously educate themselves about the relevant legal and ethical obligations that apply, and the risks that are relevant to their practice area and their clients. This is particularly so as AML/CTF activities by criminals are rapidly and constantly evolving to become more sophisticated. Awareness, vigilance, recognising red flag indicators and caution are a lawyer's best tools in assessing situations that might give rise to concerns of money laundering and terrorist financing.

The aim of this manual is to help trainers providing training to lawyers in the field of AML/CTF to understand how to mount such training so that lawyers understand the full extent of their legal and ethical obligations, along with their vulnerability to risks.

## HOW TO USE THIS MANUAL

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This trainers' manual comes accompanied by a users' manual, which is aimed at those participating in the training.

The users' manual lays out the framework for AML/CTF rules at EU level in some detail. It should be considered as the basic template for training lawyers on these rules. Nevertheless, it should not be seen as a fixed blueprint to be followed unquestioningly in every session, for the obvious reason that sessions may vary depending on the following factors:

- the previous knowledge and experience of the audience
- the vulnerability of the audience to specific AML/CTF risks
- the length of the course (since it is possible to be more generous with the content of each strand on a longer course)

- whether the course is a general one covering the whole topic or is specifically focused on just one area of the topic

In other words, the users' manual should be seen as the springboard for the training sessions that follow its plan.

### ***Learning outcomes***

Before the trainers' and users' manuals were prepared, an analysis was undertaken of EU lawyers' training needs, followed by a training needs assessment (TNA). The TNA should also be taken into account when preparing a training session, on the basis of the content of the users' manual. The TNA sets out learning outcomes in terms of skills, competency and knowledge, and has been used as the basis for this trainers' manual.

One of the outcomes of the TNA was that lawyers overwhelmingly want training which is practical, and which concentrates on case studies and best practices. Training which is rooted in the everyday requirements and realities of legal practice will find a ready audience. Each training session will need to find a balance between the necessary teaching of the substance of the AML/CTF rules on the one hand, and examples that make it come alive for practising lawyers on the other.

Although the users' manual does not contain any case studies, trainers are directed to '[A lawyer's guide to detecting and preventing money laundering](#)', published by the CCBE, the International Bar Association (IBA) and the American Bar Association (ABA) in 2014, in which pages 39-46 provide a series of cases studies. There is more on this below, under the section headed 'Case studies'.

There are also long lists of risks in both the CCBE-IBA-ABA publication mentioned above, and in another useful publication, '[Guidance for a risk-based approach for legal professionals](#)', published by the Financial Action Task Force (FATF) in 2019. These risks are traditionally broken down into three areas:

- customer risk
- transaction risk
- geographical risk

Annex III of the directive provides a non-exhaustive list of factors and types of evidence of potentially higher risk in these three categories, but the two publications already mentioned give further extensive examples in pages 28-38 of the CCBE-IBA-ABA publication, and pages 27-43 of the FATF publication. These risks are rich sources of both case studies and best practices that can serve as practical examples for lawyers undergoing training, and there is more material below on how the two publications can be used on training courses under the heading of 'Case studies'.

Finally, the TNA listed areas where a majority of bar and law society respondents felt that lawyers particularly needed training. These areas are:

- (1) how far lawyers have to go to find out the source of client funds
- (2) how to conduct AML/CTF risk assessments of oneself as a lawyer or law firm, along with information about AML/CTF risk and vulnerabilities of the legal sector
- (3) the interaction between the General Data Protection Regulation (GDPR) and AML rules
- (4) information on how smaller firms with limited resources can effectively discharge their AML/CTF obligations
- (5) how to cope with the fact that there are different AML/CTF rules in different Member States
- (6) knowledge elements of the substantive offence, risk assessments and reporting obligation (i.e. what level of knowledge is required)
- (7) how to identify varying types of clients e.g. individuals, different types of corporates, trusts etc.
- (8) specific issues of beneficial ownership
  
- (9) how far lawyers can rely on information received from other obliged entities

Again, the headings are listed here to aid trainers in the preparation of their courses. The answers to many of the questions above are contained in the users' manual under appropriate headings. There may be specific aspects which are more important in one jurisdiction than in another.

### ***Methodology***

Each training course will demand its own methodology. For instance, the black letter law element of the course may well require a traditional lecture method, accompanied by slides and notes. But the practical element, including the case studies, may be better taught in small workshops or break-out sessions from a plenary, accompanied with the setting of exercises.

## **EFFECTIVE TRAINING**

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The same general principles for good training apply to training lawyers in AML.

There are certain specific principles which should be considered for an AML training course, though, as follows:

- (1) Lawyers may come to a course with different levels of knowledge and expectation. It is important at the outset to be aware of what the participants already know. For instance, some lawyers may think that the AML/CTF rules do not apply to them at all, and there should then be a focus on the details of the scope of the directive. Others may have little

experience of criminal law, and so a focus on the kind of criminal acts which underlie AML/CF real life examples would be worthwhile. Therefore, an assessment of the level of knowledge and awareness of participants at the outset is important, maybe by a formal questionnaire or a quick oral question-and-answer session at the beginning, to be sure that the training will be relevant and effective

- (2) It is useful to invite outside experts as speakers to an AML training event, to give a different perspective. The obvious choice is to invite someone from the national financial intelligence unit (FIU), which deals with reports of suspicious transactions, since they can then explain the kinds of cases that they come across. It is important to brief the FIU representative not only to stick to examples that apply to lawyers, but also about the specific AML rules which apply to lawyers, so that their presentation is relevant.
- (3) The AML/CTF legislation is an area of law where failure to follow the correct procedures can involve the lawyer in criminal and other liabilities, unlike most other areas in a lawyer's practice. It is therefore important that participants leave the session with a clear idea of the importance of the rules, and how failure to follow them can leave them exposed to liabilities and loss of reputation (and potentially livelihood, if the matter is serious enough).
- (4) As stressed throughout this manual, lawyers consistently say that they learn most in this area when they are confronted by real life examples. All the speakers should, therefore, be requested to provide as many such examples as they can in their presentations, particularly since the important phrases in the directive are not always self-evident in their meaning. Thought should also be given to a special session dedicated just to one or more case studies. More guidance is given on this below under the section headed 'Case studies'. In addition, questions should be encouraged from participants throughout the session, along with general interaction between the trainer(s) and the participants.
- (5) Often, training will be prepared by those who specialise in training in general covering many topics, since the training of professionals is an expertise in its own right. However, training in AML/CTF is different to training in topics which cover purely substantive law, because it covers both substantive law and procedures which need to be embedded in practice management. In addition, failure to comply with the rules can lead to serious penalties against the lawyers themselves, including disbarment in serious cases, and so going beyond the more usual kind of negligence case which would follow a failure in training in a substantive subject. It is important that training is prepared with these elements in mind. Accordingly, it is recommended that a generalist trainer should have an expert in the AML/CTF rules as a joint planner of the training programme, to be sure that the relevant topics are covered properly by appropriate experts.

## SOURCE MATERIALS

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As already mentioned, there are useful guides which have been published in the area of AML/CTF for lawyers. They have been used in the preparation of the users' manual, and have been quoted from in preceding sections of this trainers' manual, too. They are recommended to trainers for extra ideas.

The two principal guides are:

- (1) '[A lawyer's guide to detecting and preventing money laundering](#)', published by the CCBE, the International Bar Association (IBA) and the American Bar Association (ABA) in 2014
  
- (2) '[Guidance for a risk-based approach for legal professionals](#)', published by the Financial Action Task Force (FATF) in 2019

However, it should be borne in mind that these two guides were not published with the specific framework of current European legislation in mind. Their intended audience is lawyers worldwide, and they deal in essential principles. In addition, the first guide is now some years old, and so some underlying circumstances may have shifted.

In addition, the Legal Sector Affinity Group published '[Anti-Money Laundering Guidance for the Legal Sector](#)' in the UK in 2020, while the UK was still in the transitional period before its departure from the EU. This is one of a number of bar issued guides. Others within the EU include guides issued by the [Law Society of Ireland](#) and the [Dutch Bar](#).

Next, there are decisions of the court which should be taken into account. The two principal cases at European level are cited in the users' manual, and briefly described. Their judgements are key in the area of the impact of the directive, and AML/CTF rules in general, on one of the core values of the legal profession, professional secrecy (which goes by other names such as confidentiality and lawyers' professional privilege). This topic is likely to come up in most training for lawyers on the AML/CTF rules, and so trainers are advised to acquaint themselves with them:

- [Ordre des barreaux francophones et germanophone and Others v Conseil des ministres](#), Case C-305/05
  
- [Michaud v France](#) (Application no. 12323/11)

Trainers should also be aware that the users' manual, and indeed the decisions cited above, deal with AML/CTF at the European level. The directive will have been implemented in national legislation, and there may well be national cases, which it will be important for the trainer to know and understand as well.

It is important for lawyers to know the exact wording used both in the version of the directive in their national language, and also in the national implementing legislation and how it is ordinarily interpreted. The national legislation and national jurisprudence cannot depart from the EU-wide

standard set in the directive, and if it does, the directive prevails. But the extent of the words might nevertheless be somewhat different between Member States.

Finally, the context and contents of national risk assessments should also be kept in mind by trainers, since the conditions underlying money laundering risks will vary from Member State to Member State. The FATF keeps a [record of national risk assessments](#).

## CASE STUDIES

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There has been repeated mention in this trainers' manual of the two existing guides to lawyers' responsibilities in relation to AML/CTF. These publications provide practical examples of the vulnerabilities of the legal profession to criminal activity in this field. They are not specifically aimed at responsibilities under the European legislation, but are general guides intended to be used by lawyers anywhere in the world. This should be borne in mind when using the material.

'A lawyer's guide to detecting and preventing money laundering', published by the CCBE, the International Bar Association (IBA) and the American Bar Association (ABA) in 2014 (hereafter called 'the first guide') is the most useful for this trainers' manual because it contains case studies as from page 40, for use in training sessions. Specifically European solutions can be stressed when discussing the material with participants.

There is a wide range of case studies provided. Each has a heading under which the case study falls, followed by a set of typical facts. Then comes a list of the red flags to which the facts should alert any participant, followed by a 'What can you do?' solution.

Here is a typical example:

### Aborted transactions and transfer of funds without underlying legal work

*A law firm was approached by a new client with instructions to assist on a number of asset purchases. The client was dealing with a junior lawyer at the firm who, at the request of the client, supplied her with the account details of the firm before completing CDD on the client or entering into an engagement letter with her. The client did not give any further instructions following the deposit of funds. Subsequently, the client explained that she no longer intended to purchase the relevant assets and asked for the deposited money to be provided to a third party, rather than returned to her personal account.*

### Red flags:

*Once funds received in client account, the transaction is aborted. Client requests that deposited funds are sent to a third party, rather than returned to it. The client is avoiding personal contact without good reason.*

### What can you do?

*Do not allow clients to deposit funds in a client until you carry out CDD, establish the purpose of the transaction and satisfy yourself that there are no money laundering risks*

*attaching to the funds. Alternatively, do not send the funds to the third party but instead return them to the original source.*

Both guides, meaning the first guide above from which the case study was taken, and the second guide, 'Guidance for a risk-based approach for legal professionals', published by the Financial Action Task Force in 2019 (hereafter called 'the second guide'), have lists of red flags which highlight in a practical way the vulnerabilities of the legal profession.

So here is a typical list of red flags from the first guide, from its Chapter IV which deals specifically with red flags (there are many of them given):

*Mode of payment*

- *The asset is purchased with cash and then rapidly used as collateral for a loan.*

*There is no legitimate explanation for:*

- *an unusually short repayment period having been set;*
- *mortgages being repeatedly repaid significantly prior to the initially agreed maturity date; or*
- *finance being provided by a lender, either a natural or legal person, other than a credit institution.*

In the second guide, there is an annex (Annex 5) devoted to 'Examples of Red flags highlighting suspicious activities or transactions for legal professionals', from which these are examples:

- l) The collateral being provided for the transaction is currently located in a high risk country.*
- m) There has been a significant increase in capital for a recently incorporated company or successive contributions over a short period of time to the same company, with no logical explanation.*
- n) There has been an increase in capital from a foreign country, which either has no relationship to the company or is high risk.*
- o) The company receives an injection of capital or assets in kind that is excessively high in comparison with the business, size or market value of the company performing, with no logical explanation.*

These examples have been provided because they show that, even if a trainer does not use one of the case studies from the first guide, both guides give practical red flags from which other case studies can be easily constructed. As mentioned before, the evidence is that the more practical the training can be, the more easily it will be absorbed by participants.