Contents

1		roduction				
Pa	rt I	Mapping the Boundaries of an Intricate Playing-Field				
2	Finding the Way in a Complex Multi-Level Legal Framework					
	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 2.3.1 Managing the Risk of Transnational <i>Bis in idem</i> : Double	24			
		Jeopardy Clause in the US Federal Legal System	31			
		on Human Rights	41			
		2.3.3 Enforcing the Principle of <i>Ne Bis In Idem</i> in the EU	50			
		2.3.4 Gathering Information Within Multi-Disciplinary				
		Cooperation Networks	66			
	2.4	Methodology: Transversal Comparative Approach Applied				
		to a Complex and Hybrid Legal Framework	71			
	Ref	erences	74			
3	Stre	engthening Financial Investigation and Supervision				
		ne 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	8	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			
	Ref	erences	105			

vi Contents

Part II		Criminal Profiles in Banking Supervision					
4	The 4.1 4.2 4.3	From to The En	the Financial Crisis to the Banking Union	109 110 115			
	4.4	Bankin Mecha 4.4.1 4.4.2	IV and V Capital Requirement Directive ng Supervision in the Eurozone: The Single Supervisory anism SSM Supervisory Powers SSM Sanctioning Powers SSM Investigations and Procedures	118 121 127 130 137			
	Refe		Solvi investigations and Procedures	143			
5			gulatory Framework of Banking Supervision	147			
	5.15.25.35.4	in a Co The Fe Other The 20	ose of a System: Deregulation and Financial Crisis complex Supervisory Framework ederal Reserve US Regulatory Agencies (FDIC, OCC, SEC) D10 Dodd-Frank Act: Impact and Waves	147 151 153			
	Dofo		unter-Reform	156 157			
				161			
6	The 6.1	The Hybrid Nature of Banking Supervision					
		Effection 6.1.1	ive Supervisory Models? Independence and Accountability of Banking	162			
		6.1.2	Supervisors	165			
		6.1.3	Overlapping in the US Regulatory Framework	174			
	()	D1.5	Critical Issues	177			
	6.2		ng Supervisory Sanctions in the EU: A New Field minal Law?	184			
	6.3	Fair T	rial Guarantees and Banking Supervision: The Right	107			
		6.3.1 6.3.2	The Right to an Impartial Tribunal The Principle of Equality of Arms: Right to Be Heard,	197 202			
		6.3.3 6.3.4	and Right of Access to Files Right to a Full Judicial Review Right of Legal Assistance and Right to a Public	207 219			
		6.3.5	Hearing	231 235			

Contents vii

		6.3.6	The Right to Remain Silent in the SSM Legal Framework	257				
		6.3.7		265				
	Refe		The Freedom From Bis In factor	271				
Pa	rt III	Ban	king Criminal Investigations					
7	Real-Time Monitoring of Banking Data: State of Play							
	7.1	.1 Banking Investigative Techniques and the Residual Role of Bank Secrecy Law						
	7.2		ures (i) and (ii): Access to Banking Information and Past	286				
		Transa	actions	291				
	7.3		ures (iii): Real-time Monitoring of Banking Data	295				
	7.4		ures (iv): Freezing of Banking Accounts					
			Overview)	299				
	7.5		ime Monitoring of Banking Data in the EU	300				
	7.6		ime Monitoring of Banking Data in the US	308				
			Court Order	309				
			Judicial or Grand Jury Subpoena	311				
			Administrative Subpoena or Summons	313				
	D C		Probable Cause Search Warrant	314				
	Refe	erences		321				
8			g a Regulation on (Banking) Data Surveillance					
			Some Proposals	327				
	8.1		fying the Fundamental Right(s) Affected by Real-Time					
			oring of Digital (Banking) Data	327				
	8.2		ng Procedural Rules for the Surveillance of Personal					
	0.0		ing) Data	339				
	8.3		to an Effective Remedy: The Authority in Charge	2.50				
	D . C.		al-Time Monitoring of Banking Records	352				
	Refe	erences		355				
9	Conclusion							
	9.1		ompliance with Fair Trial Rights in the Single Supervisory					
			anism	361				
	9.2		rotection of Fundamental Rights (Right to Privacy) in the					
		Survei	illance on Personal (Banking Digital) Data	364				