



A WELCOME MAT FOR CORRUPTION

IN TWENTY-ONE COUNTRY COMPARISON, U.S. FALLS SHORT IN
PROTECTING ITS REAL ESTATE MARKET

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OVERVIEW

As the U.S. Department of the Treasury (“Treasury”) continues to consider how to design new rules for cracking down on money laundering in U.S. real estate, this Transparency International U.S. (“TI-US”)¹ report provides a comparative look at how other nations across the world have done so. The report does so by relying on standardized data and analyses provided by in-country attorneys within a leading global law firm’s network regarding the anti-money laundering (“AML”) frameworks of 21 foreign countries, 19 of which are members of the Organisation for Economic Co-operation and Development (“OECD”).² While the data collected and analyzed for this report does not attempt to capture all specific nuances, particularities, and details of each country’s relevant legal framework, and reflects limitations and gaps among those ever-changing regulations and policies, its focus on the bigger-picture practices among these countries provides clear and critical contrasts with the current U.S. framework that should inform key parts of the forthcoming U.S. rule.

In particular, for each country the report looks at *who* in a given real estate transaction is subject to AML obligations (e.g., the real estate agent, the lawyer, the escrow agent)

as well as *what* those general AML obligations are. To present these two important metrics in a readable and easily comparable fashion, they are outlined in the report’s accompanying Appendix A and Appendix B.

Writ large, the information provided reveals that the United States is a singular outlier among surveyed countries, with AML deficiencies that must be resolved in order to realistically provide a robust and effective framework for guarding the U.S. real estate sector against money laundering—including the laundering of funds obtained through corruption. Fortunately, the AML policies of the surveyed countries, as outlined below and in the appendices that follow, provide living, time-tested approaches that can and should inform Treasury’s approach to the issue.

¹ Transparency International U.S. is part of the world’s largest coalition against corruption. In collaboration with national chapters in more than 100 countries, we are leading the fight to turn our vision of a world free from corruption into reality. For more information, visit us.transparency.org.

² Countries surveyed are Belgium, the Czech Republic, Denmark, England and Wales, Finland, France, Germany, Hong Kong, Ireland, Italy, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, and the United Arab Emirates. Note that writ large, for more than a decade, all 27 European Union member states have extended AML obligations to the real estate sector. Note also that in August 2023, Switzerland announced draft AML reforms—including new rules for real estate—in its intent to create a robust system to protect against financial crime. Many of the proposed reforms mirror the requirements adopted by other countries surveyed in this report, as discussed below. Such a development provides a particularly recent and relevant approach for the U.S. Government to consider when developing its own rules. See The Paypers, “Switzerland Drafts Tighter Rules to Combat Money Laundering,” Sept. 1, 2023, available at <https://thepappers.com/digital-identity-security-online-fraud/switzerland-drafts-tighter-rules-to-combat-money-laundering--1264173>.

KEY FINDINGS

The following key findings were able to be drawn from the information provided:

1. In all 21 countries, AML obligations for real estate transactions applied **across the entire country**.
2. In all 21 countries, AML requirements applied to **both residential and commercial real estate transactions**, with no distinctions between them.
3. In 20 of the 21 countries, at least one covered person or entity was required to **collect and verify beneficial ownership information** for every covered real estate transaction.
 - + For example, the Administrative Chamber of the Spanish Supreme Court concluded the following with regard to the obligation of covered persons or entities to identify beneficial owners: “[T] here is a need for financial entities to comply strictly with the obligation to identify the beneficial owner accurately and to adopt the appropriate measures to verify [their] identity so that the obliged entity can be sure that it knows completely, truthfully and accurately who the beneficial owner is, since precise and current information on the beneficial owner is a key factor in preventing natural or legal persons from evading the application of money laundering prevention regulations by hiding their identities behind complex instrumental financial structures.”³
4. In 20 of the 21 countries, covered persons or entities were required to **conduct customer due diligence** (“CDD”) in every covered real estate transaction. At a minimum, every such country required a basic level of due diligence, and survey results show that at least half of the countries tailored the prescribed level of due diligence to reflect the level of risk presented by a particular transaction.
5. In all 21 countries, covered persons or entities were required to **report suspicious activities** to law enforcement and/or regulators.
 - + For example, Germany recently demonstrated the power of prevention when it strengthened its regulations on reporting suspicious transactions. Enacted in October 2020, the country’s Money Laundering Reporting Ordinance for Real Estate aimed to make it possible to detect money laundering practices more quickly by outlining specific reporting obligations; the 2021 annual report from the country’s financial intelligence unit shows that this policy appears to have been highly effective, demonstrating a 99 percent increase in the number of filed suspicious activity reports in the real estate sector from 2019 to 2021.⁴
6. In 19 of the 21 countries, covered persons or entities could be required to obtain information about the **source of funds used** in a covered transaction, and in 20 of the 21 countries, **covered persons or entities could be required to document whether a covered transaction involved a politically exposed person (“PEP”).**⁵
7. In 11 of the 21 countries, **oversight and enforcement** of AML obligations for the real estate sector was done solely by government entities, while the other 10 had such regulation provided by a combination of government entities and private bodies (such as professional associations).⁶
 - + For example, the United Kingdom established the Office for Professional Body Anti-Money Laundering Supervision (“OPBAS”) as part of its reforms aimed at strengthening the country’s AML supervisory regime. OPBAS currently supervises 22 professional body supervisors (“PBSs”) in the legal and accountancy sectors, as well as three additional PBSs from whom supervisory functions have been delegated.⁷
 - + Meanwhile, Spain has a single supervisor responsible for its AML prevention efforts—the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences—that ensures covered persons or entities comply with the country’s AML framework.⁸

³ See Administrative Chamber of the Supreme Court, Judgment 747/2021, May 27, 2021.

⁴ An overview of reported cases can be found in the Annual Report of 2021 of the Federal Financial Intelligence Unit. See Zoll Online, “Annual Report 2021,” Aug. 25, 2022, available at https://www.zoll.de/SharedDocs/Downloads/DE/Links-fuer-Inhaltseiten/Fachthemen/FIU/fiu_jahresbericht_2021_en.pdf?__blob=publicationFile&v=2.

⁵ See “FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22)”, Financial Action Task Force, available at <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html>.

⁶ Note that in Germany, the Federal Financial Supervisory Authority (“BaFin”) is also responsible for supervising and enforcing compliance with the Anti-Money Laundering Act among financial institutions and other obligated entities.

⁷ See Office for Professional Body AML Supervision, “Sourcebook for Professional Body Anti-Money Laundering Supervisors,” January 2023, available at <https://www.fca.org.uk/publication/opbas/opbas-sourcebook.pdf>.

⁸ See Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias, “About SEPBLAC,” available at <https://www.sepblac.es/en/abt-sepblac/>.

8. Finally, several countries have had AML requirements for the real estate sector **for more than a decade**, with such requirements having led to many successful investigations or enforcement actions against attempts to launder illicit proceeds through real estate.
- + For example, France has had AML rules for its real estate sector since 1981.⁹
 - + Since 2020, the Swedish Financial Supervisory Authority has issued eight sanctions on financial institutions due to inadequate anti-money laundering and counter-terrorism financing routines.

TI-US RECOMMENDATIONS FOR STRONG AND EFFECTIVE AML RULES FOR U.S. REAL ESTATE

The findings in this report provide clear support for, and vivid examples of, AML approaches from across the world that can and should inform the rules currently being developed by Treasury. These findings and examples align with the specific recommendations for such rules provided by TI-US in February 2022 via its comment on Treasury's Advanced Notice of Proposed Rulemaking ("ANPRM") regarding money laundering through real estate.¹⁰ In particular, TI-US recommended that Treasury include the following key aspects in its forthcoming rules for the real estate sector:

1. **Apply AML rules to real estate transactions across the entire United States.**
2. **Apply AML rules to both residential and commercial real estate transactions.**¹¹
3. **Cover trusts.** The release of the Pandora Papers in October 2022 exposed how U.S. trusts are often used to move and hide funds by purchasing real estate. If trusts are not covered in the new rules, they will offer illicit actors an easily exploitable loophole.
4. **Eliminate transaction dollar thresholds as a criterion for when AML rules apply.** Creating a dollar threshold(s) for when a transaction is covered is more likely to provide a roadmap for evasion than to alleviate filing-related burdens on public or private sector stakeholders.
5. **Require covered persons or entities to conduct CDD.**
6. **Require that at least one party to each real estate transaction collect and report AML data, including collecting and verifying beneficial ownership information.** Treasury should consider the primary responsible party in such transactions to be the title insurance company, followed by the escrow agent, the lawyer, and then the real estate agent.¹² Such a provision would eliminate the opportunity for simple evasion by, for example, foregoing title insurance. In addition, the responsible party should be licensed and registered to do business in the U.S.
7. **Align the definition of "beneficial owner" with the definition used in the Corporate Transparency Act ("CTA").** Currently, there are multiple definitions of "beneficial owner" across U.S. law that will likely yield conflicting information, sow confusion among reporting parties, and make it hard for law enforcement to cross-reference data. Treasury's definition of "beneficial owner" should reflect the CTA's definition of the term.
8. **Require covered persons or entities to obtain information about the source of funds used in a transaction and to identify and document whether the transaction involves a PEP.** Verifying occupation, income, bank account information, gifts, informal personal loans, and the sale of securities or other property are all data collected for real estate transactions involving mortgage-financed purchases in the U.S. As such,

⁹ See generally Article L.61-2 of the French Monetary and Financial Code.

¹⁰ See Transparency International U.S., "TI-US Comment on ANPRM for Real Estate Sector Reporting Requirements to Curb Illicit Finance," Feb. 15, 2022, available at <https://us.transparency.org/resource/ti-us-comment-on-anprm-for-real-estate-sector-reporting-requirements-to-curb-illicit-finance/>.

¹¹ Commercial transactions, while often more complex than residential transactions, nevertheless involve similar professional actors. As such, Treasury should establish a hierarchy of responsible actors involved in commercial real estate transactions in order to mitigate opportunities for evasion. Lawyers, in particular, play integral roles in commercial real estate transactions and should be the primary party responsible for executing AML obligations. Escrow agents and real estate agents, respectively, should follow.

¹² There is precedent at Treasury for establishing a hierarchy of parties responsible for filing information. In its instructions for tax form 1099-S, the Internal Revenue Service ("IRS") states the following: "If no one is responsible for closing the transaction...the person responsible for filing is, in the following order: (a) the mortgage lender, (b) the transferor's broker, (c) the transferee's broker, or (d) the transferee." As such, Treasury has experience developing a list of the persons responsible for filing, and should do the same regarding real estate transactions. See Internal Revenue Service, "Instructions for Form 1099-S (01/2022)—Who Must File", available at https://www.irs.gov/instructions/i1099s#en_US_202201_pub-link1000280429.

Treasury could proceed with confidence that such requirements are not without precedent and can be accomplished without undue disruption to the closing or settlement process. In addition, the identification

and documentation of PEPs could be accomplished by simply adding a box to the relevant form that reporting parties can check if a PEP is involved.

As Treasury considers the content of its new rules to crack down on money laundering through U.S. real estate, the data and analyses in this report provide standards and examples that can and should serve as baselines and contours for the scope, depth, and enforcement of such rules. Rules that are appropriately informed by the above findings would provide law enforcement and regulatory bodies with information needed to hold corrupt and other criminal actors accountable without improperly burdening or disrupting existing industry practices and processes.

For more information, please contact TI-US at info@transparency.org.

APPENDIX A

OVERVIEW OF AML FRAMEWORKS FOR REAL ESTATE TRANSACTIONS

Country	Is there at least one person or entity involved in a transaction that is subject to AML requirements?	Are these obligations regulated in practice by government entities and/or a professional association?	Are covered persons or entities required to identify/collect and verify beneficial ownership information for every covered transaction?	Are covered persons or entities required to conduct customer due diligence in every covered transaction?	Are covered persons or entities required to report suspicious activities to law enforcement and/or regulators?	Can covered persons or entities be required to obtain information about the source of funds?	Can covered persons or entities be required to identify if a transaction involves a politically exposed person?	Do the AML obligations apply to residential real estate transactions, commercial real estate transactions, or both?
Belgium	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Czech Republic	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Denmark	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
England & Wales	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Finland	Yes	Government entities	Yes, but only in certain situations	Yes, but only in certain situations	Yes	Yes	Yes	Both
France	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Germany	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Hong Kong	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Ireland	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Italy	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Luxembourg	Yes	Both	Yes	Yes	Yes	Yes	Yes	Both
Netherlands	Yes	Government entities	Yes, except for foreign company purchasers	Yes	Yes	Yes	Yes	Both
New Zealand	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both

Norway	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Poland	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Portugal	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Romania	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Slovakia	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Spain	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
Sweden	Yes	Government entities	Yes	Yes	Yes	Yes	Yes	Both
United Arab Emirates	Yes	Government entities	Yes	Yes	Yes	Unclear	Unclear	Both

APPENDIX B

PERSONS OR ENTITIES (ASIDE FROM TRADITIONAL FINANCIAL INSTITUTIONS) INVOLVED IN REAL ESTATE TRANSACTIONS THAT ARE SUBJECT TO AML REQUIREMENTS

Country	Persons or Entities
Belgium	<ul style="list-style-type: none"> + Lawyers when assisting their client in the preparation or execution of transactions concerning the purchase or sale of real estate + Real estate agents + Notaries + Bailiffs
Czech Republic	<ul style="list-style-type: none"> + Lawyers + Real estate agents + Escrow agents + Title insurance companies + Notaries
Denmark	<ul style="list-style-type: none"> + Lawyers + Real estate brokers

<p>England & Wales</p>	<ul style="list-style-type: none"> + Lawyers + Real estate agents + Escrow agents + Notaries + Insurance companies (e.g., title, warranty indemnity, property damage) + Verifiers of overseas entities transacting in UK property + Chartered surveyors, property value assessors + Property management service providers + Accountants + Trust and corporate services providers + Investment advisors + Financing parties (including funds, wealth, and asset managers) + Licensed conveyancers + Tenants + Guarantors
<p>Finland</p>	<ul style="list-style-type: none"> + Lawyers and others who provide legal services by acting on behalf of and for their client in any real estate transaction, or participate in the planning or carrying out of transactions for their client concerning buying or selling of real property + Real estate agencies and housing rental agencies + Insurance companies
<p>France</p>	<ul style="list-style-type: none"> + Lawyers + Real estate agents + Escrow agents + Title insurance companies + Notaries
<p>Germany</p>	<ul style="list-style-type: none"> + Lawyers (and legal advisors who are not admitted to the bar yet involved in real estate activities) + Real estate agents + Auditors and certified public accountants + Notaries + Tax advisers and agents
<p>Hong Kong</p>	<ul style="list-style-type: none"> + Legal professionals + Real estate agents + Accounting professionals + Trust or company service providers
<p>Ireland</p>	<ul style="list-style-type: none"> + Legal professionals, including barristers, solicitors, and notaries who are buying or selling land or acting for or on behalf of clients in transactions relating to land + Real estate agents and other property service providers acting as intermediaries in the letting of immovable property involving monthly rent of €10,000 or more + Auditors, external accountants, tax advisers, and related persons + Credit institutions + Trust and company service providers
<p>Italy</p>	<ul style="list-style-type: none"> + Lawyers + Accountants and auditors + Notaries
<p>Luxembourg</p>	<ul style="list-style-type: none"> + Lawyers when assisting in the buying and selling of real property + Anyone who assists, by way of a business relationship, in the buying or selling of real property + Real estate agents and developers + Notaries

Netherlands	<ul style="list-style-type: none"> + Lawyers + Real estate agents + Notaries + Tax advisers
New Zealand	<ul style="list-style-type: none"> + Lawyers + Real estate agents + Conveyancing practitioners and incorporated conveyancing firms
Norway	<ul style="list-style-type: none"> + Lawyers, and others who provide independent legal assistance on a professional or regular basis, when they on behalf of their client carry out any real estate transaction or assist in the planning or carrying out of transactions for their client concerning the buying and selling of real property + Real estate agents and real estate agencies + Government-authorized and registered auditors, licenced audit firms, and auditors with responsibility for auditing of the accounts of municipal or county administrations or municipally- or county-owned enterprises + Government-authorized accountants and accounting firms + Company service providers + Persons with a limited licence to provide payment services
Poland	<ul style="list-style-type: none"> + Lawyers providing legal services concerning the purchase or sale of immovable property + Real estate agents (other than those handling lease transactions involving monthly rent of less than €10,000) + Notaries + Tax advisors providing tax advice concerning the above activities
Portugal	<ul style="list-style-type: none"> + Lawyers + Real estate investment and management companies + Auditors, external accountants, and tax advisors + Non-financial real estate entities + Self-managed securities and real estate investment companies + Notaries and other independent legal professionals + Investment firms and other financial companies + Companies that commercialize contracts relating to the investment in tangible assets to the public + Trust or company service providers in certain activities
Romania	<ul style="list-style-type: none"> + Lawyers providing assistance regarding the purchase or sale of real estate + Real estate agents and developers, including those acting as intermediaries in the rental of real estate involving monthly rent of €10,000 or more + Bailiffs, notaries, and other legal professionals performing any of the above functions
Slovakia	<ul style="list-style-type: none"> + Lawyers providing legal services concerning any financial operation or other activity leading to or directly inducing a movement of funds in purchasing or selling real estate + Real estate brokers and others authorized to mediate the sale, lease, or purchase of real estate + Court distrainers in selling real estate + Notaries providing the services above
Spain	<ul style="list-style-type: none"> + Lawyers and other independent professionals when they participate in the design, implementation, or advice on activities on behalf of clients relating to the buying and selling of real estate or when acting on behalf of clients in any real estate transaction + Property developers and persons whose business activities include those of agency, commission, or brokerage in real state trading or in the leasing of real estate involving a transaction for a total annual rent of €120,000 or more or a monthly rent equal to or greater than € 10,000 + Notaries and registrars of property, trade, and personal property + Auditors, external accountants, tax advisers, and any other person who undertakes to provide, directly or through other related persons, material support, assistance, or advice in tax matters as a principal business or professional activity

Sweden	<ul style="list-style-type: none">+ Lawyers+ Real estate agents+ Escrow agents+ Title insurance companies+ Notaries
United Arab Emirates	<ul style="list-style-type: none">+ Lawyers and other independent legal professionals who prepare, conduct, or execute financial transactions for clients regarding the purchase or sale of real estate+ Real estate agents+ Accountants+ Notaries

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