

AML-TF supervision and detection



Adam Farkas

Executive Director, European Banking Authority (EBA)

AML-TF: improving supervision and detection

Money laundering and terrorist financing (ML/TF) undermine the integrity and stability of the financial system. This is why international standards and European legislation require financial institutions to put in place systems and controls to prevent ML/TF and to report it should it occur.

The European anti-money laundering and countering the financing of terrorism (AML/CFT) framework has evolved considerably over the last five years. The new approach requires financial institutions and supervisors to 'think risk', to take a holistic view of all the factors that, together, determine the overall level of ML/TF risk, and to make the right judgement on the effective and proportionate management of that risk. It also requires supervisors to have a shared understanding of applicable rules, and a similar supervisory response to institutions with similar ML/TF risk exposure and risk profiles to ensure that they are treated consistently wherever they operate in the single market.

A common understanding and approach is important because divergent national practices expose the Union's internal market to significant ML/TF risks. Early analysis of a recent spate of high profile AML/CFT scandals involving European banks in large-scale, cross-border ML/TF operations over a significant period of time suggests that the perceived failure, by some competent authorities, to act decisively and in good time to identify and address shortcomings in banks' AML/CFT systems and controls was at least in part to blame on incompatible views, by national authorities, on the respective responsibilities of home and host supervisors, and prudential and AML/CFT supervisors.

These cases highlighted also that in the absence of a common framework, there was a lack of cooperation and information exchange between prudential and AML/CFT competent authorities. This hampered effective AML/CFT oversight.

The EBA has, since its inception, worked to promote a common supervisory culture and foster the convergence of supervisory practices. On AML/CFT in particular, it is working to create a common understanding of the risk-based approach and how it should be applied by supervisors and institutions. Over the last three years, the EBA, together with ESMA and EIOPA, has issued two draft technical standards, three sets of guidelines and three opinions, facilitated the drafting of an agreement between national AML/CFT authorities and the ECB and consulted on guidelines on supervisory cooperation in AML/CFT matters. >>>

>>> Recent events have highlighted that guidelines and other legal instruments are only part of the solution and they will not, by themselves, be enough to establish an effective European AML/CFT supervisory regime. They need to be implemented consistently and it is here that much of the EBA's focus will be going forward. One example is the EBA's recent launch of a series of staff-led, ex-ante reviews of competent authorities' approaches to the AML/CFT supervision of banks. Over the course of the next three years, these reviews will identify weaknesses and best practices in individual jurisdictions and across the EU, allowing the EBA to give early stage feedback to competent authorities and informing the future development of common policy products and training.

The minimum harmonisation and directive-based approach of relevant EU legislation allows national differences, and therefore limits how much convergence the EBA's work can achieve. To avoid that these differences affect the robustness of the European AML/CFT regime, the consistent and effective application of the EBA's common guidelines and standards becomes even more important. This is why last year's legislative proposals by the Commission and the European Parliament are welcome. If adopted, and supported by sufficient resources, they would allow the EBA to continue its work on strengthening AML/CFT supervision in Europe more effectively, and to improve implementation and coordination through greater legal certainty. And if in time a more harmonised European approach is deemed necessary, whether in legislation or institutionally, the EBA stands ready to support it. ●



Liviu Voinea

Deputy Governor, National Bank of Romania

Freedom of capital and shared responsibility: the effective implementation of AML standards

Are information flows among the different authorities involved in the supervision of financial entities adequate? Are existing laundering risk assessment tools and indicators sufficient? In a nutshell, my answer to both questions is no. More needs to be done. I will focus on four key messages that I would like to pass on:

- First and foremost, money laundering erodes the foundation of the Union itself, by hijacking one of the fundamental freedoms: the freedom of capital. This is why priority must be given to the anti-money laundering and counter-financing terrorism (AML/CFT) efforts. AML/CFT is not a side issue, not a by-product of the banking union reform or of the European supervisory authorities (ESAs) regulation; it should be regarded as the very core of the enhanced supervisory rules and procedures. An effective fight against money laundering increases the trust not only in the financial sector, but in the European project itself. Failing to address it, on the other side, is detrimental to public institutions, to private businesses, to society as a whole. Freedom of capital is incomplete without shared responsibility. Not only the regulators and the supervisory bodies are relevant here, but the first line of defence should be the private sector itself. If not for moral reasons, the private sector should understand that short-term high profits will eventually end up in medium and long-term losses, penalties, criminal prosecution and public disgrace. As for the public sector, the EU must find the right balance of fostering innovation, digitalisation, access to finance, capital union, while ensuring adequate and coordinated supervision. Extending regulatory coverage to all financial sectors and activities mitigates migration risk to shadow banking. The era of blind trust in self-regulating markets is gone; the fight against money laundering is in itself a public good.
- Second, rules must be obeyed. Not applying commonly agreed rules weakens the credibility of any regulator or supervisor. The implementation of FATF >>>

>>> standards is a must. Make sure that the current standards are implemented in a coherent and unitary way at national level, before new ones are set. EU has created in the last decade a series of new laws, new bodies, and new tools. However, some of them are not sufficiently tested and the reform remains incomplete, which creates an uneven playfield and leaves room for discretion. Moreover, discretion, as opposed to rules, is case-by-case deregulation and should be avoided. To address the issue of discretion, more transparency is needed, more public scrutiny and more accountability. To achieve all these, we need more data recording, reporting and assessing.

- Third, Europe is as weak as its weakest link. The recent cases of money laundering in some European banks have raised concerns that gaps remain in the Union's supervisory framework and as such, we need to act. AMLD4 was based on minimum harmonisation at Member State level, setting out general principles and technical standards included in the Guidelines for supervisors, leaving their implementation at the discretion of the Member States that led to different national supervisory practices. While the AMLD5 provides that the ECB should conclude a multilateral MoU with AML supervisors on the practical modalities for exchange of information, as mentioned above, in EU legislation there are no detailed provisions on cooperation obligations between prudential and AML supervisors that would facilitate timely and regular input. The ECB in its supervisory function under the Single Supervisory Mechanism has no competence to assess compliance with AML rules; hence, the ECB remains dependent on national AML supervisors for information relating to potential breaches of AML rules.
- Fourth, enhanced coordination at EU level is needed to address AML/CFT in a coherent, pragmatic and efficient manner. The Romanian Presidency has significantly contributed to the progress of the ESAs with the highly important component that addresses risks posed to the financial sector by the money laundering activities file by reaching an acceptable compromise.

Designing and implementing the highest standards of AML/CFT is a process, not a battle. Yet, Europe cannot afford to lose too many battles – otherwise, public trust in the banking sector and in its regulators will be severely eroded. What we need is understanding of the real significance of the problem, following the rules, setting comprehensive standards and procedure, and ensuring harmonized implementation. ●



Will Morgan

Financial Crime Policy, Group Public Affairs,
HSBC Holdings PLC

Doing more together against criminal abuse of the financial system

The global financial system is changing fast, to the benefit of its legitimate users. But what about those who abuse the system to defraud, to launder money or to finance criminal activity, including terrorism? Is enough being done to ensure they don't benefit, too?

In recent years, most national authorities have enhanced their anti-money-laundering (AML) capabilities. The EU is a good example. It has updated its AML Directive (5AMLD), and has incorporated AML into its review of European Supervisory Authorities in order to strengthen regulatory cooperation.

Meanwhile, financial institutions have made huge investments in human and technological resources to identify and mitigate financial crime risk and to comply with evolving regulation.

So why, despite redoubled effort in the public and private sectors, do large-scale money-laundering networks continue to operate? Why the disappointing impact on criminals (1% of illicit funds seized globally)? It is clear that rapid change in the way financial services are provided and consumed has been greatly enabled by cooperation between public authorities and financial institutions. Perhaps that spirit of collaborative innovation can help keep the financial system safe, too. If so, where should we now channel our collective efforts?

We should start with the information flow from financial institutions to public authorities, which is generally rules-based in response to regulatory requirements rather than risk-based and intelligence-led in response to law enforcement priorities. We can automate routine regulatory reporting and redirect public and private sector >>>

>>> resource against mutually-agreed priority threats. Here we might also apply the lessons from established public-private financial intelligence-sharing partnerships such as those in US, Hong Kong, Canada, Australia, Singapore and the UK. Information flows from other parts of the private sector must be similarly enhanced.

We should also ensure our AML efforts are underpinned with accurate, accessible, verified information on which rapid and well-founded risk decisions can be based. Beneficial ownership registers, digital identities and other government schemes can deliver real-time and reliable information to those that need it for AML purposes. The EU will blaze a trail with successful establishment, under 5AMLD,

of interconnected beneficial ownership registers across its territory.

“Spirit of collaborative innovation can help keep the financial system safe.”

- WILL MORGAN

Finally, we should continue to reform information-sharing between and within financial institutions. Barriers here deprive institutions, and the authorities to whom they report, of a shared and comprehensive view of international criminal networks. Policy-makers can

promote the application to AML of transformative technologies such as artificial intelligence, machine learning and cloud computing. Compatibility between data privacy and AML legislation can be enhanced, consistent with the recommendations of global standard-setter, the Financial Action Task Force (FATF). For the EU, this could include realising the intention, expressed in Recital 46 of 5AMLD, to permit proportionate sharing between financial institutions.

We should never stop asking what more our own institutions can do to meet the AML challenge. But the most urgent question is what more we can do together. ●

1. United Nations Office of Drugs and Crime



Duncan DeVille

Global Head of Financial Crimes Compliance, Western Union

Making the EU's AML framework appropriate for the 21st Century

Western Union is a global leader in the Money Transfer and Remittance business. Supervisors and law enforcement agencies generally consider our industry to be high risk for financial crime as many of our customers do not maintain bank accounts and often still rely on cash. We operate through agents. A particularly large number of transactions is cross-border. This risk profile is importantly mitigated by the level and sophistication of our compliance programmes for anti-money laundering and

counter-financing of terrorism. More than a quarter of our staff worldwide is working in this area alone. Effective risk management is one of our important differentiators in the industry.

I would like to congratulate the EU that AML remains at the top of the policy agenda. We welcome plans to strengthen the coordinating role of the EBA. In fact, we have been advocating for the EU to go even further and consider the introduction of a fully harmonised regulatory and supervisory framework for AML. We would also welcome much better cooperation between the Member States' FIUs. The European Commission announced that it would present a separate legislative proposal on this in early 2020 and we at Western Union can only support them in this. Western Union similarly maintains regular networks with law enforcement agencies. This is another area where the EU could foster cooperation. The better we can understand what information law enforcement agencies require the more we can calibrate our risk-based application of AML solutions.

“The better we can understand what information law enforcement agencies require the more we can calibrate our risk-based application of AML solutions.”

- DUNCAN DEVILLE

Effective AML enforcement means that in addition to highly committed colleagues we and the rest of the financial services industry are investing heavily in new

technologies to improve compliance. This extends to a number of areas: transaction monitoring, real time KYC applications, screening against sanctions and other lists, as well as the application of AI to strengthen our analytical capabilities. All of this requires access to the appropriate data, ideally at a global scale.

Eurofi is all about promoting understanding between EU policy makers and the industry. Here are Western Union's recommendations as to how the EU regime could be improved:

- There needs to be real-time public-private exchange of relevant and targeted information on money laundering and terrorism financing. This exchange and cooperation should extend well beyond suspicious transaction reporting.
- EU privacy laws should provide legal certainty on the types of information that can be exchanged across FIUs and the private sector.
- The cooperation between different public authorities (supervisors, FIUs and law enforcement) can be improved.
- There is also still significant room for improved international cooperation between public authorities and with the industry.
- Regulators and supervisors should promote the use of new technologies, such as e-ID, AI and big data analytics.
- At the same time, regulators should maintain a level playing field in terms of requirements and expectations, including from new entrants and FinTech companies.

Western Union looks forward to engaging in a debate with policy makers and the industry on all these options and to ensuring a framework fit for the 21st century. ●



Līga Kļaviņa

Deputy State Secretary on Financial Policy, Ministry of Finance of Republic of Latvia

Overcoming challenges of Anti-Money Laundering supervision

Money laundering and terrorist financing through the misuse of the financial system has long been a phenomenon where physical and legal boundaries of the jurisdiction are not an obstacle. Recently some European banks were found in breach of anti-money laundering (AML) provisions questioning the efficiency of existing supervisory mechanisms and reflecting the shortcomings of risk assessment, cooperation and information sharing at the domestic and EU level as well as internationally.

First analysis of European institutions calls for additional resources for the European Banking Authority in order to counter money laundering and suggests for better cooperation and information sharing among AML and prudential supervisors to protect the integrity of the financial system. It also launches a discussion on possible long-term options for reform, including possible centralization of AML supervision and financial intelligence at the EU level.

There are separate national supervisory authorities charged with enforcing AML rules and prudential supervision. In the case of prudential supervision of international banks, both the group's supervisor (home country) and

the subsidiary's supervisor (host country) are responsible, while in the case of AML supervision a territorial approach applies.

Regulatory competition can entail the reluctance of supervisors from different countries to share critical information among each other. Along similar lines, national AML supervisors can face low incentives to report AML breaches by national banks to the supranational supervisor, as it could take more stringent supervisory actions to stop money laundering at the national bank.

As money laundering is primarily connected with criminal proceeds, the process involves financial intelligence units and criminal investigators. This can lead to variance in AML enforcement across the EU due to differences in criminal law and sanction regimes. Financial intelligence information is collected at the national level and exchanged in individual cases without a possibility to gather and analyse cross border flows of suspicious transactions. New and emerging technologies could help find ways to strengthen our capacities and further develop the fight against money laundering.

"The establishment of an EU body charged with AML supervision would be the best approach."

- LĪGA KĻAVIŅA

Latvia has recently significantly improved access to the information on ultimate beneficial owners, making it public and improving risk indicators and quality of information at the national company register. This improves transparency of the companies established in our jurisdiction, but the full benefits would become available if company registers within the EU would apply the same standards and go even further with verification of the true identity of the ultimate beneficial owner, thus preventing the use of registered companies in illicit multi layered structures.

The current powers have not prevented money laundering scandals from occurring in the EU in the recent past. In the short-term use of existing structures and institutions is a good start, but to ensure high quality AML supervision and eliminate regulatory competition, the establishment of an EU body charged with AML supervision would be the best approach. To warrant enforcement of the same rules across member states, it would also be useful to turn directives into

regulations. With joint efforts we could bring tangible results to the stability and integrity of the whole financial system and additional value to the fight against financial crime. ●



Petr Ježek

MEP, Committee on Economic and Monetary Affairs and Chair, Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance, European Parliament

The EU has realised prudential financial supervision is not the end of the story

One lesson learned from the recent money laundering scandals across Europe is that the EU urgently needs tougher, more coordinated anti-fraud controls including a central body able to enforce laws against money laundering. The focus must be on structurally improving regulation nationally, regionally and on a global scale.

The key takeaway from the numerous hearings we have held in the TAX3 Committee following the various money laundering scandals across Europe, is that there is a worrying lack of coordinated and harmonised measures to ensure that tax crimes are effectively detected and tackled. A clear testimony to this issue is the lack of resources and information exchange among FIUs within most Member States. FIUs usually lack the required >>>

>>> resources and personnel needed to efficiently detect and curb financial crimes, which shows the pressing need for FIUs to be more harmonised and reinforced across Europe, with a focus on more efficient information exchange.

The developments we are witnessing at the Council level to tackle money laundering through the strengthening of the European Supervisory Financial Systems should be welcomed. Nevertheless, many improvements must be made in order to achieve a robust regulatory system that will be able to make our financial system safer when it comes to AML.

The Council's general approach to reform of the European financial supervision architecture will help strengthen the supervisory powers of the European Banking Authority (EBA). I believe this is a good step that will allow the EU to better clamp down on money laundering, notably in the banking sector. This decision will help increase the consistency of rules across EU Member States regarding the carrying out of AML/CFT rules by national tax authorities. Nevertheless, the question remains as to whether the EBA's new powers will be sufficient to ensure effective supervision. Indeed, the EBA already has some jurisdiction over AML but clearly lacks adequate resources and capacity to carry out its functions.

"The imperative of establishing sound supervisory incentives to fight money laundering demands a stronger EU-level role in AML supervision."

- PETR JEŽEK

In my view, there should be a single EU authority charged with stronger supervisory powers over banks and institutions including the implementation and enforcement of EU legislation when it comes to money laundering, tax evasion and tax avoidance.

Regardless of the name or nature of the institution that will take on this task, this European AML Authority should work on the basis of deep relationships with national authorities such as financial intelligence units and law enforcement agencies.

While the establishment of such a European AML body should be kept in mind as a long-term solution, other measures can be taken in the short- to medium- term, such as the proper

implementation and enforcement of the provisions of the 5th AMLD by Member States and FIUs. The Council's decision to reinforce EU supervisory arrangements therefore highlights the need to answer the supervisory shortcomings, both of the ECB - which scope is too limited in supervising EU financial institutions as well as the EBA, which should better oversee Member States' AML and prudential supervision of banks.

All in all, the efforts undertaken jointly by the Council and Parliament are going in the right direction to harmonise the implementation of the AMLD legislation into national law and in the way it is applied by national supervisors. ●



Jesper Berg

Director General, Danish Financial Supervisory Authority (Finanstilsynet)

Money laundering: three avenues for the future efforts

Modern crime is big business and it is international. Often it is also high tech. This gives us the recipe for the way authorities should work.

We have witnessed, and indeed been heavily engaged with, some very spectacular and worrisome AML cases. They are big and they are international. In Denmark, we are struggling with two cases, Danske Bank and Nordea. If we could, we would have liked the cases to go away. They are damaging to the public's confidence in the financial system and they are damaging to the reputation of the authorities.

We cannot make them go away. But we can learn from them and use the experiences to look forward. Going forward, we should follow at least three avenues.

Firstly, international cooperation is of paramount importance. The authorities shall not only exchange information but cooperate actively in the individual cases, coordinate activities and make sure that cases do not fall in between chairs. In this way, the division of responsibility shall be clear to all parties. The supervisory colleges are already in existence and have been so for many years. AML shall have much more focus in the colleges. In that respect, we have already taken such an initiative in Denmark. But not only shall supervisory authorities cooperate with each other, they shall also cooperate with the FIUs and other authorities. The fora for this cooperation shall be strengthened.

Secondly, new technology shall come into the forefront. High tech shall be used by the obliged entities to have effective and efficient KYC and transaction monitoring and the authorities should push behind this development. High tech shall also be used by the authorities to monitor and analyse the activities of obliged entities as well as the SARs and STRs. Big data is big advantage. It cannot be ruled out that GDPR might raise some issues. If it does, we shall be open to discuss those issues.

Thirdly, authorities shall also have specialised skills. We shall be able to dissect the systems in the obliged entities, we shall be able to see new patterns of money laundering and terrorist financing, and we shall be able to spot the right impact points in a large bank.

The three avenues goes together. We shall set up the right teams composed of people with the right skills, across borders using processed big data.

This is not done overnight but we shall initiate our investments today. We are already lagging behind the big business in crime. ●