

EU ANTI MONEY LAUNDERING (AML) POLICY REDESIGN



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Anti-money laundering and countering financing of terrorism – the way forward at EU level

Money laundering and terrorism financing (ML/TF) continue to pose a serious threat to the integrity of the EU economy and

financial system and the security of our citizens. According to Europol around 1% of the EU's annual Gross Domestic Product is 'detected as being involved in suspect financial activity'. Despite progress made in recent years, further reforms at EU level are needed to address remaining shortcomings; these were identified in a package of Commission reports in July 2019 based around a Communication on better implementation of EU AML/CFT rules.

The EU Action Plan on Anti-money laundering and countering financing of terrorism (AML/CFT) of May 2020 sets an ambitious agenda for a comprehensive AML/CFT policy at Union level with six pillars for future action:

1. Ensuring effective implementation of the existing AML/CFT framework in the EU;
2. Establishing an EU single rulebook on AML/CFT;
3. Bringing about EU-level AML/CFT supervision;
4. Establishing a support and cooperation mechanism for FIUs;
5. Enforcing EU-level criminal law provisions and improving information exchange;
6. Strengthening the international dimension of the EU AML/CFT framework.

The European Commission will shortly issue legislative proposals related to some of these pillars - the single rulebook, a support and cooperation mechanism for FIUs, and EU-level supervision, which will then be negotiated with the European Parliament and the Council. There is strong

political support in all EU institutions for a more stringent EU framework that should allow moving forward quickly.

The single rulebook's objective is to achieve more harmonisation in key areas of the AML/CFT legal framework (obliged entities, customer due diligence, beneficial ownership and sanctions), and be directly applicable, in the form of a regulation. Other provisions, for example concerning national supervisors and FIUs, will remain in a Directive. A proposal to create an EU supervisor with direct supervisory competence over a limited number of the riskiest financial sector entities and a support and cooperation mechanism for FIUs, possibly under "one roof" is supposed to address the current deficiencies of the current decentralised supervision.

On the international front, the Commission will continue engaging actively in the Financial Action Task Force, as well as in bilateral dialogues with a number of third countries. The Commission will give its views on the way forward on pillar 5 of the Action Plan, including Public-Private Partnerships for information exchange, in a publication in the autumn of 2020, along with an updated Supranational Risk Assessment report.

At the same time, enforcement remains our key focus. Enforcement monitoring includes how effectively the EU rules are applied in the Member States, including the capacities and resources of the relevant authorities; full population of registers of beneficial ownership of legal entities and trusts is also a priority.



PEDRO MARQUES

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Upgrading the EU's anti-money laundering framework

In the past few months, more scandals, such as Open Lux, FinCEN files or Cyprus papers, exposed how complex schemes are still used for illicit financial transactions, including money laundering. These revelations are particularly dramatic given the social and economic impact of the Covid-19 pandemic. While honest people, families and companies still struggle to recover, others enjoy the profits of criminal activity. This is not admissible; EU must act now and

deliver on an effective anti-money laundering framework.

The scale of this challenge should not be underestimated. According to the United Nations Office on Drugs and Crime, up to EUR 1.87 trillion are laundered each year, at the global level. Currently, in the EU, despite several AML directives, effectiveness in tackling money laundering remains suboptimal. For instance, according to a recent report by Europol, relevant authorities confiscated just 1% of criminal profits in the EU. To this background, the European Commission has taken a first step by adopting an action plan that aims to provide solid ground for progress. To be successful, the upcoming AML legislative package must

address the main shortcomings of our current framework.

Firstly, the loopholes created by diverging national implementation of the directives. By turning some content of AML directives into a Regulation, we can set common record keeping, internal controls, customer due diligence requirements and define a single way to identify beneficial owners. We should also seize the opportunity to harmonise sanctions and establish penalties proportional to the turnover of companies.

Secondly, the lack of a central supervisory body. Given the single market's cross-border economic activity, it is clearer that an effective AML supervision cannot be restricted to the national level. We

need an EU supervisor and a common approach that fills in the gaps of national supervision, thus contributing to better compliance and enforcement.

If we want the citizens' trust, our fight against money laundering must be relentless.

Thirdly, the limited integration of financial intelligence units. Introducing a mechanism for coordination and support at the EU level would lead to better execution by Member States. It would improve data collection and exchange of information, as well as

upgrade the financial analysis of cross-border suspicious transactions.

Furthermore, other resources should also be considered for the upgrade of our AML framework. For instance, leveraging digital technologies, such as artificial intelligence and machine learning, can deliver smarter checks and improve not only the outcomes, but also the cost-effectiveness of the whole process, which must also be taken into account.

The upcoming AML legislative package is our best chance to prevent the EU's economy recovery from being undermined by illicit financial flows. If we want the citizens' trust, our fight against money laundering must be relentless.



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Cooperation and information exchange as the key to fighting money laundering

The prevention of money laundering and terrorist financing has become a top priority on the EU's agenda in recent years, also against the backdrop of money laundering scandals. It is important that we continue to step up our efforts in the fight against money laundering. But how?

The Commission's legislative proposal announced for May 2021 looks likely to be a key building block. In particular, it will establish more harmonised rules and a more uniform application of these rules throughout the Union.

However, it should be borne in mind that the fight against money laundering can only be successful if:

- all parties involved in prevention work together effectively, and
- links to law enforcement authorities are further developed.

A key aspect of such cooperation with added value is the exchange of data within the prevention system. Money launderers are neither restricted by national borders nor are they limited to laundering their dirty money through only one institution. Therefore, illicit activity often becomes visible only when obliged entities and authorities monitor suspicious activities across jurisdictions and different institutions. Data sharing currently takes place only to a very limited extent between obliged entities.

We must overcome any silo mentality and focus on a more intensive cooperation and possibilities to share data in the fight against money laundering.

More extensive forms of data exchange – e.g. pooling transaction data – could help prevent the exploitation of information gaps that enable arbitrage by criminals who e.g. may attempt to engage with multiple financial institutions, each having a limited and partial view of transactions. This would result in more accurate and valuable STRs that could significantly improve the effectiveness of AML prevention and simplify the work of law enforcement authorities.

This potential cannot be fully exploited at present due to the lack of unambiguous rules on how data can be exchanged effectively and in compliance with data protection requirements, while fulfilling both interests. Because of the untapped potential in this area, the FATF is also addressing these issues within the framework of the "Digital Transformation" project initiated under the current presidency.

Due to the enormous amount of data involved in such exchanges, the use of RegTech must also be further developed and promoted to analyse these data volumes accurately, quickly and automatically. RegTech solutions also enable complex processes to be designed more cost-effectively.

However, accurate STRs are not an end in themselves; they are only the starting point for law enforcement if suspicious cases arise. Therefore, once these STRs have been forwarded to law enforcement authorities, it is vital to ensure that they fall on fertile ground. For the analysis and prosecution of suspicious cases, too, the exchange of information between all responsible parties must become a daily routine.

Public-private partnerships offer potential to better link prevention and law enforcement in the fight against AML. Through such partnerships, knowledge and experience can be exchanged between private entities and competent authorities with the aim to provide necessary information, but also valuable feedback to obliged entities. Thereby obliged entities can minimize risks for their own institutions and simultaneously improve prevention by the private sector.



HANNES MÖSENBACHER

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Are AML regulations the world's least effective policy?

30 years after the first steps in fighting money laundering in Europe, results are still negligible. The ratio between banks' efforts in collecting data and complying with subsequent tracking obligations is disproportionate to the actual prosecution and conviction of criminals. Of the 80% - 90% SARs¹ that are filed, an alarming number bring no immediate value and only 10% are investigated further (Kaiser, 2021). It should therefore not come as a surprise that AML regulations have been described as the world's least effective policy (Pol, 2018). Add to this a reluctance to embrace digital opportunities by regulators and unwieldy formulaic requirements for customers, it is easy to

conclude that AML regulations need to become smarter.

According to the Compliance Week (2021) European banks annually spend 115 billion Euro on AML Compliance, three to four times more than their counterparts in North America. Yet all too often, we have the impression that European supervisory authorities focus on sanctioning formal inaccuracies made by banks, instead of managing AML risks in partnership with banks.

The EU Commission has recognised this disparity. With the Action Plan for the Prevention of Money Laundering and Terrorist Financing presented in May 2020, we see a window of opportunity to step up our collective ambition by establishing a standardised anti-money laundering framework throughout the Union. When implementing this Action Plan, we expect that the legislative proposal in May 2021 will consider two strands:

The time has come for a more effective AML approach and equilibrium between effort and benefit.

Firstly, the harmonisation of legal frameworks and supervisory competences. We would welcome the introduction of a supervisory authority at EU level, exclusively and directly responsible for all institutions, banks, payment services, crypto-asset providers or brokers. Parallel supervisory structures incl. different regulatory approaches, loss of information and thus duplications of costs must be avoided. EBA's and ECB's AML competences, which recently have been strengthened, must be re-defined, and national supervisory authorities should be integrated into the new EU

authority. We do not need more; we need a more focused regulatory regime.

While it is very much appreciated that the existing legal instrument of a "Directive" will be changed into a "Regulation", we believe it is important to have a unified approach towards regulatory examination. This is the only way to ensure we have an aligned understanding and interpretation of the supervisory regime within the EU, preventing regulatory arbitrage. Also, cross-border exchange of information within a group like RBI, being active in 13 CEE countries, and also between banks and banking groups, should be made possible and strengthened. A starting point could be a central European Beneficial Ownership Register, with complete and qualified data, that market participants can rely on.

The second strand relates to cooperation between the banking industry and public authorities. We need a stronger and more cohesive partnership between the private and public sectors, as it is successfully practised in Great Britain with the "Joint Money Laundering Intelligence Force" or in the Netherlands in the area of transaction monitoring.

European banks are committed to fight money laundering. Enhanced collaboration between banks and authorities based on harmonised rules will help Europe not only to follow the money trail but to also become more effective in preventing crime. The time has come for a more effective AML approach and equilibrium between effort and benefit. First steps have been made by the European Commission in the right direction, but there is still a long way until it becomes an effective framework against money laundering.

1. Suspicious Activity Report



MATTHEW ELDERFIELD

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A paradigm-shift is needed to efficiently combat financial crime in Europe

The European defence against financial crime has not been working effectively in the past. Banks have been found to have been ineffective compared to the size and complexity of the problem. But the public authorities have also been found to be ineffective, as has the European regulatory framework.

The fact that European firms spend over a hundred billion euros on AML

compliance every year but that only about 1% of the proceeds of crime are confiscated illustrates that the current system is not working. This is a complex area, where there is a lot to consider but at its heart, I would suggest that the reforms need to have three key elements.

First, that the public authorities in this area need to be better resourced and better coordinated. This argues in favour of the Commission proposals for an EU AML Authority and for taking action to strengthen and support the FIUs. This is needed for a number of reasons: to help the smaller member states that are out-gunned by the criminals, to recognise that this is an international problem, to create a more consistent framework that is less burdensome to comply with for businesses and consumers

- and many other factors. Until a credible EU-level authority is in place it is de facto the US that is the financial crime regulator for European banks.

Secondly, there needs to be better use of technology and data in the fight against financial crime.

Thirdly, there needs to be more public-private collaboration between banks and authorities.

The facts around transaction monitoring illustrate these last two points. Research notes that only 10% of suspicious activity reports are investigated. I am skeptical it is actually that high. This makes the point for better resources, for better use of data and technology and for better

collaboration. The UK model, the Joint Money Laundering Intelligence Task Force, is a forerunner in this. This allows sharing of information between the banks and the public authorities and allows for targeted and intelligence-led activities. In the Nordics, we have been part of a pilot to establish a similar approach in Sweden, called SAMLIT, which is showing great promise.

Banks want to be partners in a better system that catches the real criminals.

Imagine an EU-level approach, where the new AML Authority and well-resourced and data-driven FIUs worked in partnership with the banks to have

targeted transaction monitoring on the typologies of organised crime, where specific criminal names were provided to allow sophisticated network analysis using AI to find associates, seize more of the proceeds of crime and make arrests.

I am humble about the historic track record of the banking sector. And I know the sheer size and complexity of the problem and indeed the complexity of the compliance requirements means we will make mistakes and criminal money will get through. But banks want to be partners in a better system that catches the real criminals. Given how much money is being spent throwing hundreds of thousands of SARs at under resourced FIUs each struggling in their own country, we can collectively do much better.



JOSÉ MANUEL CAMPA

Chairperson, European Banking Authority (EBA)

The EBA moves forward in the fight against financial crime

Europe is at a crossroads. The approach to stemming the tide of dirty money into the single market has until now focused on a succession of minimum harmonisation directives, specific provisions in sectoral laws and a strong reliance on national governments, supervisors and financial institutions to take the steps necessary to fight money laundering and terrorist financing (ML/TF).

Not surprisingly, we ended up with a fragmented approach. An approach where financial sector anti-money laundering and countering the financing of terrorism (AML/CFT) supervisors

in different EU Member States do not have the same powers; where prudential supervisors consider financial crime risks differently across countries and sectors; and where the common EU rules that determine what financial institutions do to prevent and detect ML/TF are interpreted differently in each Member State.

One year ago, the EBA was given a new legal mandate to lead, coordinate and monitor the entire EU financial sector's fight against money laundering and terrorist financing. We have been working hard to make the best use of the new duties and powers to tackle ML/TF. For example, we have published regulatory products, strengthened cooperation between AML/CFT and prudential supervisors, created AML/CFT colleges and assessed competent authorities' approaches to AML/CFT supervision. We are also creating a central AML/CFT database.

Greater harmonisation of rules with cooperation and direct EU supervision is needed to embrace a bold, integrated approach to tackle financial crime.

But while our new powers are an important step in the EU's journey towards a more effective and comprehensive AML/CFT regime, they are not sufficient to ensure financial crime in Europe is contained once and for all. For this, a much more ambitious approach is needed. We have set out what this should entail in our response to the Commission's call for advice on the future AML/CFT legal framework.

First, we need rules that are homogeneous and apply directly to all financial institutions wherever they operate in the single market. Greater harmonisation should be conducive to an approach that is proportionate and risk-based and guarantees that the same risks are managed consistently.

Secondly, we need a more integrated and sufficiently intrusive approach to supervision where prudential and AML/CFT competent authorities work together to ensure that ML/TF risks are addressed effectively across all Member States, across all sectors and throughout an institution's life cycle. Active cooperation and information exchange among supervisory authorities and stakeholders in the public and private sector is a prerequisite for this and has to be enhanced.

Third, we need direct supervision at EU level of the highest ML/TF risk institutions as part of a harmonised, proportionate approach to the AML/CFT supervision of all obliged entities throughout the Union.

Embracing a bold, new and integrated approach to tackling financial crime, and emphasising the roles and responsibilities of each of us in government, supervision, law enforcement and the financial services industry in stamping out financial crime is the right way forward. The EBA's ongoing work harnessing the synergies between AML/CFT policy and other policy areas such as prudential, resolution, deposit guarantee schemes and consumer protection will be crucial to this.

Together, we can make a difference.