

## EU AML / CFT AUTHORITY: SUCCESS FACTORS



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### AML is an essential step towards transforming and enhancing AML/CFT supervision

Massive technological innovation is rapidly changing the face of the financial sector. Cross-border payments these days can be made instantaneously any time of the day and week, with the number of payment providers and the overall complexity of the financial system growing. The Financial Action Task Force reports that multiple jurisdictions are facing increased vulnerabilities, particularly due to a rise in remote transactions. The COVID-19 pandemic accelerated the pace of change in customers' financial patterns - more people work from home and conduct more online transactions than ever before.

With such a transformation taking place, sound, prudent and accurate AML/CFT procedures must be a top priority for financial market participants. Even though AML frameworks are improving, substantial

amounts of money involved in suspect financial activity are still being detected. Europol assesses the annual cost of money-laundering to the European economy at well over 100 billion EUR. Therefore the EU Member States must take action. Besides efforts to improve efficiency of the national AML/CFT frameworks, a further push is needed to implement more uniform AML supervision across the EU Member States and to establish an effective EU AML Authority (AMLA).

Money-laundering and terrorism-financing activities are not contained within national borders. Accordingly, a truly effective framework for AML/CFT must be international. Completing the Single Market for services requires a well-functioning financial sector, and a well-functioning financial sector requires AML/CFT compliance at the very heart of financial companies, with uniform rules for compliance across the EU. To ensure this, we need a harmonized AML/CFT supervision framework.

**Extensive information exchange and deep cooperation are central for the EU AML/CFT framework.**

Currently, AML/CFT regulatory and supervisory system is too country-centric and therefore application of the rules for compliance vary depending on the country. The recent proposal of the Commission introduces a Single Rulebook for preventing the financial system from being used for the purposes of money-laundering or financing terrorism. Such a Single Rulebook in place at the EU level will stop regulatory arbitrage and provide a basis for an effective supervisory practices. Furthermore, the Commission proposes to expand the rules against anti-money-laundering or terrorism financing regarding crypto-assets and related service providers - a crucial step, given the mounting evidence from research of illegal activities involving such assets.

At the center of such an EU-wide supervisory framework for AML and

CFT should be a competent AMLA. A capable AMLA has the potential to improve the resilience of the European financial system, reduce the likelihood of systemic errors, and allow individual cases to be handled with greater efficiency. To this end, it must be ensured that AMLA has a broad mandate, covering a range of players in the financial sector, and its staff have thorough knowledge in all areas of financial services. In addition, there must be clear and objective criteria for determining which institutions fall under AMLA's direct supervision, ensuring an appropriate balance between AMLA and national AML/CFT supervisors, in both the overall supervisory framework and the day-to-day operations.

Last but not least, it is of utmost importance for AMLA to have a good overview and knowledge of the EU Member States' markets, as well as to promote the convergence of supervisory practices. Therefore, at least one entity per Member State should fall under direct AMLA supervision.

AMLA should work in close cooperation not only with national AML/CFT supervisors, but also with other institutions - ESAs, for example - to ensure the flow of all necessary information. Currently, we lack a well-defined common structure to support such cooperation at the EU level. This shortage of common tools and resources leads to situations where too few cross-border joint analyses by AML/CFT and non-AML/CFT supervisors are carried out, hindering the capacity to detect money-laundering and terrorism financing early on. Creating an EU-wide AML/CFT data hub, administered by AMLA, that integrates data from all sides is vital, as access to reliable, accurate, detailed and real-time data is crucial for an effective AMLA.

Building up an EU-wide AML/CFT framework with an AMLA at the center of it is not an easy feat. However, we are sure to succeed, as we start from vast experiences of AML/CFT coordination at the national level and recognize prevention of money-laundering and terrorism financing as our top priority.



## MARCUS PLEYER

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### Let's make the AML A a giant leap forward in the EU's AML/CFT policy

When considering how to combat money laundering and terrorist financing even more effectively, we should be aware of the indisputable starting point: money laundering and terrorist financing are global phenomena, often with a transnational and cross-border character.

Why is this the case? The EU's internal market has brought us all many freedoms: goods, services, capital and people can move freely, citizens can freely choose their place of residence as well as pursue a job, education or entrepreneurial activity in a Member State of their choice. At the same time, however, the internal market has also facilitated the free movement of laundered money across borders. The fact that proceeds can be moved across national borders makes traceability more difficult, offers an opportunity to disguise the origin of the money and allows the funds to be laundered where preventive requirements are lowest. The consequence of these findings is that we need to mirror the

freedoms achieved by the internal market with safeguards that prevent abuse of these freedoms for money laundering purposes.

Considerable progress on harmonisation has already been achieved with the EU's AML directives – a single rulebook within the upcoming directly applicable AML Regulation will now make the necessary complements to achieve a real level playing field. What is still missing, however, are measures that enable authorities to take EU-wide action at the same pace and within the same mindset as transnational money launderers. Only by doing so can we prevent criminals from exploiting the freedoms of the single market by taking the path of least resistance for their money laundering activities.

With the proposal for a European Anti-Money Laundering Authority (AMLA) in particular, we are pursuing the goal of ensuring uniform application of the EU legal framework and establishing common supervisory practices. The latter will be accomplished by means of standard-setting and coordination of supervisory activities, as well as direct supervision of (small numbers of) obliged entities from the financial sector who, due to their cross-border activities, fall under the jurisdiction of several supervisory authorities, thus creating a special coordination burden. In addition to designing strong powers for the AMLA, our attention should also focus on how the governance is designed. In this regard, we should re-examine the governance we have designed for other agencies, while

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bearing in mind it was often developed for their primary role of standard-setter. The guiding principle in the re-evaluation of existing decision processes should be that it is critical to design a customised decision process for each of the authority's powers, because the strongest powers cannot be exercised efficiently in practice if they do not mesh with the decision-making processes.

The Commission's proposal has been already guided by this idea and, with regard to the AMLA's internal decision

making process, differentiates between whether the AMLA takes directly binding measures vis-à-vis individual obliged entities in the area of direct supervision, or acts in the area of standard-setting. This approach is to be thoroughly welcomed due to the fact that for standard-setting, which the AMLA will undertake in many areas of money laundering law, we urgently need common ownership and broad support from the supervisory authorities that will be tasked with consistent implementation of such standards. In this way, know-how from day-to-day supervisory practice can best feed into new standards, given that authorities are conscious of where problems lie.

In contrast, a different decision-making structure is required for the powers within the framework of direct supervision, where action has to be swift and targeted. Here, the day-to-day supervisory work will be carried out by the respective national supervisory authorities together with AMLA staff in joint supervisory teams, again with the aim of using existing knowledge and experience. However, a body that is independent and impartial – the envisaged Executive Board – should then make the final assessment as to whether directly binding measures need to be taken against an obliged entity.

In this way, we will ensure that the AMLA decides – especially in constellations where the AMLA has direct supervision because national supervision has proven insufficient – without being exposed to the delays and potential conflicts of interest associated with too large a forum of national supervisors. In addition, such governance will allow the AMLA to be perceived externally as a body with indisputable integrity and objectivity in combating money laundering.

We should not let the opportunity pass us by to build up the AMLA from scratch and install custom-made decision-making processes. In doing so, we can achieve decisive progress for the institutional set-up of the EU's AML structure, comparable to the establishment of the SSM in prudential supervision.



## PHILIPPE BERTHO

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### Equipping the EU with a fit-for-purpose AML/CFT regime and architecture

As a follow up to its 2019 report on the assessment of recent alleged money laundering cases involving EU credit institutions and subsequent 2020 action plan, the European Commission unveiled its AML/CFT package in July 2021. With this package, the EC seeks to address shortcomings in the existing EU AML/CFT regime notably in the EU cross border context.

The AML/CFT package includes a new AML/CFT regulation and a regulation establishing an EU AML/CFT authority. There is much to command in the EC's proposals, which would thoroughly improve the EU's ability to tackle the threat that money laundering and terrorism financing (ML/TF) poses to the integrity of its economic and financial system and, ultimately, its social fabric. Still, further improvements could be envisaged by the EU's co-legislators.

The current AML/CFT directive embodies one of the strongest set of AML/CFT rules in the world. Yet, it

requires transposition into national law. This is conducive to divergent interpretation; fragmentation in national rules and sometimes delay in implementation ensue. The proposed new regulation includes directly applicable rules that obliged entities would have to comply with. Harmonized rules would bring greater convergence in practices across the EU. However, for that objective to be fully achieved, the rules have to be detailed enough.

Among other issues, two sets of requirements would gain to be further developed in the new regulation. First, customer due diligence (CDD) requirements need to be fleshed out in a granular way to prevent inconsistent implementation or, worse, regulatory arbitrage occurring within the internal market. This is especially true for identification and identity verification requirements, all the more so in a context of growing remote customer relationships. After all, a suspicious transaction report with incorrect identity information has scant value if at all. Second, for groups of obliged entities with significant cross border activity, both within the EU and in non-EU territories, comprehensive risk-based requirements at groups' level would address ML/TF cross border and trans-sectoral nature. This would help ensure that transactions carried out by non-EU subsidiaries or branches of EU-based groups comply with EU rules.

#### AML's direct supervision scope needs to be crafted so that it adds value to the existing framework.

Having the right AML/CFT regulation in place is not enough; supervision and enforcement have to follow suit, including on a cross-border basis. Recent initiatives, such as the European Banking Authority's guidelines on AML/CFT colleges for cross-border financial groups and on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units (FIUs), have greatly improved the coordination of competent authorities within the EU. Yet, the EC's proposal to set a new EU AML/CFT Authority (AMLA) would lead the EU AML/CFT architecture to a quantum leap.

AMLA would have a two-pronged role in supervision and in FIUs' coordination. In the supervisory realm,

AMLA is set to become the center of an integrated system of national AML/CFT supervisory authorities, with direct supervisory power on a subset of financial obliged entities deemed to be exposed to the highest ML/TF risk. Getting that subset right is not easy; indeed, gauging an entity's ML/TF risk exposure and benchmarking it to that of other entities is not as straightforward as measuring the size of its balance sheet.

Additionally, ML/TF risk exposure is not always commensurate with an entity's volume of clients or activities. Against that background, two areas of the EC's proposal require further consideration.

First, the scope of AML's direct supervision needs to be crafted so that it adds value to the existing framework. Current selection criteria are mainly EU-oriented; the inclusion in AML's direct supervision of entities with non-EU-based parent entities would bring greater EU-wide supervisory leverage—especially so in the cryptosphere in which the geographical location of activities is less relevant. Current selection criteria also hint at focusing on a few banking groups, possibly headquartered in a limited number of member states; consideration should be given to a broader set of financial activities and to giving to AML's direct supervision a meaningful stake in each and every member state.

Second, AML's indirect supervision would be instrumental in bringing consistency in the supervision of both financial and non-financial activities and levelling up the EU's defense against the ML/TF threat. The AMLA regulation needs to empower it with sufficient tools to help ensure its effectiveness.

Other thoughts could be given to information sharing and synergies between AML's supervisory and FIU parts. Yet, overall, the EC's AML/CFT package is a robust proposal, which, once adopted, will equip the EU with a much-awaited modernized and more integrated AML/CFT regime.



## DERVILLE ROWLAND

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### AMLA's role in delivering enhanced convergence, coordination and cooperation

The flow of illicit funds contributes to and sustains serious societal harm, including drug dealing, terrorism, and modern slavery, not to mention risks to financial stability. The UN Office on Drugs and Crime estimates that between 2 and 5% of global GDP is laundered each year. According to Europol, this equates to between €715 billion and €1.87 trillion annually.

Recent scandals have shown that the current EU framework to fight financial crime and money laundering is not as effective as desired. The proliferation in new technologies creates new opportunities for criminals and terrorists to launder their proceeds or finance illicit activities.

The weaknesses in the framework and inconsistent approach to supervision require structural and legal changes combined with the coordinated effort of a broad coalition of actors comprising regulators, FIUs, law enforcement, policy makers and legislators across the EU.

The AML/CFT Package represents a radical overhaul of the framework and has the potential to strengthen our collective defences. The ultimate success of the Package will depend on our ability to act collectively and in the spirit of solidarity to realise the full potential of the proposals.

The divergent application of the existing AML/CFT rules hinders the EU's ability to prevent the financial system being used for illegitimate purposes. The creation of a single AML/CFT rulebook by means of a directly applicable Regulation will prevent inconsistent application of the rules across Member States, close regulatory loopholes and reduce regulatory arbitrage, all of which criminals have exploited.

The establishment of AMLA is at the heart of the framework overhaul. AMLA will be charged with raising standards in supervision, delivering a common understanding in supervisory practices and driving increased alignment and coordination with other EU and international authorities.

A credible methodology for assessing EU wide ML/TF risk and identifying the firms that pose the greatest ML/TF risk to the Union will be imperative to AMLA's success. AMLA must also embrace an intelligence-led approach to its direct supervision ensuring that its resources are concentrated on the areas of greatest risk. Information-sharing with ESMA, the ECB, NCAs and FIUs will be essential to this intelligence-led approach.

#### Enhanced convergence, co-ordination, and co-operation between the broad coalition of actors is vital.

AMLA's Joint Supervisory Team approach to direct supervision is welcome. NCAs with in-depth knowledge of national AML/CFT risks must be engaged and empowered in this structure. This will inevitably require meaningful cooperation and a continuous feedback loop between AMLA and the NCAs.

In order for AMLA to have a meaningful impact in the fight against money laundering, it will have to work closely with NCAs to ensure that firms not directly supervised are complying with their AML/CFT obligations. AMLA must foster with the NCAs an effective and responsive risk culture. AMLA must be

effective in its own threat response and capable of requiring NCAs to respond, where required, to address the threat of money laundering.

In its role as AML/CFT supervisor, AMLA will identify emerging ML/TF risks and trends across the Union. Its role in developing Regulatory Technical Standards that reflect real-time developments will ensure that the single rulebook remains relevant, agile and capable of responding to evolving threats.

AMLA's mandate to coordinate FIUs across the Union provides it with the opportunity to revolutionise how financial intelligence is shared and analysed. AMLA's interaction with law enforcement will be key to ensuring that financial intelligence results in prosecutions.

AMLA's indirect supervision of the DNFBPs has the potential to be a powerful tool in the fight against money laundering as lawyers, accountants and trust and company providers act as gatekeepers to the financial system. The DNFBPs are uniquely placed to prevent criminals gaining access to the financial system and represent a rich store of intelligence for both AMLA and FIUs.

The success of the Package is not dependent on any single factor. The drivers of success are multifaceted. A harmonised rulebook, overseen by a single supervisor that raises standards and delivers increased alignment and cooperation across the regulatory landscape, will be transformative. No legislative package can, however, contemplate every ML/TF risk and totally eradicate money laundering.

Success will ultimately be measured by how well the Package enables the Union to reduce money laundering and its detrimental impact on the financial system.



## DUNCAN DEVILLE

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### Anti-money laundering: making the new EU framework a reality

In July last year the European Commission published its ambitious package to reform the anti-money laundering/anti-terrorism financing (AML) framework for the EU. Western Union is a very strong supporter of these proposals. Compliance with AML is one of the largest investments made by Western Union and one of the most significant barriers to the emergence of efficient cross-border payments both within the European Union and internationally. This has also been recognized in the G20 Roadmap for enhancing cross-border payments.

At the heart of the European Commission's proposals are two elements:

- harmonization of the rules via a single rulebook by moving parts of the current AML framework from a Directive, which is not directly applicable, to a Regulation, which is directly applicable across the EU;
- more centralized supervision via the new EU authority on AML.

Together these measures are expected to lead to significantly higher harmonization across the EU. Harmonization brings legal certainty, reduces frictional

costs in implementing the rules across 27 jurisdictions and most importantly allows companies to develop and roll out a single compliance program for the Single Market as a whole.

The proposals by the European Commission recognize that financial services institutions, and in particular payment services providers, are increasingly offering their services and products to clients in an online environment, be it through mobile or other non-face-to-face applications. Harmonizing the AML rules allows companies to develop technology solutions to on-board clients by using electronic identification tools. Technology also allows companies to better identify, track and act upon suspicious transactions. All of this should contribute to making Europe a safer place for doing business, while not disrupting the innovative and seamless customer experience which Western Union and its competitors aim to deliver.

The legislative proposals are now with the European Parliament and the EU Member States. As the co-legislators elaborate on the legislative texts, we at Western Union believe there are a number of aspects that still deserve further consideration and would help make the revised EU AML framework a real success.

**We believe individual companies should have the right to opt in to the sole and direct supervision by the AML authority.**

We welcome that the proposals aim to clarify how AML reporting obligations interact with the General Data Protection Regulation. In the absence of legal certainty in this regard many financial institutions rightly err on the side of caution, potentially depriving law enforcement of information that could solve, or even prevent, crimes. A further improvement would be to require the new AML authority and the national Financial Intelligent Units to swiftly agree on common suspicious transaction report templates. This would streamline the reporting process and allow for the use of modern analytical tools to report suspicious transactions.

Even though we are strong proponents of a harmonised AML framework,

Western Union also believes the EU AML framework should allow companies to rely more on risk-based approaches when it comes to AML prevention and detection. This means that the EU framework should not be overly prescriptive but should allow individual companies to develop and implement their own risk mitigation techniques, appropriate for their own respective business models.

This brings us to the question of direct supervision by the EU AML authority. The European Commission's proposal suggests that high-risk activities should be directly supervised by the authority. These are defined by their cross-border nature, as well as the nature of the underlying activity. We are critical of any regulation whereby cross-border financial services institutions would automatically be deemed riskier than exclusively domestic financial services institutions. Why otherwise promote a Single Market in the EU? Any assessment of a respective financial institution's risk profile should instead take into account the average size of the transactions, the nature of the transaction and most importantly the risk mitigation techniques and past supervisory track record of the respective financial institution. It is important to avoid a potential blacklisting of directly supervised financial institutions.

Western Union has one final suggestion. Independent of the designation process we believe individual companies should have the right to opt in to the sole and direct supervision by the AML authority. This would make them subject to only one AML regime within the EU, thereby reducing the compliance burden for pan-European companies, but most importantly leading to more effective and efficient AML supervision in the European Union. It would also help address any concerns when it comes to de-risking.



## JESPER BERG

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### Technology and public private partnership are the greenfield opportunity for AMLA

Combatting and preventing money laundering remains one of the key challenges we face – as an industry, as regulators, as supervisors and as society. This seems unlikely to change anytime soon.

We are all struggling to improve the effort, procedures, and systems. Much has been done and much is being done. Banks and authorities have stepped up. Few banks and no authorities want to fail. Failure is not an option, and could also cost you dearly on your reputation. There is still work to do. A very large part of crime is undetected, and criminals are getting better and better at hiding and masking their illicit proceeds. It is a global and a local problem. The Financial Action Task Force has done much to solve the global issue by issuing recommendation and by assessing the individual jurisdictions. The question remains, where should we focus on the plethora of options for improvements to the framework put forward?

In the European Union, the Commission has put forward a proposal for an AML

package. The package includes more stringent and more harmonized rules.

The package also includes a proposal for a new European AML Authority, the AMLA. The task of the AMLA will be to supervise the largest and most risky financial institutions in the AML/CFT area, to supervise the supervision in the member states (to police the police, so to speak), and to issue standards for supervision.

Nobody questions the need to keep up the pressure on both supervisors and the supervised, but it deserves discussion, how the AMLA will give maximum value for the money spend.

Being close to financial institutions, local law enforcement authorities and the judicial system will continue to be crucial for efficient supervision. National supervisory authorities should still play a central role in supervision, also in the largest and riskiest financial companies.

However, supervisors are at best a supporting actor in the fight against money laundering. The key battle to win is taking place in the nexus between financial institutions, the FIUs and the police. The Greenfield opportunity for the AMLA is to contribute to the winning of that battle.

#### Technology and Public Private Partnership is the Greenfield Opportunity for AMLA

Increased cooperation and enhanced room for exchanging information has great potential, both within the private sector and between the private sector and authorities. And, building on such initiatives, technology has the potential to enhance the quality and efficiency of efforts further.

The criminals' methods are becoming ever more complex and more international. Banks therefore need to have better access to data on transactions made by the criminals in order to detect them in their own system. Crucially, banks must be able to cooperate closer in their transaction monitoring and investigation of suspicious transactions.

Legislators and authorities, both on EU level and on national level, must support banks by closer cooperation, not least via a close public-private partnerships.

Authorities shall augment their efforts through closer cooperation and exchange of information on suspicious transactions and on suspected noncompliance by banks and other obliged entities.

There are both high- and low-hanging fruit here. Technology holds great potential for both CDD-procedures and transaction monitoring. Developments within electronic identity solutions can enhance security when verifying identities, while access through APIs to for example validated beneficial owner registers can make necessary customer information readily available. Advanced technologies such as machine learning can increase the quality of existing transaction monitoring systems and facilitate the identification of criminal networks spreading their activities across multiple financial institutions in more extensive transaction monitoring systems. A fundamental premise for efficiently exploiting technology is, however, that comprehensive, informative, and high quality data is readily available.

Increased use of data and data sharing does not come without risks obviously. I believe it is important to have an up-front in-depth discussion of just how far we want to go down this road. It is important that we find the right balance between the worthwhile fight against financial crime on the one hand, and on the other ensure that we do not encroach on basic human rights and data privacy rules.

Both authorities and the private sector play a crucial role in fighting money laundering and terrorist financing. Increased cooperation, exchange of information and usage of technology must necessarily go hand in hand with making our common efforts more efficient.