AML: key success factors

1. With a uniform set of AML rules and the creation of an Anti Money Laundering Authority (AMLA), the EU expresses its strong legislative will to be up to the AML challenge

A policymaker commented that the issue of AML has been rising up the agenda. The damage money laundering scandals can cause to the reputation and even the existence of institutions is clear. Robust AML regimes are part of environmental, social and governance (ESG) frameworks. AML efforts have recently been stepped up. There is no financial integrity, fair competition or fair pricing without an effective AML regime and the importance of AML to national security has also been recognised since February 2022. Past scandals have revealed that the European system is not perfect. There are a lot of problems to fix, and international expectations are high.

For this reason, the Commission issued a legislative package in summer 2021 proposing a uniform set of AML rules. Some rules are harmonised with discretion at the national level and directly applicable, in particular for customer due diligence (CDD) and for know your customer (KYC) across the EU, preventing arbitrage and limiting the number of regulatory regimes financial institutions deal with. The Commission proposed the Anti-Money Laundering Authority (AMLA) to ensure the uniform application of the regime, the issuance of draft technical standards and the supervision of the industry. The Council concluded its negotiations at the end of 2022 with some material amendments, such as on information exchange between private sector entities and stronger supervisory powers for AMLA.

The European Parliament (EP) defined its position at the end of March. The trialogue is going to be started soon. The panel will take a closer look at the EP's proposal, which includes new proposals and more detail on existing rules to make them stricter. Thresholds for due diligence obligations are being lowered and there is a push for more transparency. The discussion will be split into four parts. The first part is about where Europe stands. The second part will look into transparency. The third part will look at the links between AML and sanctions. Finally, other important elements of the trialogue will be considered.

1.1 The EU Parliament contributed to strengthening the EU's ambition and reinforcing the efficiency and reach of the bill

A public representative commented that the EP's proposals are ambitious, but achievability and proportionality have always been considerations. The proposals are achievable, but this depends on political will. The EP's proposal extends the others', making the AML regime more European and broadening its scope. The list of obliged entities is extended to include football clubs. The EP also extends beneficial ownership (BO) registers, increasing accessibility of real estate registers and including cars, boats, and planes. The focus is on places in Europe where there is a known need to have a closer look.

The EP is also looking for a better quality of due diligence, putting forward a list of high risk countries, institutions, and high net worth individuals. The intention is to arrive at a common definition of ownership with a lower threshold, stronger requirements for obliged entities and better verification of data. Supervision must be very good and very European. The AMLA should take the lead because it would be ineffective to have a college of supervisors who cannot make decisions. Binding mediation is necessary where there are issues, but the AMLA should also have a role in the peer review of financial intelligence units (FIUs) and the BO register. A package of this size and importance has not been discussed enough, so this discussion is valuable. Some pushback is to be expected from member states given that the EP focuses on freezones, which a small number of member states do not have.

An industry representative stated that the package covers some blind spots by looking holistically at risk based approaches and the impacts on the de risking of whole industries as well as on consumers of financial services. The financial industry should always look for improvement in the set up of public private partnerships around information sharing. Although there is currently a gap, it is well positioned to make improvements and stay connected to regulators and supervisors' needs. The one stop shop concept stands to serve the global community very well because splitting suspicious transaction reporting (STR) across countries devaluates it. The benefits of having one place to file a comprehensive view of suspicious activity go beyond AML work. Bringing together supervisors and FIUs is critical because they are not as connected and can provide different feedback. The public private partnerships built into this regime will help improve that.

The ability to file on almost anything must be protected. Financial institutions should not dump more garbage into the system, but it is important that information from one country be shared among other FIUs for the monitoring of illicit activity.

1.2 The package represents real opportunities for efficiency for financial institutions and their international customers

An industry representative observed that this package represents a huge opportunity, particularly for the

private sector. Banks trying to conduct AML duties are faced with different situations in different countries, making it difficult to manage the necessary information and increasing costs. The new harmonised approach will allow practitioners to rationalise their internal processes and simplify the requests made of international clients. There are still some challenges. The package is right to argue for better-quality due diligence, but it does not follow that due diligence will be better if the threshold is lower. If a 15% threshold[1] were adopted, organisations would need to review all their internal processes. 25% is most common internationally, though some countries have different thresholds and having the same threshold across Europe is helpful. The request usually goes much lower for tax purposes, so it will not be a huge challenge.

1.3 A widened regulatory scope and improved, and commensurate supervision are necessary to address the rising number of AML cases in the context of technology and innovation

An industry representative noted that the bigger challenge is that new organisations are going to be covered by this regulation. However, this will be positive globally because it is not true that only banks have to provide this information. It is therefore very important to cover a wide scope.

A regulator stated that there are more AML cases every year, in part because national authorities are putting in more effort. Every year from 2016 until 2022 there have been more cases in Eurojust, with the number of cases in 2022 double that of 2016. The challenge is primarily the scope. There are more obliged entities to be supervised and new technologies bring new challenges. It is necessary to adapt quickly and establishing a central database will help supervisors work more efficiently.

AMLA must have sufficient resources to supervise more than 40 groups, as this puts a lot of pressure on the new institution and on the national competent authorities (NCAs). The NCAs must also be provided with more people and the resources for the joint supervisory team must be increased. New products are still being designed to be out of scope of the Markets in Crypto Assets (MiCA) regulation, and more supervision is needed to establish whether they do indeed fall under MiCA. Caution is needed around product classification to avoid spill-over effects from the risks of traditional financial products. The battle on AML is a marathon rather than a sprint and significant effort is necessary to create financial hygiene.

2. Improved transparency and further data sharing between financial institutions and national and international supervisory authorities is inevitable

2.1 When it comes to money laundering, transparency is of the essence

An industry representative commented that transparency is necessary and the proposal around the central database and information exchange will be a gamechanger. Banks must also exchange information, as criminals do not simply use one bank.

A public representative observed that the EP tried to base the high value asset register on existing registers. Money can be laundered through the trade in these assets. The EP tried to ensure authorities have good access to BO data on real estate at a European level and the registers were extended to make clear the source of funding and BO of cars, boats, and planes over €2 million. Art and jewellery were not included this time because the regime has to be proportionate, but the EP hopes to gain experience on how to create registers for other high value assets for which there is a lack of data.

A regulator stated that supervisors should be able to rely on each other's assessment. Once access has been granted to registers in one member state, it should be granted elsewhere. The legislative framework should provide certainty in this regard in order to foster unbureaucratic behaviour which is prerequisite for effective supervision and investigation. Money laundering crosses borders, so investigating funds requires checking registers across Europe. A European solution is certainly the way forward also when it comes to BO registers and transparency.

2.2 However, when pursuing money laundering, it is essential to consider data privacy and take account of possible reputational damage. Policymakers' judgement will be key in this respect

An industry representative remarked that caution is needed around extending access to the wider public. The recent ECJ decision on data privacy should be remembered, and the French data privacy authority was also sceptical. AML risk is of a different nature because of the potential reputational impact. Putting information into the media too quickly can trigger huge damage before the legitimacy of the information can be checked. Recently, the role of social media in the collapse of Silicon Valley Bank has been acknowledged. That type

1. On ultimate beneficial ownership (UBO), the EU's Fourth Anti-Money Laundering Directive states that holding more than 25% of the shares or interest of an entity or being a beneficiary of at least 25% of its capital gains gives individuals UBO status. Setting the threshold to 15% is debated. UBOs are natural persons who ultimately own or control a customer and/or natural persons on whose behalf a transaction is conducted. They include persons who exercise ultimate effective control over a legal person or arrangement.

of impact could be greater in an AML case. This is not to say that transparency is not needed, but a balance with data privacy must be found.

2.3 People with a legitimate interest should access data

A public representative observed that the ECJ decision on transparency was a surprise. The EP tried to work on the basis of the statement in the verdict that journalists have a legitimate interest to ensure quick and unbureaucratic access for journalists. The EP has come up with a way forward to ensure quick access while doing justice to the ECJ decision and will discuss this with the Council. This involves providing quick access based on a declaration of honour, with the possibility of revoking access if it becomes clear that someone is not a real journalist. Mutual recognition is also needed, because Luxembourg has restored access to the BO register only for the two journalists in Luxembourg, when Luxembourg is an investment hub with clients from across Europe and the world.

A regulator commented that the ECJ ruling shows that balancing transparency and privacy rights is difficult. The court contributed to finding a good solution by pointing out that there is a clear need for transparency and rapid access to registers to combat money laundering, and that journalists have a legitimate interest. The ECJ said that while transparency was highly important in fighting money laundering, unrestricted access to registers which legislators introduced with the fifth AML Directive (AMLD) following the Panama Papers would go too far, opening a Pandora's box of private information that could be disseminated to anyone. So, the question to answer is yet again how to give rapid access to all the right people. The decision on the way forward is a call for the legislator, but for supervisors it is important that the assessment of who has a legitimate interest in access to registers is granted as quickly and unbureaucratically as possible. The legislator should provide guidance in a level 1 or 2 text to give greater certainty around the definition of legitimate interest.

2.4 Conditions for improving data protection

A policymaker noted that a European Data Protection Board (EDPB) letter observed that the provisions on information exchange between private sector institutions do not give sufficient weight to data protection. A regulator commented that the reasons for the implementation of the regime must be considered. The two main innovations of the AML package are the AMLA and the shift from directive to regulation. These steps are more of the same. The first line must be strengthened in the fight against financial crime. The concern expressed by the EDPB must be acknowledged, but it lacks nuance and fails to recognise the importance of the AML regime. Co legislators should discuss introducing more safeguards into the rules, but the AML package must change how things are done today. A policymaker questioned whether the EDPB letter understood that the current EU draft provides for national legislation to set up the data protection requirements. The EDPB should have spoken to the AML community beforehand.

2.5 Effective transparency requires an appropriate trade off between information quality and quantity since data should feed into a meaningful risk based decision-making process

An industry representative stated that the key questions are whether more transparency is better and who connects the dots. One must question whether the system is ready to connect the dots and become more effective. Global standards are necessary to create a common understanding of how public and private sectors can combat money laundering because it is a cross border activity, but when a matter becomes sufficiently material to be considered further is a matter of judgement. It is necessary to determine whether taking action will result in a meaningful outcome and act on the basis of risk. There is a big difference between a local company and an offshore company, and the means of a company are important.

Reflection is needed on how much the focus should be on implementing more policies and procedures as opposed to adopting a risk based approach. All entities have the same interests, and it is necessary to ensure they can respond to changes in the geopolitical environment. The right balance is needed before the focus can shift to the outcome. The speaker's organisation urges that the beneficial ownership threshold should be kept at 25% in line with the Financial Action Task Force (FATF), the US, the UK and Switzerland. Application of a lower threshold should be determined on the basis of risk profiles. While increasing numbers of suspicious activity report (SAR) filings are made, their outcomes remain unclear. The speaker's organisation therefore promotes the new directive very strongly because it is fundamental that there is greater effectiveness across many countries.

3. Real synergies between AML and sanctions application arrangements should be sought, though significant specificities must be factored into the surveillance framework. Succeeding at implementing these arrangements may open the way for progress on tax evasion

A Financial Intelligence Unit official stated that, while the proposal on financial sanctions and related measures for "obliged entities" is certainly interesting and makes sense, it is necessary to determine who the obliged entities are. AML/CFT obliged entities cover a huge scope, but essentially everyone is obliged to enforce sanctions. It is necessary to clarify which group the rulebook addresses. Although there is a difference in nature and purpose between sanctions, which are rule based and deterministic, and CDD measures, which are more discretionary and risk based, there are some commonalities. A designated person can be a beneficial owner of a company, so a look-through approach is needed to identify the subject that has to be sanctioned.

This is very similar to the BO conundrum that arises in traditional CDD. The European Commission has also presented a proposal to criminalise sanction evasion, which is a more nuanced area. Progress is therefore being made towards merging the two frameworks, but some fine tuning is needed.

Although the idea of conferring sanction-related tasks to AMLA is appreciated, there are many concerns. It is not clear which obliged entities will fall under AMLA's remit around sanctions or how it would take decisions. Two configurations of the AMLA general board are proposed and neither includes sanctions competent authorities, with the exception of supervisors and FIUs that have competencies in that area. This governance issue must be addressed. There is also a question around feasibility with regard to the time and resources needed to implement this.

A regulator commented that there are clear supervisory synergies between AML/CFT and sanctions monitoring. Those responsible for AML in industry are increasingly also responsible for sanctions monitoring. National prudential supervisors also check the sanctions monitoring systems and controls of obliged entities and report inadequacies to sanctions monitoring boards. The EP's attempt to achieve convergence is positive, but there are concerns around the fragmentation of the list of sanctions competent authorities. It is also unclear whether AMLA will have the necessary resources to achieve its objectives, given the lack of trained supervisors. A European academy for training supervisors could address this and increase the consistency of approach. Centralisation using technology would allow resources to be pooled between AML and sanctions monitoring, producing better results.

A public representative noted that it is surprising that AML and tax avoidance remain separate, as the information on high value assets for AML could be used for tax purposes, but this is not on the table.

4. Expected challenges and priorities to implement the AML framework

4.1 Financial institutions as well as the public sector must make important technical and human investments to comply with the forthcoming AML framework and meet expectations

An industry representative stated that the whole AML package should be implemented, including less popular areas such as the one-stop shop. Financial institutions are making significant investments to be compliant, so it is important to see the real impacts of the regime.

An industry representative observed that the current system is inefficient despite costing banks significant sums, so there is a lot of expectation. The new system should be implemented efficiently, and AMLA should have significant powers. It needs to have enough people to supervise 40 entities and to have access the right information, because it will not start with its own information. A constructive dialogue with the industry is also needed, both because of the cost and because the industry is making a lot of SARs to protect itself, when the proportion that leads to action is small.

4.2 Many lessons will be learned around public private and NCA-AMLA cooperation from the application of a new risk based surveillance approach

An industry representative remarked that a constructive dialogue is needed to implement a risk based approach, because the existing lack of risk tolerance makes this impossible. Agreement on such an approach is necessary to have an efficient system that does not cost huge sums.

An industry representative commented that the directive should be implemented as soon and as cleanly as possible. A risk based directive will be a strong foundation to address new developments. The more open dialogue and intelligence sharing within public-private partnerships over the last 18 months has been very beneficial and encouraging. The directive also recognises that even the sanctions regime is no longer solely rule based because of the provisions around enablers, which are a key consideration for banks. The risk of the present system is that form is prioritised over substance and the bigger picture is missed, so a risk based approach is needed. Getting to the next level will require comprehensive cooperation between public authorities and the private sector.

A regulator stated that AMLA should start functioning in line with its AML obligations and, once these are functioning as planned, the European Commission should propose expanding its role. This is a good opportunity to establish a centralised European institution to supervise the financial market. If AMLA also cooperates closely with national authorities, it has the potential to be transformational.

A regulator wished to ensure that AMLA adds value and does not become another layer of complexity. AMLA's role in coordinating with national authorities will be much more difficult than the European Central Bank's (ECB) challenge regarding the Single Supervisory Mechanism (SSM), as this is a more difficult issue to supervise.

4.3 Defining clear, short term operational objectives and leveraging existing national expertise are key success factors for the upcoming AML framework implementation phase

A regulator commented that legislators should finalise the legislative package and supervisors must establish priorities and effectively prepare to avoid the endeavour failing, because the AML architecture is much more difficult than the SSM. It will be crucial for national authorities to understand AMLA's role, and vice-versa, in order to integrate it into their processes, to avoid both redundancies and supervisory gaps. There is a lot of expertise in national authorities that must be brought together to set it up. Sharing forces will be key. Finally, expectations from within and outside the EU around what can realistically be achieved should be managed. There is no doubt that the right intention is there. But

realism about the delays and the deliverables is necessary. Contingencies should hence be put in place to anticipate and address them.

A Financial Intelligence Unit official stated that AMLA as an FIU mechanism acts as a multilateral accelerator of cooperation in the Commission and Council's approach. FIUs will remain in the same situation because there is no truly supranational level at which AMLA would sit and govern properly. FIUs are already free to start joint analysis and AMLA simply acts as a broker. In the EP's proposals, AMLA becomes a truly supranational director of joint analysis with the power to steer, promote and initiate joint analysis. This is helpful in giving FIUs the correct incentives to join and participate in a supranational approach. However, the EP should not embark on the FIU.net one stop shop proposal because it is neither feasible nor appropriate.

A regulator commented that AMLA should promote stronger cooperation between prudential and AML regulators, which is very important for the integrity of the European financial system.