

The birth of the new anti-money laundering authority: harnessing the power of EU-wide supervision

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Abstract

Purpose – This paper aims to critically examine the European Union's legislative initiative to establish an Anti-Money Laundering Authority (AMLA), which will introduce union-level supervision and provide support to national supervisors in the field of anti-money laundering and countering the financing of terrorism (AML/CFT), as well as to financial intelligence units (FIUs) in European Union (EU) member states. The paper discusses why this initiative was deemed necessary, which are the key objectives, rules and principles of AMLA and which challenges and opportunities will emerge as AMLA becomes operational.

Design/methodology/approach – This paper draws on reports, legislation, legal scholarship and other open-source data on the EU legislative initiative to establish a new AMLA.

Findings – AMLA will provide a comprehensive framework for EU-level AML/CFT supervision and for cooperation among FIUs. If all organisational challenges are properly addressed, the new authority will significantly enhance the EU's ability to tackle money laundering and terrorism financing.

Originality/value – To the best of the author's knowledge, this study is one of the first to examine the mission, governance and supervision mechanisms of the EU's AMLA, as well as the challenges and opportunities associated with its functioning.

Keywords Money laundering, European Union, Anti-money laundering authority (AMLA), Supervision, Financial intelligence unit, Decentralised agencies

Paper type Research paper

1. Introduction

The 2021 European Commission's proposal [1] to establish the European Union Anti-Money Laundering Authority (AMLA) is an essential step towards tackling the growing menace of money laundering and terrorism financing in Europe. This is a priority for the European Union (EU) in its fight against organised and serious international crime (Council of the European Union, 2021). AMLA is the cornerstone of a comprehensive action plan put forward in 2020 to prevent these criminal activities [2]. By introducing EU-level supervision and providing support to national supervisors in the field of anti-money laundering and countering the financing of terrorism (AML/CFT), as well as to financial intelligence units (FIUs) in EU member states, AMLA will create an integrated system that will strengthen



cooperation and coordination among member states. This will make it harder for criminals to launder their illicit funds in the EU, thus remedying the current troubling situation in which “98.9% of estimated criminal profits are not confiscated and remain at the disposal of criminals” (Europol, 2016; Bakowski, 2021).

Following the partial political agreement between the Council and the European Parliament on the proposal (June 2022), which demonstrates the urgency and importance of this initiative, the establishment of AMLA is still on course. In all likelihood, the new authority will be operational in 2026 (PWC, 2022), bringing about a new era in AML/CFT. AMLA will provide a comprehensive framework for EU-level AML/CFT supervision and for cooperation among FIUs (European Parliament, 2022). It will ensure high standards of independence and accountability and significantly enhance the EU’s ability to tackle money laundering and terrorism financing. In light of these important developments, it is worth examining why such an initiative was deemed necessary (Section 2), which are the key objectives, rules and principles of AMLA (Section 3) and which challenges and opportunities will emerge as AMLA becomes operational (Section 4).

2. Securing the EU’s financial system: the need for comprehensive EU-Wide AML/CFT supervision

The EU’s AML/CFT framework consists of several instruments, the most prominent of which are the anti-money laundering directives (European Parliament, 2021). The first one of these directives was adopted in 1991 [3]. The EU’s AML/CFT framework is heavily influenced by and compliant with the soft law rules of the Financial Action Task Force, which is the key standard setter in the area of AML/CFT globally (Pavlidis, 2021). The fifth version of the AML Directive, adopted in 2018, imposes important obligations on certain entities that mainly operate in the financial sector. These “obliged entities” have to apply customer due diligence requirements in accordance with a risk-based approach, identify and verify the identity of customers and beneficial owners (a rule usually defined as Know Your Customer), monitor financial transactions and file suspicious transaction reports to the designated FIUs when there are signs of money laundering. When transposing the EU’s AML directives, member states designate national competent authorities as AML/CFT supervisors with direct supervisory powers over obliged entities. Their role is to monitor compliance with AML/CFT requirements under EU and national law; in other words, they must ensure that obliged entities implement appropriate internal controls, compliance procedures and risk assessments.

However, there are significant interrelating issues that undermine the efficiency of the application of AML/CFT rules across the EU (Girard, 2021; European Parliament, 2022), especially the “insufficient oversight of how entities subject to AML/CFT rules apply them” and the “insufficient detection of suspicious transactions and activities by FIUs, particularly in cross-border cases” (European Commission, 2021). Moreover, differences in the responsibilities and traits of national supervisors have led to inconsistent levels of quality and efficacy in AML/CFT supervision across the EU. Events such as the Danske Bank and Wirecard scandals have demonstrated the shortcomings of supervisory authorities. These scandals have made apparent that relying solely on national AML/CFT supervision is inadequate in certain instances and that weaknesses in the AML/CFT supervision of one national authority can pose a serious risk to the entire single market. Thus far, the AML framework has followed a national supervisory model, though there has been harmonisation of certain substantive rules at the EU level. This situation contrasts with the prudential supervision of credit institutions by the European Central Bank, which in 2014 acquired supranational powers and now follows a direct supervision model (Schiavo, 2022).

Furthermore, after the financial crisis of 2008, there has been a manifest trend in favour of EU-centralised supervision and “agencification” as models to follow in the implementation of EU law (Chiti, 2018; Scholten and van Rijsbergen, 2015; Tridimas, 2012).

If we admit that effective EU-wide mechanisms are required to address AML/CFT incidents involving cross-border elements, the next logical question concerns the reason to favour a new specialised AML agency over the European Banking Authority (EBA), which currently has a limited AML/CFT mandate. In 2019, the EBA was mandated to take charge of coordinating and monitoring the AML/CFT efforts of all financial services providers and competent authorities in the EU [4]. This involved merging the AML/CFT mandates of the three European supervisory authorities (ESAs), which have been criticised (correctly) for their inbuilt deficiencies, such as “fragmentation, one-size-fits-all architectural design, absence of enforcement capacity [and] conflict between national and supra-national reflexes” (Botopoulos, 2020). Nevertheless, the EBA’s ability to enforce AML/CFT standards and guidelines is very limited as it lacks the authority to supervise individual financial institutions directly and does not possess the necessary legal tools to ensure compliance (European Commission, 2021; Schlarb, 2022). The European Parliament has conveyed its apprehension about the insufficient implementation of the EU’s AML/CFT rules and has expressed legitimate concerns about the EBA’s capacity to fulfil its mission in this field [5]. It has also highlighted the significance of improved collaboration between national AML/CFT authorities and FIUs to address these issues and has reiterated the necessity of assigning specific supervisory responsibilities to a specialised union body. For this reason, the European Parliament has praised the European Commission’s plan to establish AMLA as an EU-level AML/CFT supervisor and coordination and support mechanism for FIUs [6]. AMLA’s features will be examined in the following section.

3. How the proposed changes can revolutionise AML/CFT supervision in the EU

3.1 *Decoding the organisation and governance structure of AMLA*

Under the Commission’s proposal, AMLA would be governed by two boards: the General Board and the Executive Board. The General Board would be composed of representatives from all member states and would be divided into two compositions: one for heads of public authorities responsible for AML/CFT supervision and the other for heads of FIUs. The General Board would be responsible for deciding on delegated acts, guidelines and measures for obliged entities and FIUs. The Executive Board, which would include the Chair of the authority and five independent full-time members appointed by the General Board, would be the governing body of AMLA. The Executive Board would be responsible for all decisions on individual obliged entities or supervisory authorities, budget and procurement matters, and the day-to-day management of the authority. The Chair of AMLA would represent the authority and head the General Board’s meetings, while an Executive Director would manage the daily operations of the organisation. The Administrative Board of Review would handle appeals against binding decisions.

The General Board in supervisory composition would decide on delegated acts, guidelines and similar measures for obliged entities; it would also provide its opinion on decisions concerning directly supervised obliged entities before the adoption of the final decision by the Executive Board. The General Board in FIU composition would decide on relevant measures for FIUs. General Board decisions would be taken by a simple majority, except those regarding draft regulatory and implementing technical standards, guidelines and recommendations, which would be taken by a qualified majority of member-state representatives in accordance with EU voting rules. The Executive Board would take all

decisions on individual obliged entities or individual supervisory authorities, where relevant. All Executive Board decisions would be taken by a simple majority, with the Chair holding the casting vote in case of a tie. AMLA would cooperate with the existing ESAs, which would attend the meetings of the General Board in supervisory composition and in FIU composition as observers, if invited. AMLA would also participate in the meetings of the Board of Supervisors of the ESAs as a permanent non-voting member, not limited to AML topics. This cooperation reflects the urgent need for supervisory convergence, which European institutions and major market participants have vigorously been pushing for over the past few years (Busch, 2018; Association for Financial Markets in Europe, 2021).

3.2 Strengthening and centralising AML/CFT supervision

AMLA would be at the centre of a unitary architecture (Kirschenbaum and Véron, 2018); that is, an integrated system with national supervisors which ensures that obliged entities comply with AML/CFT-related obligations. The authority would directly supervise a limited number of financial-sector entities categorised as high risk by national supervisors in member states. To qualify as a “selected obliged entity” under Articles 12 to 27 of the proposal, two requirements must be met: a) the entity must be active in a certain number of member states (eligibility criterion) and b) a minimum number of national supervisors must categorise the entity in the highest AML/CFT risk category according to a harmonised methodology (qualifying criterion). The European Parliament’s amendments favour expanding the scope of direct AMLA supervision by including crypto-asset service providers meeting the selection criteria, which addresses the need for an integrated cross-border supervisory mechanism in this sector (Covolo, 2020). In the Commission’s proposal, the plan has been for AMLA to choose selected obliged entities in 2025 so that it could place them under its supervision in 2026 and then review its choice every three years.

Selected obliged entities would be supervised by joint supervisory teams consisting of staff from AMLA and national supervisors, with AMLA leading the teams. The establishment and functioning of such teams have been a challenge for centralised supervision by means of the Single Supervisory Mechanism (Wissink, 2017). National supervisors would retain full responsibility for the direct supervision of non-selected entities, with AMLA coordinating supervisors and helping to increase their effectiveness. AMLA would also carry out peer reviews and investigate possible breaches by supervisors in the non-financial sector. AMLA would have the power to adopt binding decisions and pecuniary administrative sanctions in the case of direct supervision, and it could require financial and non-financial supervisors to act in the case of indirect supervision.

3.3 A new mechanism for supporting and coordinating FIUs

Though not an FIU, AMLA would play a significant role in promoting collaboration and information sharing among national FIUs, which is a key driver of efficiency in AML/CFT (Pavlidis, 2020). Under Articles 33 to 37 of the proposal, the authority would function as a support and coordination centre that provides assistance to FIUs on a range of activities, such as conducting joint analyses of cases of mutual interest and ensuring the FIU.net platform is regularly updated and efficiently hosted. AMLA would also be responsible for developing mandatory reporting templates and standards for suspicious transaction reporting that obliged entities would have to adhere to when providing information to FIUs. To enable effective collaboration between FIUs and AMLA, each FIU would have the option to delegate one member of staff to the new authority. This staff member would be responsible for facilitating and enhancing cooperation between the FIU and AMLA, including the joint analysis of cases.

3.4 *Unlocking the full potential of AMLA*

AMLA is expected to undertake important additional responsibilities, starting with the maintenance of the AML/CFT database. Currently, the EBA manages this database, but AMLA would take over this responsibility to assess the risks and vulnerabilities of selected obliged entities. In 2022, the EBA launched the EuReCA database, which covers the whole EU and contains data on notable AML/CFT deficiencies, in particular among financial institutions, as identified by competent national authorities. The database also includes the actions taken by these authorities to address such deficiencies and ensure compliance with AML/CFT rules. The idea of developing EU-wide databases as a means of combating money laundering and organised crime (Stefanou, 2010) has gained momentum in recent years. This trend should be leveraged to facilitate cross-border financial investigations and criminal proceedings.

AMLA would also conduct periodic reviews to ensure that national supervisors have adequate resources and powers to perform their duties. AMLA is expected to facilitate the functioning of supervisory colleges, which are groups of national supervisors responsible for supervising cross-border financial institutions. Furthermore, AMLA would promote the convergence of supervisory practices and standards while developing a risk-based supervisory methodology. This reflects the notion that “high-quality, well-resourced and convergent supervision based on a single rulebook is a key pre-requisite for a well-functioning Capital Markets Union” (High-Level Forum on Capital Markets Union, 2020). Following this logic, AMLA would coordinate peer reviews of supervisory standards and practices for non-financial supervisors, including self-regulatory bodies. The new authority would ask these supervisors to investigate possible breaches of requirements by obliged entities and consider imposing sanctions or remedies.

AMLA would also coordinate joint analyses by FIUs, identify relevant cases and develop appropriate methods for the joint analysis of cross-border cases. It would provide FIUs with IT and artificial intelligence services, as well as tools for secure information sharing, including through the hosting of FIU.net. Finally, AMLA would be responsible for the adoption of regulatory technical standards and implementing technical standards by issuing guidelines or recommendations addressed to obliged entities, national supervisors or FIUs. This would ensure that all parties have a clear understanding of their responsibilities and obligations regarding AML/CFT compliance.

4. From adversity to advantage: how the new AMLA can overcome challenges and seize opportunities in the fight against money laundering

The new authority must have adequate budgetary autonomy, which will provide it with the resources necessary to carry out its functions, as well as functional autonomy, which will enable it to make decisions and carry out its functions in a way that aligns with its goals and objectives. These autonomies are key in the context of supervisory powers (Masciandaro *et al.*, 2008) and will enable AMLA to respond quickly to changes in the external environment. Without them, the authority may struggle to achieve its objectives and may be vulnerable to external pressures and interference, which could undermine its effectiveness. The European Parliament has indicated that the proposed resources are inadequate to provide full support for AML-related investigations and coordination mechanisms, and it has urged the allocation of more funds to AML/CFT, which will be a major challenge for AMLA.

Indeed, as already pointed out by the EU in the context of the ESAs, “enhanced powers alone would not be sufficient to achieve the ESAs’ objectives where they do not have sufficient funding or where they are not governed in an effective and efficient manner” [7].

The same point is applicable to AMLA, which should have the power to levy fees on certain obligated entities, such as financial institutions and other businesses that are subject to AML/CFT regulations. The amount of the fee would depend on the specific tasks and functions of the authority, such as conducting supervisory reviews, coordinating cross-border investigations and developing regulatory standards. Furthermore, AMLA would receive a contribution from the EU budget to cover its operating expenses. Under the Commission's proposal, which may be revised, an operational AMLA would have a staff of 250 employees and a total annual budget of €45.6m. The EU would cover 25% of this, while obliged entities are expected to cover the remaining 75% through fees.

Regarding functional autonomy, the new supervisor should operate with an independent governance structure (Costa and Peers, 2016) and collaborate with other relevant EU and national authorities. Independence is essential to ensure that AMLA is managed effectively, transparently and in the best interests of all stakeholders; it will help to guarantee accountability, objectivity and strategic direction. AMLA's proposed governance structure aims to achieve a smooth decision-making process and prevent conflicting competencies among EU bodies. The General Board and the Executive Board would have clear responsibilities and decision-making powers, while the Administrative Board of Review would handle appeals against binding decisions. The new authority would also cooperate with the existing ESAs to promote coordination and avoid duplication of efforts.

It is also important for AMLA to be accountable to the two main legislative bodies of the EU, the European Parliament and the Council, which are constantly called upon to boost transparency, integrity and accountability (European Parliament, 2019). Under the Commission's proposal, the Chair of AMLA would present an annual report to both bodies, as well as the Commission, on the activities and performance of the authority. This report would provide information on the implementation of the regulations, the progress made in achieving AMLA's objectives, and any other issues related to the authority's work. This level of accountability will ensure that AMLA remains transparent and effective in carrying out its responsibilities (Schmidt and Wood, 2019).

Another challenge for AMLA will be to focus on supervising high-risk entities in the financial sector while also supporting national authorities and promoting supervisory convergence in the non-financial sector. This approach is consistent with the concepts of proportionality and subsidiarity (European Commission, 2021). The first concept entails giving adequate but not excessive authority and resources to the EU bodies, such as AMLA. The second one involves recognising that national supervisory authorities will not be replaced but will still be part of the integrated supervisory system, even if direct supervision is transferred to the EU. Direct EU supervision will only apply to entities for which there is evidence that national action alone is insufficient. Another challenge for both direct and indirect supervision will be to ensure a consistent approach to the implementation of AML/CFT rules, which will help to reduce regulatory arbitrage and create a level playing field for firms operating across different markets. This is important for promoting fair competition and ensuring that firms are subject to the same standards of supervision, regardless of where they are located.

Concerning the FIU coordination and support mechanism, the Council has proposed that the new authority take a central role in supporting FIU analyses and promoting exchanges and capacity building between FIUs and other competent authorities. In this context, it is important that the governance of the coordination and support mechanism involves FIUs and respects their core roles and responsibilities, including operational independence, autonomy and the security and confidentiality of financial intelligence (Bartolozzi *et al.*, 2022). A negative aspect is that the Commission's proposal on the establishment of AMLA

does not seem to improve information exchanges with third countries. The Commission has noted that these information exchanges “fall within the exclusive external competence of the EU, as FIUs are regulated exhaustively by the AML Directive” [8]. The problem is that national FIUs ignore this external competence of the EU and conclude agreements or memoranda of understanding with their counterparts in third countries without involving EU institutions. This practice may also raise concerns about data protection ([European Parliament, 2022](#); [Mouzakiti, 2020](#)).

Finally, there is the issue of where to locate AMLA. Location is always a problem with EU decentralised agencies, and this decision will be made according to the 2012 common approach [9], which aims to ensure a fair distribution of agencies across member states. A seat agreement will be established between AMLA and the host member state, which will define the rights and obligations of both parties. If everything goes as planned, AMLA will start its activities in its designated location by the beginning of 2024, which gives the authority around a year to prepare and establish itself.

5. Concluding remarks

The establishment of AMLA, as well as the creation of a comprehensive single rulebook ([Schlarb, 2022](#)), are crucial steps towards combating money laundering and terrorism financing in Europe. By harnessing the power of supranational supervision and by providing an integrated system that brings together national AML/CFT supervisors and FIUs, AMLA will significantly enhance the EU’s ability to tackle financial crime. It is therefore imperative that the proposal is approved and that AMLA becomes operational as soon as possible. Of course, when this happens, there will be challenges, such as the authority’s funding, functional autonomy and cooperation with national authorities. However, the benefits of this initiative far outweigh any potential obstacles. AMLA will facilitate greater cooperation among EU member states, which will help to ensure that the EU remains at the forefront of the fight against financial crime. It will also help to maintain the EU’s reputation as a safe and reliable place to do business, which is essential for economic growth and prosperity. Finally, like most other EU decentralised agencies, AMLA will help shape relevant policymaking and implementation activities ([Egeberg *et al.*, 2015](#)) in close collaboration with the Commission and other institutions of the union.

Notes

1. Proposal for a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010, COM(2021) 421 final, 20.7.2021.
2. Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing, OJ C 164, 13.5.2020, p. 21.
3. Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L166, 28.6.1991, p. 77.
4. Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or

- to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, OJ L 334, 27.12.2019, p. 1.
5. European Parliament resolution of 19 September 2019 on the state of implementation of the Union's anti-money laundering legislation (2019/2820(RSP)).
 6. European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing: the Commission's Action Plan and other recent developments (2020/2686(RSP)).
 7. Regulation (EU) 2019/2175, op. cit., at recital 4.
 8. Report from the Commission to the European Parliament and the Council assessing the framework for cooperation between Financial Intelligence Units COM(2019) 371 final, Brussels, 24 July 2019.
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