STUDY

Requested by the ECON committee

European Parliament

The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information

A critical assessment

Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies
Author: Silvia ALLEGREZZA
PE 733.968 - July 2022

EN

The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information

A critical assessment

Abstract

This study evaluates selected aspects of the Commission's AML/CFT reform package presented on 20 July 2021, focusing on two main topics. First, it analyses the AML Authority direct supervisory powers and their effectiveness. Second, it illustrates how the reform package intends to foster coordination and information sharing among the FIUs. Recommendations are provided in order to remedy the gaps and weaknesses identified.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Economic and Monetary Affairs (ECON).

This document was requested by the European Parliament's committee on Economic and Monetary Affairs.

AUTHOR
Silvia ALLEGREZZA, University of Luxembourg

ADMINISTRATOR RESPONSIBLE
Radostina PARENTI

EDITORIAL ASSISTANT
Roberto BIANCHINI

LINGUISTIC VERSIONS
Original: EN

ABOUT THE EDITOR
Policy departments provide in-house and external expertise to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for email alert updates, please write to:
Policy Department for Economic, Scientific and Quality of Life Policies
European Parliament
L-2929 - Luxembourg
Email: Poldep-Economy-Science@ep.europa.eu

Manuscript completed: June 2022
Date of publication: July 2022

This document is available on the internet at:
http://www.europarl.europa.eu/supporting-analyses

For citation purposes, the publication should be referenced as: Allegrezza, S., 2022, *The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information: A Critical Assessment*, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

CONTENTS

LIST OF ABBREVIATIONS

ABoR	Administrative Board of Review
AI	Artificial Intelligence
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Authority
AMLAR	Draft Regulation establishing an EU AML/CFT Authority in the form of a decentralised EU regulatory agency (COM(2021) 421)
AMLD4	Fourth AML Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing […] OJ 2015 L 141/73
AMLD5	Fifth AML Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU
AMLD6	Sixth AML Directive, replacing the existing EU AML/CFT Directive (Directive 2015/849 as amended) and containing provisions which are not appropriate for a Regulation, and requiring national transposition, e.g., rules concerning national supervisors and Financial Intelligence Units in Member States (COM(2021) 423)
AMLR1	Draft Regulation, containing directly applicable AML/CFT rules, including a revised EU list of entities subject to AML/CFT rules and a revised policy on third countries whose AML/CFT approach pose a threat to the EU's financial system (COM(2021) 420)
AMLR2	Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (recast)
BAR	Bank Account Registers
BRIS	Business Registers Interconnection System
CFT	Countering the financing of terrorism
CJEU	Court of Justice of the European Union

CRA	Credit Rating Agency
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
e-CODEX	e-Justice Communication via Online Data Exchange
EBA	European Banking Authority
EBOCS	European Business Ownership and Control Structures
ECB	European Central Bank
ECRIS	European Criminal Records Information System
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
EPPO	European Public Prosecutor's Office
ESA	EFTA Surveillance Authority
EU	European Union
EUCARIS	European car and driving licence information system
FATF	Financial Action Task Force
FinCEN	United States Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit(s)
FOE	Financial Obliged Entity
GDPR	General Data Protection Regulation
IA	Impact Assessment
IRI	Interconnection of insolvency registers
IT	Information Technology
JST	Joint Supervisory Team

LED	Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA
LRI	Land Registers Interconnection
ML	Money laundering
OLAF	European Anti-Fraud Office
Reg	Regulation
RegEBA	Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC
RegEPPO	Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')
SAR	Suspicious activities report(s)
SOE	Selected Obliged Entity
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
SSMReg	Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
STR	Suspicious transaction(s) report
TF	Terrorism Financing

EXECUTIVE SUMMARY

Background

This study provides an overview of the reform package presented by the EU Commission on 20 July 2021. It follows the many legislative initiatives adopted by the European Union (EU) that led to the approval of five Directives on anti-money laundering / countering the financing of terrorism (AML/CFT) prevention and one Directive on the use of criminal law to counter money laundering and terrorism financing. A parallel effort was made in order to increase the enforcement of those rules. In December 2019 the European Banking Authority (EBA) was tasked to lead, coordinate, and monitor the fight against money laundering and terrorist financing within the EU. However, this first attempt to centralise supervision at the EU level quickly proved to not be enough.

Recent scandals involving European major banks revealed many weaknesses within the current EU legal framework and even more lacunas in the way it has been enforced. The proposed reform package offers concrete solutions to the many of the problems faced by the European strategy in preventing money laundering. With three Draft Regulations and one Draft Directive, the reform package aims at strengthening the prevention against money laundering and terrorism financing. In particular, it proposes the establishment of a new Anti-Money Laundering Authority (AMLA) with the goal to partially centralise direct enforcement over selected obliged entities (SOEs).

The Commission presented the AML/CFT reform package in July 2021 to address the existing regulatory and supervisory fragmentation. First, it is meant to overcome the existing deficiencies in the quality and effectiveness of AML/CFT supervision in the EU and contribute to better convergence of high supervisory standards. Second, it seeks to increase the action of national Financial Intelligence Units (FIUs) by fostering their efficiency in collecting data and improving cooperation in cross-border cases through joint analysis and information sharing.

Aim

The present study will assess the effectiveness of the reform package and highlight its strengths and weaknesses. It will contribute to the assessment of such a challenging reform, offering a structured analysis of its effectiveness by offering a concrete response to the current failures of the EU AML/CFT strategy. To this aim, it identifies specific weaknesses and sets out potential amendments to the reform package. In particular, this study addresses the following issues:

- The effectiveness of the partial centralisation of AML/CFT supervision via the establishment of a new European Authority (AMLA) with direct and indirect supervisory powers;
- The effectiveness of the new cooperation and information sharing among national FIUs for a better enforcement of preventive and repressive AML/CFT strategies across the EU.

Key Findings

On the **effectiveness of the partial centralisation of AML/CFT supervision** via the establishment of a new European Authority (AMLA) with direct and indirect supervisory powers:

- The establishment of the AMLA represents an important step towards ensuring a more efficient strategy against AML/CFT. It may contribute to overcoming the core problem, i.e. the coexistence of an integrated, enforceable single financial market policy with the national structures of AML supervision;

- The reform package will offer a better institutional design of the EU AML/CFT strategy, promoting one integrated system composed of AMLA and national supervisors;
- The combined effect of a new common Authority together with a stronger set of directly applicable common rules, and a robust harmonisation of additional ones, including a common definition of money laundering, may represent an efficient and effective answer to the current EU ML crisis;
- A centralised Authority supervising selected obliged entities will reduce fragmentation in supervision and discrepancies among national competent authorities, supporting the development of a common supervisory culture;
- As the future AMLA will apply both EU and national law, special attention should be given to the complete and correct implementation of EU Directives;
- The structural design of the future AMLA seems adequate to the tasks conferred to the new Authority and appropriate to ensure an effective and efficient decision-making cycle in terms of both quality and speed;
- A partial centralisation of supervisory powers limited to the financial sector seems adequate to the current state of harmonisation at the EU level. Conversely, due to the heterogeneity and fragmentation of regulation of the non-financial sector, a centralisation of supervision of non-financial obliged entities would require prior harmonisation efforts;
- The selection criteria for financial obliged entities (FOEs) to be directly supervised by the AMLA appear too strict. First, it would be opportune to amend the current criteria on geographical impact in order to enlarge the pool of obliged entities to be submitted to direct supervision, including at least one obliged entity headquartered in each Member State. Second, the high-inherent risk profile required for financial entities to be selected, justified by the existence of prior investigations for material breaches in the previous three years, implies the disclosure of confidential information and a related reputational risk. Finally, more clarity is needed in describing the selection procedure for the FOEs to be placed under direct supervision of the AMLA;
- The proposal strengthens supervisory powers by abandoning the often-criticised approach of some national supervisors, limiting their task to what has been termed 'cosmetic supervision'. The current legal framework presents a fragmented picture, as not all Member States' legislations offer the same investigative possibilities at the national level. Even when the law authorises such investigative measures, practice shows a very low frequency of anti-money laundering investigation;
- The ability of the EU supervisor to take over direct supervision of any financial entity if a procedure confirms inadequate supervisory action by the national supervisor, would represent a crucial enforcement tool for the AML/CFT strategy.

Improvements are needed in terms of:

- Accountability and reporting duties of the future AMLA to the EU Parliament;
- A better definition of the 'material breaches' that might lead to the imposition of an administrative penalty;
- A solid toolkit of investigative measures to counter the highly technological development of the financial market;

- A separation between the two tasks conferred to the JST, currently in charge of offsite and on-site inspection toward the same obliged entity, as the knowledge previously acquired during off-site supervision might affect the independence of the on-site inspection and influence its findings;
- More importance to the decisions adopted by the Administrative Board of Review (ABoR).

On the **effectiveness of the new cooperation and information sharing among national FIUs** for a better enforcement of preventive and repressive AML/CFT strategies across the EU:

- The best EU policy option is to confer to AMLA the role of coordinator of national FIUs, managing the FIU.net and fostering information sharing and joint analyses. Efficiency of the coordination role is supported by the AMLD6 providing for a partial harmonisation of the data that the FIUs can have direct and immediate access. However, access to law enforcement data is still restricted and depends on the existing divergences in terms of model and competences of Member States' FIUs, a problem that the envisaged reform will not solve;
- Coordination of several reforms is required in order to strengthen information sharing among AML/CFT authorities as well as financial and banking supervisors. To this aim, the future AMLA will develop common technical standards and a common template for the STRs, requiring that the FIUs use electronic filing. Furthermore, AMLA will be in charge of the FIU.net, the main network for information exchange among national FIUs;
- Public-private partnerships should be developed using the many positive experiences already existing in several Member States as a blueprint;
- Specific attention should be given to the data protection regime, especially when FIUs are cooperating with third countries or private parties.

1. IMPROVING THE EU STRATEGY AGAINST MONEY LAUNDERING AND TERRORISM FINANCING

KEY FINDINGS

A partial centralisation of AML/CFT supervision via the establishment of a new European Authority (AMLA) with direct and indirect supervisory powers represents an efficient response to horizontal vulnerabilities. The proposed design of the integrated system composed of the AMLA and national supervisors seems sufficiently detailed and able to grant effectiveness for the future integrated system to act as a 'mechanism'. It reduces the impact of the differences among national supervisors in terms of structure and power.

AMLA will pursue these aims via a combination of new practical instruments and convergence tools to promote common supervisory approaches, best practices, and mutual assistance. Particularly important is the provision which allows the AMLA to act as a neutral decisional organ for disagreements between supervisory authorities on the measures to be taken jointly in relation to an obliged entity. A single Authority can better exercise the necessary EU regulatory function and it will grant a more coherent application of administrative sanctions for material breaches of AML/CFT rules.

Money laundering and terrorism financing (ML/TF) are sophisticated and constantly evolving phenomena. They represent major threats to the economy, as well as the integrity of financial systems, altering competitiveness and corrupting the market. As such, laundering money is essential to the very existence of major criminal organisations[1]. Over the last thirty years, the EU has adopted many initiatives to tackle money laundering and terrorism financing. Many of these aimed at adapting the EU legal framework to international conventions and standards developed by supranational organisations, in particular by the Financial Action Task Force on Money Laundering (FATF)[2]. Following a classic "twin-track approach"[3], the EU has operated on prevention as well as on repression. The impetus of the EU has expanded from regulatory to criminal law and produced five Directives on prevention of the use of the financial system for the purpose of money laundering[4], as well as a

[1] Levi, M., Antonopoulos, G., 2022, Through a glass darkly': Organised Crime and Money Laundering Policy Reflections - An introduction to the special issue, Trends in Organized Crime 24, pp. 1-5; Vogel, B., Maillart J.-B., 2020, National and international anti-money laundering law; Borlini L.S. (2017), Regulating Criminal Finance in the EU in the Light of the International Instruments, 36 Yearbook of European Law, 553-598, p. 553.

[2] For an historical overview of the EU legal framework, see Van den Broek, M., 2015, Preventing Money Laundering, Eleven; Bergström, M., 2016, Money Laundering, in Mitsilegas, V., Bergström, M., Konstantinides, A., Research Handbook on EU Criminal Law, Elgar, pp. 335-354.

[3] Van den Broek, M., 2015, Preventing Money Laundering, Eleven, p. 475.

[4] First AML Directive; Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on Prevention of the use of the Financial system for the Purpose of Money Laundering, [2001] OJ L 344/76 (Second AML Directive); Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the use of the Financial System for the Purpose of Money Laundering and Terrorist Financing (Text with EEA relevance), [2005] OJ L 309/15 (Third AML Directive); Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), [2015] OJ L 141/73 (Fourth AML Directive); Directive 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU, [2018] OJ L 156/43 (Fifth AML Directive).

Framework decision[5] and a Directive on combating money laundering by criminal law[6].

However, recent scandals have shown that the existing EU anti-money laundering and anti-terrorism financing response is inadequate to address the flow of dirty money. The reasons are clear and firmly stated in literature[7], and go far beyond the inadequacy of the regulatory framework. On reflection, it becomes clear that inefficiency is mostly due to poor enforcement more than to regulatory deficiencies. Horizontal discrepancies among national legislation still persist: national supervision is inadequate; enforcement is ineffective at both national and European level; cooperation among national supervisors is scarce; information exchange among Financial Intelligence Units (FIUs) encounters many obstacles; and criminal law enforcement is almost absent. Meanwhile solid data are lacking[8] and the figures available are as outrageous as they are mere results of approximation. Despite the enormous amount of literature and studies dedicated to AML/CFT which have been produced in the last decade, there are very few good data available. Figures are based on approximation of a macro nature, based on estimations of rough projections of the size of the shadow economy or upon foreign direct investments compared to real investments[9].

To counter the lack of enforcement, a first provisional step toward a centralisation of powers at EU level was taken in December 2019 when the European Banking Authority (EBA) was tasked to lead, coordinate and monitor the fight against money laundering and terrorist financing within the EU, thus becoming a crucial actor. However, this first attempt to centralise supervision at the EU level soon proved to be insufficient. First, the EBA highlighted[10] that divergence of national rules and practices had a significant adverse impact on the prevention of the use of the EU's financial system for money laundering/terrorist financing purposes. The EBA suggested the adoption of a stronger regulatory framework at the EU level on customer due diligence measures and AML/CFT systems and control requirements. The EBA proposed the adoption of directly applicable Union law which would determine what measures should be taken by financial institutions to tackle ML/TF. Second, it highlighted how AML/CFT supervisors' powers and measures necessary to ensure financial institutions' compliance with their AML/CFT obligations, as well as financial intelligence operational powers, and cross-border cooperation strong needed further harmonisation. Third, in the wake of the post-financial crisis reforms, mostly based on increasing EU centralised supervision via 'agencification' as a new model for administrative implementation of EU law[11], the EBA paved the way toward the establishment of a new

---

5 Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

6 Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. See, Allegrezza, S., 2022, European Strategies against Money Laundering: A Critical Overview of Current and Future Enforcement, in Crijns, J., Haentjens, M., Haentjens, R., The Enforcement of EU Financial Law, Hart, pp. 197-222.

7 Mitsilegas, V., Hufnagel, S., Moiseienko, A., 2019, Research Handbook on Transnational Crime, Elgar; Unger, B. et al., 2020, Improving Anti-Money Laundering Policy, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf. Unger B., Ferwerda, J., van den Broek, M. and Deleanu, I. (2014), The Economic and Legal Effectiveness of the European Union's anti-Money Laundering Policy, Edward Elgar, Cheltenham; Bergström M., (2016) Money Laundering, in Mitsilegas V., Bergström M., Konstantinides A., Research Handbook on EU Criminal Law, Elgar, pp. 335-354; Lannoo K., Parlour R., (2021), Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf; Kirschenbaum, J., Véron, N. (2018), A better European Union architecture to fight money laundering, Bruegel, Retrieved at https://www.bruegel.org/2018/10/a-better-european-union-architecture-to-fight-money-laundering/; Mouzakiti, F., (2020), Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, pp. 351 – 374.

8 Levi, M., 2020, Evaluating the control of money laundering and its underlying offences: the search for meaningful data, in Asian Journal of Criminology, published online: 20 May 2020, retrieved at: https://doi.org/10.1007/s11417-020-09319-y.

9 Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious, CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. 2.

10 Opinion of the European Banking Authority on the future AML/CFT framework in the EU, EBA/OP/2020/14, 10 September 2020.

11 Chiti, E., 2018, Decentralized Implementation. European Agencies, in Schütze, R., Tridimas, T., Oxford Principles Of European Union Law: The European Union Legal Order: Volume I, OUP, 748-776; Chiti, E., Teixera, PG, 2013, The Constitutional Implications Of The European

Authority specifically tailored to AML/CFT needs.

The AML/CFT reform package presented by the Commission in July 2021 addresses the existing regulatory and supervisory fragmentation. As such, it is meant to overcome the existing deficiencies in the quality and effectiveness of AML/CFT supervision in the EU and contribute to better convergence of high supervisory standards. The proposal is part of the Commission Action Plan presented in May 2020 aiming to establish a Union policy on combating money laundering. Its primary aims were:

(1) To ensure the effective implementation of the existing EU AML/CFT framework;

(2) To establish an EU single rulebook on AML/CFT;

(3) To bring about EU-level AML/CFT supervision;

(4) To establish a support and cooperation mechanism for FIUs;

(5) To enforce EU-level criminal law provisions and information exchange;

(6) To strengthen the international dimension of the EU AML/CFT framework.

Three are the main specific objectives pursued by the reform package, focused on priorities no. 2, 3, 4 and 6:

1. To strengthen EU AML rules and enhance their clarity while ensuring consistency with international standards and existing EU legislation;
2. To improve the effectiveness and consistency of anti-money laundering supervision;
3. To increase the level of cooperation and exchange of information among FIUs.

To this aim, the reform package includes four legislative proposals:

- A Regulation establishing an EU AML/CFT Authority in the form of a decentralised EU regulatory agency (COM(2021) 421) (hereinafter, AMLAR);
- A new Regulation, containing directly applicable AML/CFT rules, including a revised EU list of entities subject to AML/CFT rules and a revised policy on third countries whose AML/CFT approach pose a threat to the EU's financial system (COM(2021) 420) (hereinafter, AMLR1);
- A sixth AML Directive, replacing the existing EU AML/CFT Directive (Directive 2015/849 as amended) and containing provisions which are not appropriate for a Regulation, therefore requiring national transposition, e.g. rules concerning national supervisors and Financial Intelligence Units in Member States (COM(2021) 423) (hereinafter, AMLD6);
- A recast of Regulation 2015/847 on Transfers of Funds (COM(2021) 422) (hereinafter, AMLR2).

The reform package represents a major step forward in the fight against illicit financial flows, and a milestone in the process of European integration. However, there are areas wherein the package could be strengthened in order to grant effectiveness to the measures proposed.

This study intends to contribute to the assessment of such a challenging reform, offering a structured analysis of its effectiveness and proposing concrete responses to the current failures of the EU AML/CFT strategy. To this aim, it identifies specific weaknesses and sets out potential amendments to the reform package.

Responses To the Financial And Public Debt Crisis, Common Market Law Review 50: 683-708; Scholten, M., van Rijsbergen, M., 2015, The Limits of Agencification in the European Union, German Law Journal, Vol. 15 n. 7, 1223-1255; Tridimas, T., 2012, Financial Supervision and Agency Power: Reflections on ESMA, in Nic Shuibhne, N., Gormley, L.W. (eds), From Single Market to Economic Union: Essays in Memory of John A. Usher, OUP, 55, 60.

In particular, this study addresses the following issues:

- The effectiveness of the partial centralisation of AML/CFT supervision by the establishment of a new European Authority (AMLA) with direct and indirect supervisory powers;
- The effectiveness of the new cooperation and information sharing efforts among national FIUs for a better enforcement of preventive and repressive AML/CFT strategies across the EU.

1.1. The proposed Anti-Money Laundering Authority: Towards a partial centralisation of AML/CFT supervision as a response to horizontal vulnerabilities

Fragmentation in supervision and discrepancies among national competent authorities in the manner in which they supervise financial obliged entities have been identified among the main reasons for the deficiencies within the current AML/CFT framework.

As Kirschenbaum and Véron correctly observe, the core problem depends on the coexistence of an integrated, enforceable single financial market policy within the national structures of AML supervision[12]. AML supervisory weakness of a Member State at the national level attracts money launderers who use these regulatory shortfalls to access to the entire single market. "This, in turns, creates a constituency in the country against forceful AML enforcement, bringing together the criminals and their representatives, an array of service providers, and potentially also government authorities that have failed in their past AML supervisory duties. If sufficiently large, this aggregate constituency might weigh on national political processes and outcomes, even in cases that stop short of outright government capture. The resulting pressures further weaken the AML supervisory framework"[13]. Breaking this vicious circle between one single market and many national supervisors is the main goal of the Commission proposal. This proposal would establish a two-tier architecture based on a partial centralisation of supervisory powers at the EU level: stronger supervisory powers are conferred to national AML supervisors and their activities are subject to control by a common EU agency acting as a 'supervisor of supervisors', whereas certain obliged entities are submitted to the direct supervision of a common European Authority.

The establishment of a centralised AML/CFT authority at the Union level represents a seminal step towards ensuring a more efficient strategy against those phenomena. Even though it might be naïve to believe that one single EU-wide agency will be a panacea for all ML/TF related problems, it still represents an important improvement to the current framework. A reform package combining a stronger harmonization of Union AML/CFT requirements, together with a Union level supervisor will facilitate and strengthen the European action in this field, preserving the integrity of the market from illicit activities.

The proposal reflects a real improvement under several aspects:

A better institutional design of the EU AML/CFT strategy: One integrated system composed of AMLA and national supervisors, as envisaged by Article 7 AMLAR, reduces the impact of the differences among national supervisors in terms of structure and power, and partially solves the structural issues of some national supervisors embedded in banking or financial prudential supervisors[14]. The current

[12] Kirschenbaum, J., Véron, N., 2018, A better European Union architecture to fight money laundering, Bruegel, Retrieved at: https://www.bruegel.org/2018/10/a-better-european-union-architecture-to-fight-money-laundering/.

[13] Ibid. For similar remarks, extended to central banks, see in Demetriades, P., Vassileva, R., 2020, Money laundering and central bank governance in the European Union, in Journal in International Economic Law, no. 23, 509-533, p. 530.

[14] Concerns have been raised on the frequent cohabitation within the same authority of the AML/CFT supervisor and the banking or financial supervisor. See Lannoo K., Parlour R., (2021), Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at

AML Standing Committee of the EBA brings together 57 different authorities from EU and EEA member countries in the financial sector. Supervision at national level is organised mostly according to three models: the prevalent one places the AML supervisor within the national central banks; the second option designates a Financial Services Authority as the AML/CFT supervisor; and the third is a hybrid of the previous ones[15]. The AMLA is designed to become the centrepiece of an integrated system of national AML/CFT supervisory authorities and will ensure their mutual support and cooperation. AMLA will thus become a hub to develop a better cooperation among national supervisors. The current proposal presents a detailed and articulated framework of instruments and strategies to increase mutual assistance and information exchange between national supervisors. The design of the integrated system seems sufficiently detailed and able to grant effectiveness for the future integrated system to act as a 'mechanism'. These aims will be pursued by AMLA via a combination of new practical instruments and convergence tools to promote common supervisory approaches, best practices, and mutual assistance. Particularly important is the provision to allow AMLA to act as neutral decisional organ in case of disagreements between supervisory authorities on the measures to be taken jointly in relation to an obliged entity[16]. The additional value is to create a dialogue concerning the concrete difficulties supervisors are facing as a grounding work for a common supervisory culture. Also crucial is the commitment to support national counterparts on technological aspects, closing the gaps due to the different budgetary capacities of the EU Member States. The human professional capacity will also be enhanced via training programs, staff exchanges secondment schemes, and twinning and short-term visits.

A single authority can better exercise the necessary EU regulatory function: The future AMLA will facilitate the convergence among Member States' approaches via direct and indirect supervision, periodic assessments, and peer reviews of the financial and non-financial AML/CFT supervisory authorities[17]. According to Articles 5(1), 6(4), and 38 AMLAR, the AMLA will be competent for the development of regulatory technical standards and implementing technical standards to be submitted to the Commission for approval[18].

The harmonising effect of the AMLA regulatory powers will complement the two other parts of the reform package, namely the AMLR and the AMLD6. The combined effect of a new common Authority together with a stronger set of directly applicable common rules and a robust harmonisation of additional ones, including a common definition of money laundering, may represent an efficient and effective answer to the current EU ML crisis[19]. One shall notice that, compared to the ESAs regulatory powers, in the case of the AMLA, no differentiation effect is possible, as no Member State is excluded from the current proposal. The Single Supervisory Mechanism (SSM) can be seen as a fundamental step

https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. 10; "This heterogeneity could be an argument for a single entity at European level, but it could also indicate how difficult it might be to have such an entity function efficiently, if responsibilities are spread over different competent authorities. Equally, a certain flexibility is required if implementation of a risk-based approach is to work for supervision. It is a fine balance to achieve, which needs to be guided by agreed objectives and results. On the non-financial side, the supervisory structure is even more complex, and depends on how a given profession is organised and how AML legislation translates in action, which is often carried out in a self-regulatory way".

15 Lannoo, K., Parlour R., 2021, Anti-Money Laundering in the EU Time to get serious, CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p.10.

16 Article 10 AMLAR.

17 Article 5 AMLAR.

18 According to the current limits to the conferral of executive powers to the EU agencies, their action is thus "limited to the adoption of draft regulatory measures and confined within the strict boundaries of purely technical decision-making, excluding the exercise of any discretion", Chiti E, (2015), In the Aftermath of the Crisis – The EU Administrative System Between Impediments and Momentum, in Cambridge Yearbook of European Legal Studies, Vol. 17, 311 – 333, p. 315.

19 Article 3 Directive 2018/1673, recalled by Article 3 AMLR1.

of the differentiation effect[20] in EU administrative law, drawing a dividing line between Eurozone and non-Eurozone processes. It implies a differentiation of the administrative capacities available within different sectors, whereas the AMLA follows an inclusive approach.

A better regulatory framework complemented by a single Authority will also foster a common AML/CFT culture: Common regulations can reduce flexibility, but the threats faced by the Member States, the types of criminality, their modus operandi, criminal culture, and organised criminal groups differ[21]. A common culture is the only way to ensure an effective enforcement while adapting it to the specific needs of the national system. Using its regulatory powers, the AMLA will identify best practices and translate them into recommendations to be applied throughout the Union. In particular, the AMLA will be the main actor in the development of a common methodology for risk-assessment: applying a common risk-based approach is the optimal solution to inconsistencies detected in national supervisors' practices[22].

The AMLA will assume the regulatory powers previously conferred to the EBA when adopting guidelines and recommendations. Some attention should be given to the completeness of its regulatory powers compared to existing legislation. In particular, the current Article 16b RegEBA offers the possibility for any natural or legal person, including competent authorities and Union institutions and bodies, to raise "questions relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, and guidelines and recommendations". The Q&A is an important tool for developing meaningful dialogues in a very dynamic field, as is AML/CFT. This possibility is currently absent from the AMLAR proposal. It would be important to amend the current proposal and introduce such a tool among the instruments to develop a common culture in AML/CFT supervision.

The establishment of AMLA will increase the efficiency of the EU supervisory function: Even more crucial will be the take-over of direct supervision from national authorities over a list of selected obliged entities (SOEs). Hence, the AMLA will have the power to directly supervise some of the riskiest financial institutions that operate in a large number of Member States, or require immediate action to address risks. The AMLA will, *inter alia*, be entitled to carry out supervisory reviews and assessments on an individual entity and group-wide bases.

Prioritising AML supervision over large groups will contribute to the reduction of the problem of cross-border financial supervision of listed obliged entities, fostering the effectiveness of AML/CFT supervision in cross-border cases. A common Authority also offers a higher level of specialisation of the staff, harmonising the existing differences in quality, resources, and practices[23]. National supervisors are often understaffed, and lack experience and knowledge[24]. On the contrary, when a national authority has developed expertise in a specific area of AML/CFT supervisory practices, the AMLA will exchange and disseminate these practices to all of the counterparts[25].

---

[20] Chiti, E., 2015, In the Aftermath of the Crisis – The EU Administrative System Between Impediments and Momentum, in Cambridge Yearbook of European Legal Studies, Vol. 17, 311 – 333, p. 319.

[21] Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. ii. Levi M., Antonopoulos G., (2022), Through a glass darkly': Organised Crime and Money Laundering Policy Reflections - An introduction to the special issue, Trends in Organized Crime 24, pp. 1-5. (10.1007/s12117-020-09403-w).

[22] AML/CFT methodology (Article 8) and regulatory function (Article 12(5).

[23] Commission Staff Working Document Impact Assessment Accompanying the Anti-money laundering package, Brussels, 20 July 2021, SWD(2021) 190 final.

[24] Koster, H., 2020, Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework, Journal of Money Laundering Control, Vol. 23, no. 2, 379-386, DOI 10.1108/JMLC-09-2019-0073, p. 383.

[25] Article 10 AMLAR.

The centralised structure will rely on common investigative measures, helping to overcome the problem of 'cosmetic compliance' often indicated as a prevalent bad practice among national supervisors. The scarce use of proactive investigations, and, specifically, the refusal to proceed with on-site inspections, has hindered the capacity to detect primary compliance failures[26].

One common Authority will grant a more coherent application of administrative sanctions for material breaches of AML/CFT rules. Existing literature[27] and prior reports indicate dramatic differences in the number and level of sanctions applied by national supervisors[28]. The new Authority will apply the same type of sanctions and adapt their intensity according to the European principle of proportionality[29].

Despite the numerous positive aspects of the new proposed Authority, many problematic issues can be raised in relation to the current proposal. The following sections will analyse the different issues and suggest – when possible – the necessary amendments to be brought to the current proposals.

1.2. The law regulating AMLA's activities

The creation of a Single Rule Book represents one of the pillars of the reform package, and will offer the future AMLA a solid common legal framework to fulfil its tasks. However, this goal is only partially accomplished by the Commission proposal, as rules governing AML/CFT will be partially based on regulations (AMLR1 and AMLR2) and partially based on a directive (AMLD6). The latter obviously needs to be implemented into national law. As such, the combination of regulations, directives, and national law transposing EU Directives will represent the applicable law for the AMLA's operational tasks, including direct supervisory powers. Some additional remarks are needed to understand the complexity of such a composite legal framework.

Pursuant to Article 5(6) AMLAR, "for the purpose of carrying out the tasks conferred on it by this Regulation, the Authority shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the Authority shall apply also the national legislation exercising those options".

This choice to confer to a European agency the power to apply national law in combination with directly applicable EU law is not unprecedented. The current proposal thus follows the integrated legal framework model adopted for the Single Supervisory Mechanism (SSM)[30]. Pursuant to Article 4 (3) sub-para. 1 SSMReg, in applying all relevant Union law for the purpose of carrying out its supervisory tasks, including all relevant secondary law, the ECB may apply national law. The latter includes national legislation, by which options explicitly granted in regulations have been exercised as well as national

---

[26] Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions (COM 2019/373 final), p. 8.

[27] See the seminal study of Van den Broek, M., 2015, Preventing Money Laundering, Eleven, p. 89, comparing Spain, The Netherlands, the UK and Sweden.

[28] Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions (COM 2019/373 final), p. 8.

[29] See infra, para. 2.7.

[30] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63). Witte, A. (2014), The Application of National Banking Supervision Law by the ECB: Three Parallel Modes of Executing EU Law, Maastricht Journal of European and Comparative Law 21(1), pp. 89-109; Di Bucci, V., 2018, Quelques questions concernant le contrôle jurisdictionnel sur le mécanisme de surveillance unique, in Liber Amicorum Antonio Tizzano. De la Cour CECA à la Cour de l'Union: le long parcours de la justice européenne, Torino, pp. 317-331; Amtenbrink. F, (2019), The application of national law by the European Central Bank: challenging European legal doctrine?, ECB legal conference 2019, retrieved at: https://www.ecb.europa.eu/pub/pdf/other/ecb.ecblegalconferenceproceedings201912~9325c45957.en.pdf (accessed on 26 May 2022).

legislation transposing relevant directives.

Introduced as a novelty by the SSMReg to describe the ECB/SSM legal framework, this European agency application of national law has already raised a rich scientific debate in the field of banking supervision. Concerns have been raised regarding the complexity that stems from the SSM applying several potentially different legislations[31]. The main dispute focuses on the theoretical and practical issues which arise when a supranational organ empowered with direct supervisory powers applies a fragmented puzzle of different national rules. It may seem incoherent to pursue an effective and consistent functioning of the SSM[32] through a fragmented legal framework based on a patchwork of national laws. Others, on the contrary, accepted the political compromise – the sole *ratio* behind such a choice – and saw an opportunity to deepen the harmonisation process via a common organ applying different national laws[33].

Even in this last scenario, there many issues are raised by a common organ endowed with executive powers based on a combination of EU and national law. Scholars have particularly identified as the main issues the appropriate method of interpretation, the scope of review of national law by the Court of Justice of the European Union (CJEU), the exercise of public power by the ECB that is at least partially rooted in national law, and the inadequate implementation into domestic law of relevant secondary Union law in the shape of directives (including non-implementation and erroneous implementation)[34].

Non-implementation or inadequate implementation of the EU directives seem to be particularly sensitive in the field of AML/CFT, as the proposed AMLD6 lays down pivotal rules on the functioning of national supervisors as well as on the establishment and cooperation of national FIUs. The many infringement procedures promoted by the Commission in the last decade testify to the reluctance of Member States to correctly implement AML/CFT directives[35]. A cautious scepticism in expecting a

---

[31] See inter alia Ferran, E., Babis, VSG., 2013, The European Single Supervisory Mechanism, 13(2) Journal of Corporate Law Studies, 255; Teixeira, P.G, 2014, Europeanising Prudential Banking Supervision. Legal Foundations and Implications for European Integration, in Fossum, J.E., Menéndez, A.J. (eds), The European Union in Crisis or the European Union as Crises? (ARENA Centre for European Studies 528, 569; Magliari, A., 2015, The Implications of the Single Supervisory Mechanism on the European System of Financial Supervision. The Impact of the Banking Union on the Single Market in Chiti, E., Vesperini, G. (eds), The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives, il Mulino, 185, 204; Lehmann M., (2017), Single Supervisory Mechanism Without Regulatory Harmonisation? Introducing a European Banking Act and a 'CRR Light' for Smaller Institutions', 3 EBI Working Paper Series 7-8; Voordeckers O., (2020), National Banking Law Within the European Single Supervisory Mechanism. Stumbling Block or Stepping Stone?, University of Luxembourg PhD thesis, retrieved at: https://orbilu.uni.lu/handle/10993/44296; Coman-Kund, F., Amtenbrink, F., 2018, On the Scope and Limits of National Law by the European Central Bank within the Single Supervisory Mechanism 33 Banking & Finance Law Review 133.

[32] Article 6(1) SSM Regulation.

[33] Teixeira, P.G, 2014, Europeanising Prudential Banking Supervision. Legal Foundations and Implications for European Integration. in Fossum, J.E., Menéndez, A.J. (eds), The European Union in Crisis or the European Union as Crises? (ARENA Centre for European Studies 528, 568; Tridimas, T., 2019, The Constitutional Dimension of Banking Union in Stefan Grundmann and Hans-W Micklitz (eds), The European Banking Union and Constitution. Beacon for Advanced Integration or Death-Knell for Democracy?, Hart 25, pp. 46-47.

[34] For a complete overview, see Voordeckers, O., 2020, National Banking Law within the European Single Supervisory Mechanism. Stumbling Block or Stepping Stone?, University of Luxembourg PhD thesis, retrieved at: https://orbilu.uni.lu/handle/10993/44296; Wymeersch, E., 2022, The Implementation and Enforcement of European Financial Regulation, in in Crijns, J., Haentjens, M., Haentjens, R., The Enforcement of EU Financial Law, Hart, (forthcoming); Coman-Kund, F., Amtenbrink, F., 2018, On the Scope and Limits of National Law by the European Central Bank within the Single Supervisory Mechanism 33 Banking & Finance Law Review 133.

[35] On 8 November 2018, the Commission reported that it referred Luxembourg to the European Court of Justice for only transposing part of the 5th AML into national law. The Commission proposed that the Court charges a lump sum and daily penalties until Luxembourg takes the necessary action. Furthermore, the Commission sent a reasoned opinion to Estonia and a letter of formal notice to Denmark for failing to completely transpose the 4th AML Directive. Although these Member States have declared their transposition, the Commission assessed the notified measures and concluded that some provisions are missing. Estonia and Denmark now have two months to respond and take the necessary action. Otherwise, the European Commission may take the next infringement steps, including referral to the CJEU. On 12 February 2020, the Commission started infringement proceedings against eight Member States for not having transposed the 5th Anti-Money Laundering Directive (Directive (EU) 2018/843. The Commission sent letters of formal notice to Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia, and Spain, because the countries have not notified any implementation measure for the 5th AML Directive. On 12 November 2021, the Commission has decided to open infringement proceedings against Czechia on grounds of incorrect transposition of the 5th Anti-Money Laundering Directive. The deadline for transposing the Directive was 10 January 2020 and Czechia had declared partial transposition. The Commission assessed the notified national measures and concluded that there are several instances of incorrect transposition (non-conformity) of the Directive into

similar approach by the Member States when transposing the new package seems justified. Nevertheless, the entire system is built upon the premise that national implementation will optimally occur, and no rule in both the SSM and the AMLAR suggests a solution to a lack of or incorrect implementation.

With reference to the SSM, possible solutions have been identified. First, when national implementation of EU law appears inadequate, interpretation in conformity should be promoted as a remedy. Second, when a national legislature does not implement EU law at all, the doctrine of direct applicability of the EU Directives appears to be the best solution[36].

Interpretation in conformity represents a duty of EU organs, which would otherwise be forced to apply national law in contrast to EU law and its supremacy[37]. However, it does not represent a panacea, as general principles of law, namely legal certainty and non-retroactivity, as well as the exclusion of *contra legem* interpretation of national law, should always be respected[38].

Non-implementation and the use of direct application are more problematic, as elaborated by CJEU case-law, as a potential solution relying on the wording of the SSM Regulation. However, scholars observe that the wording of Article 4 (3) sub-para. 1 SSMReg, which only broadly refers to all of Union law, including Union law that is composed of directives, does not create legal certainty on the part of individuals. Moreover, allowing EU organs to bypass national implementation laws would leave room for EU organs to systematically disregard national law[39]. Even excluding any potential abuse, allowing for the direct application of directives by the ECB would "diverge from the spirit of the SSM Regulation - it would result in an almost total levelling of the difference between directives and regulations as far as banking supervision is concerned"[40]. Furthermore, even accepting a direct application of EU Directive as a way to grant effectiveness to the system and to keep Member States from blocking the supranational effort by non-implementing EU law, this would never apply to punitive powers conferred to the Authority. Even proponents of such a solution for the SSM exclude the application of the direct effect doctrine to sanctions or penalties, at least when of a criminal law nature, as a result of an indirect

national law, which affect, among others, some fundamental aspects like the definition of beneficial ownership and the proper functioning of the beneficial ownership registers. On 6 April 2022 the Commission sent a letter to Belgium for failure to communicate some of the transposition of the measures required to enact EU rules on combating money laundering by criminal law into its national law (Directive 2018/1673).

36 Amtenbrink, F., 2019, The application of national law by the European Central Bank: challenging European legal doctrine?, ECB legal conference 2019, retrieved at: https://www.ecb.europa.eu/pub/pdf/other/ecb.ecblegalconferenceproceedings201912~9325c45957.en.pdf (accessed on 26 May 2022). Bionadi, A. and Spano, A., 2020, The ECB and the Application of National Law in the SSM: New Yet Old…, European Business Law Review, Vol. 31(6), pp. 1023 – 104; See also Boucon, L., and Jaros, D., 2018, The Application of National Law by the European Central Bank within the EU Banking Union's Single Supervisory Mechanism: a New Mode of European Integration?, European Journal of Legal Studies, Special Issue, pp. 155-187; For the interpretation in conformity, incumbent obligation extended to national courts, see particularly Cases C-14/83, Von Colson ECLI:EU:C:1984:153, para. 26, C-456/98 Centrosteel ECLI:EU:C:2000:402, para. 16, and C-334/92 Wagner Miret ECLI:EU:C:1993:945, para. 20. For further discussion.

37 By analogy, national courts and bodies are also bound by the obligation of interpretation in conformity. See Case C-430/21 RS ECLI:EU:C:2022:99, para. 53: in accordance with the principle of the primacy of EU law, the national court called upon within the exercise of its jurisdiction to apply provisions of EU law is under a duty, where it is unable to interpret national law in compliance with the requirements of EU law, to give full effect to the requirements of EU law in the dispute brought before it, by disapplying, as required, of its own motion, any national rule or practice, even if adopted subsequently, that is contrary to a provision of EU law with direct effect ». See also: C-106/77 Simmenthal ECLI:EU:C:1978:49, para. 24; C-573/17Popławski ECLI:EU:C:2019:530, para. 61 and 62; and C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 Euro Box Promotion and Others ECLI:EU:C:2021:1034, para. 252.

38 See Case C-261/20 Thelen Technopark Berlin GmbH ECLI:EU:C:2022:33, para. 28; C-176/12 Association de médiation sociale ECLI:EU:C:2014:2, para. 39 and the case-law cited; C-385/17 Hein ECLI:EU:C:2018:1018, para. 51

39 Kornezov, A., 2016, The application of national law by the ECB – a maze of (un)answered questions, in ESCB Legal Conference 2016, Frankfurt am Main, pp. 270-282; p. 279.

40 Witte, A., 2014, The Application of National Banking Supervision Law by the ECB: Three Parallel Modes of Executing EU Law, Maastricht Journal of European and Comparative Law 21(1), pp. 89-109, pp. 108-109.

reliance on a directive through the application of the SSMReg[41].

Additionally, the conferral of executive powers to common organs does not overrule the limits imposed by the CJEU to the direct effects of directives[42]. The direct effect doctrine has been developed in order to avoid detrimental effects on individuals when the Member States have failed to fulfil their Treaty obligation to correctly implement EU law[43]. Neither the SSM nor the future AMLA are to any extent to be considered national organs. However, they both exercise public powers on Member States territories, producing a kind of legislative substitution[44] of the national supervisory authorities with the ECB, and later with the AMLA. This implies the need to have a common level playing field in terms of applicable law. It is not recommended for a common EU supervisor to dispose of a different set of supervisory rules compared to the national one, especially when the possibility of a take-over by the EU Authority is contemplated. Allowing the AMLA to directly apply EU law even when national supervisors do not dispose of the powers provided for by the Directive because of a lack of national implementation would determine an unbalanced situation. The FOEs submitted to centralised supervision will follow a certain set of rules, including the directly applicable ones, whereas those left under the national supervisor will observe national law, but with the concrete possibility of their supervision being taken to the upper level via the take-over procedure[45].

41 Di Bucci, V., 2018, "Quelques questions concernant le contrôle jurisdictionnel sur le mécanisme de surveillance unique", in Liber Amicorum Antonio Tizzano. De la Cour CECA à la Cour de l'Union: le long parcours de la justice européenne, Torino, pp. 317-331; p. 329. On this debate, see Amtenbrink, F., (2019), The application of national law by the European Central Bank: challenging European legal doctrine?, ECB legal conference 2019, retrieved at: https://www.ecb.europa.eu/pub/pdf/other/ecb.ecblegalconferenceproceedings201912~9325c45957.en.pdf (accessed on 26 May 2022).

42 See e.g. Case C-63/99 Gloszczuk ECLI:EU:C:2001:488, para. 38; C-257/99 Barkoci and Malik, ECLI:EU:C:2001:491, para. 39; C-453/99 Courage v Crehan, ECLI:EU:C:2001:465, paras 26–27. See more particularly Lenaerts, K., Corthaut, T., 2008, Towards an Internally Consistent Doctrine on Invoking Norms of EU Law, in Prechal, S., van Roermund, B., (eds), The Coherence of EU Law: The Search for Unity in Divergent Concepts (Oxford University Press), 514–15. For further discussion, see: Squintani, L., Lindeboom, J., 2019, The Normative Impact of Invoking Directives: Casting Light on Direct Effect and the Elusive Distinction between Obligations and Mere Adverse Repercussions', 38 Yearbook of European Law, pp. 18-72.

43 Winter, JA, 1972, Direct Applicability and Direct Effect: Two Distinct and Different Concepts in Community Law, 9 CML Rev, p. 425; Pescatore, P., 1983, The Doctrine of "Direct Effect": An Infant Disease of Community Law'8 European Law Review, p. 155; Prechal, S., 2000, Does Direct Effect Still Matter?, 37 CML Rev, 1047; Prinssen, J.M., Schrauwen, A. (eds), 2002, Direct Effect. Rethinking a Classic of EC Legal Doctrine, Europa Law Publishing; Schütze, R., 2018, Direct Effects and Indirect Effects, in Schütze, R., Tridimas, T. (eds), Oxford Principles of European Union Law, Oxford University Press; Simon, D., 2001, Le système juridique communautaire, PUF, pp. 383–469; Tesauro, G., 2012, Diritto dell'Unione Europea (CEDAM), pp. 161–182; Distefano, M. (ed.), 2017, L'effetto diretto delle fonti dell'ordinamento giuridico dell'Unione europea (Editoriale Scientifica, passim; Leczykiewicz, D., 2015, Effectiveness of EU Law before National Courts: Direct Effect, Effective Judicial Protection, and State Liability, in Chalmers, D., Arnull A. (eds), The Oxford Handbook of European Union Law, Oxford University Press, passim.

44 Coman-Kund, F., Amtenbrink, F., 2018, On the Scope and Limits of National Law by the European Central Bank within the Single Supervisory Mechanism 33 Banking & Finance Law Review, 157.

45 See infra, para 2.3.

2. THE AMLA GOVERNANCE AND STRUCTURE IN RELATION TO ITS DIRECT SUPERVISORY POWERS

KEY FINDINGS

The structural design of the future AMLA seems adequate to the tasks conferred to the new Authority and appropriate to ensure an effective and efficient decision-making cycle in terms of both quality and speed.

Due to the heterogeneity and fragmentation of regulation and supervision of the non-financial sector, it is an opportune choice to limit the scope of the new EU supervisor to the financial sector.

However, criteria appear to be too strict. Geographical impact should be reviewed in order to include obliged entities headquartered in each Member State. The exclusion of some Member States would impair the diffusion of best practices and hamper the development of a common supervisory culture. The proposed criteria may trigger a reputational risk insofar as they rely on previous investigation of material breaches. Moreover, clarity is needed in order to describe the procedure to select the FOEs under direct supervision of the AMLA.

The ability of the EU supervisor to take over direct supervision of any financial entity if a procedure confirms inadequate supervisory action by the national supervisor represents a crucial enforcement tool for the AML/CFT strategy. The possibility to alert the AMLA on the need of a take-over should be expanded to include all national supervisors to make the tool more effective.

The proposal offers to AMLA strong supervisory powers, enabling the Authority to go beyond 'cosmetic compliance'. However, a necessary remark concerns the attribution to the same Joint Supervisory Team (JST) of offsite and on-site inspection toward the same obliged entity. This double mandate should be reviewed in favour of a larger distance among the two tasks to preserve independence in conducting the different tasks. A reflection should be carried out on the possibility to develop investigative measures to face the technological developments of the financial market.

The organisation and governance of the new Authority[46] will be comprised of two collegial governing bodies, namely an Executive Board of five independent full-time members, and the Chair of the Authority and of a General Board composed of representatives of Member States.

The Executive Board[47] is responsible for the overall functioning and execution of the AMLA's tasks. It adopts all decisions towards selected obliged entities (SOEs) or supervisory authorities when they are submitted to the AMLA's direct or indirect supervisory functions[48].

As for the General Board[49], the proposal foresees an appropriate division which mirrors the many tasks listed in Article 5 AMLAR: the executive main organ of the future Authority can sit in a supervisory composition, with heads of public authorities responsible for AML supervision, as well as in the FIUs composition, with heads of EU national FIUs[50]. The General Board is responsible for the adoption of regulatory instruments, draft technical implementation standards, guidelines, and recommendations. In its supervisory composition, it may also provide its opinion on any decision concerning directly

[46] Article 45 AMLAR.
[47] Article 52 AMLAR.
[48] Article 53 AMLAR.
[49] Article 46 AMLAR.
[50] See infra, Chapter 3.

supervised obliged entities prepared by a Joint Supervisory Team (JST) before the adoption of the final decision by the Executive Board[51].

An Administrative Board of Review completes the picture. This deals with appeals against binding decisions of the AMLA addressed to the SOEs under its direct supervision[52].

The structural design of the future AMLA seems to adequately respond to the tasks conferred to the new Authority and to appropriately ensure an effective and efficient decision-making cycle in terms of both quality and speed[53]. Specific issues for which an improvement seems possible will be analysed in detail in the following sections related to direct supervision and FIUs coordination.

As for governance, a few remarks are necessary to improve the current proposal and prevent potential conflicts in the future. In particular, Article 72 AMLAR describes the accountability and the reporting duties of the future Authority. The latter is accountable to the European Parliament and to the Council for the implementation of this Regulation. It shall submit an annual report on its activities. The Chair of the Authority shall present that report in public to the European Parliament. At the request of the European Parliament, the Chair shall participate in a hearing on the execution of its tasks by the competent committees of the European Parliament, replying orally or in writing to questions raised by the European Parliament.

Article 72 appears quite weak in terms of content when compared with the accountability requirements and procedures for similar organs[54]. In particular, Article 45 SRMReg offers a more robust set of additional duties to explain and respond to questions addressed to it by the European Parliament or by the Council and imposes specific cooperation duties in case of an investigation[55]. As the future AMLA will be an agency of the Commission and considering the involvement of national law in the exercise of its tasks, Article 72 AMLAR should be reviewed to introduce stronger accountability and reporting duties.

---

51 Article 49 AMLAR.

52 See infra, Section 2.7.

53 Unger, B. et al., 2020, Improving Anti-Money Laundering Policy, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf. Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p., iv.

54 Fernandez-Bollo, E., 2021, Democratic accountability within the framework of the SSM and the SRM as a complement to judicial review, in Zilioli, C., Wojcik, K-P., Judicial Review in the European Banking Union, Elgar, 17-27, p. 23.

55 See in particular the following paragraphs of Article 45 SRMReg: The Board shall reply orally or in writing to questions addressed to it by the European Parliament or by the Council, in accordance with its own procedures and in any event within five weeks of receipt of a question. 7. Upon request, the Chair shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament where such discussions are required for the exercise of the European Parliament's powers under the TFEU. An agreement shall be concluded between the European Parliament and the Board on the detailed modalities of organising such discussions, with a view to ensuring full confidentiality in accordance with the requirements of professional secrecy imposed on the Board by this Regulation and when the Board is acting as a national resolution authority under the relevant Union law. 8. During any investigations by the European Parliament, the Board shall cooperate with the European Parliament, subject to the TFEU and regulations referred to in Article 226 thereof. Within six months of the appointment of the Chair, the Board and the European Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the Board by this Regulation. Subject to the power of the European Parliament pursuant to Article 226 TFEU, those arrangements shall cover, inter alia, access to information, including rules on the handling and protection of classified or otherwise confidential information, cooperation in hearings, as referred to in Article 45(4) of this Regulation, confidential oral discussions, reports, responding to questions, investigations and information on the selection procedure of the Chair, the Vice-Chair, and the four members referred to in Article 43(1)(b) of this Regulation.

2.1. Direct supervision over selected obliged entities: Challenging the rationale of the criteria

Among the many scenarios discussed in the Impact Assessment (IA), the Commission chose to create an independent and autonomous Authority competent for the direct supervision over selected risky entities and for the indirect oversight over all other entities[56].

This policy choice seems the most adequate for a concrete answer to the inefficiency of the system without establishing a total centralisation of AML/CFT supervision, a costly option for which the EU is not equipped[57]. The outcome is a partial centralisation, currently limited to the financial sector, combined with an indirect supervision of the non-selected entities as well as of the non-financial sector.

We agree with the Commission that the ability of the EU supervisor to take over direct supervision of any financial entity, if a procedure confirms inadequate supervisory action by the national supervisor, would be an added safeguard reducing ML/FT risk in the Union.

Due to the heterogeneity and fragmentation of regulation and supervision of the non-financial sector, it is appropriate to limit the scope of the new EU direct supervisory powers to the financial sector. This does not mean that there is no need to improve the oversight of non-financial obliged entities such as auditors, notaries, and gambling operators: the supervisory function over the latter "is often insufficient or left to self-regulatory bodies"[58]. However, the road is still long and rocky to centralise supervision of those actors. The financial crisis pushed the EU to introduce a specific supervisory architecture, consisting of three European supervisory authorities and a board to monitor systemic risks. Conversely, there are no EU entities corresponding to the ESAs for non-financial markets. Certain categories such as tax advisors, auditors, external accountants, notaries, lawyers, and real estate agents are mostly submitted to self-regulating bodies at national level and cooperation among them seems poor[59].

The intensity of supervision needed depends on the AML risk profile of an entity and represents the main pillar on which the selection of entities to be submitted to the centralised AMLA supervisory powers is based. The risk profile is first assessed at national level and then combined with a significant cross-border presence and complex activities.

However, the IA did not discuss sufficiently the exact criteria to determine 'risky entities'. The very concepts of risk-assessment studies, risk models, and risk appetite can be subjective. To reduce fragmentation, each supervisor must "make sure their interpretations are in writing, clear and understandable, and based on reasonable and logical arguments"[60]. Furthermore, AMLA must have direct access to information from obliged entities when it deems it necessary, and assessment mechanisms must be devised in a transparent manner[61].

The current proposal confers to AMLA direct supervisory powers in a very limited number of cases. In order to fall within the scope of AMLA direct supervision, the obliged entities shall have to be

---

56 Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA, Commission Staff Working Document, 17.4.2018 SWD(2018) 114, pp. 29-55.

57 Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. 10.

58 Transparency International, Policy Brief on The Proposed Eu Anti-Money Laundering Package, January 2022, p. 2.

59 Lannoo, K., Parlour R., 2021, Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. 20. Further research is absolutely needed in relation to non-financial entities.

60 Koster, H., 2020, Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework, Journal of Money Laundering Control, Vol. 23, no. 2, 379-386, DOI 10.1108/JMLC-09-2019-0073, p. 381.

61 Transparency International, Policy Brief on the Proposed EU Anti-Money Laundering Package, January 2022, p. 2.

established in several Member States – seven Member States for credit institutions, ten for other financial institutions – and to present a high-risk profile. This last requirement implies a two-steps assessment: credit institutions should present a high-risk profile in at least four Member States, and must have been under supervisory investigation for material breaches in the previous three years. Financial institutions should present a high-risk profile in at least one Member State in which they operate and in at least five other Member States where they provide services via representative agents.

The Commission made clear that the limited scope of direct centralised supervision is due to budgetary considerations[62]. However, these criteria appear too strict. According to the estimation of the Commission, also cited by the ECB Opinion of February 2022, only approximately 12 to 20 obliged entities will meet these criteria. Even considering the need to limit the costs of the future Authority, this unprecedented step towards a better supervision in the field of AML/CFT would only be justified by a higher impact in terms of obliged entities falling within the scope of AMLA direct supervision. The establishment of a brand-new authority for only 20 obliged entities seems hardly justifiable in terms of subsidiarity.

Additionally, the criteria as laid out in the proposal are so stringent in terms of geographical impact to exclude some Member States' obliged entities entirely from the AMLA direct supervision. If no national financial entity is selected for direct supervision, there will be less dialogue and fewer occasions for exchange between the AMLA and the national supervisors. The exclusion of the nation-based obliged entities from the AMLA supervisory action would impair the diffusion of best practices and hamper the development of a common supervisory culture[63].

As observed by the ECB, it would therefore be opportune to amend the current criteria in order to enlarge the pool of obliged entities to be submitted to direct supervision, in particular obliged entities headquartered in each Member State.

An amendment of the indicated criteria would also be necessary to avoid a reputational risk for the SOEs. The current version of Article 13(1) AMLAR combines the geographical operational width with a high-inherent risk profile, together with an additional precedent for credit institutions: it will have been "under supervisory of other public investigation for material breaches" in the previous three years[64]. This additional requirement insinuates the doubt of 'black-listed' entities under a persistent suspicion of being at high ML/TF risk. As the AMLA shall proceed with this selection every three years and publish it without delay, this publication might entail a high reputational and potential economic damage to the concerned entities.

The publication of the list, as the ECB observed, "would be equivalent to indirectly making public the high ML/TF risk status of the selected obliged entities, which is currently confidential supervisory information"[65]. It is thus opportune to replace those criteria with neutral and objective ones that do not

---

62 Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA, Commission Staff Working Document, 17.4.2018 SWD(2018) 114, p. 44.

63 ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 3. According to Transparency International, "AMLA's budget needs to be increased to ensure sufficient resources are available for both direct and indirect supervision. This should come at the expense of national supervisors. A comparison with national level supervision and the single supervisory mechanism of the European Central Bank suggests that the budget needs at least a doubling compared to what is being proposed". Transparency International, Policy Brief on The Proposed Eu Anti-Money Laundering Package, January 2022, p. 2.

64 Article 13(1)(a) AMLAR.

65 ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 4.

imply the disclosure of such a sensitive supervisory information to the public and to the market[66].

In particular, preference should be given to systemic factors such as the geographical width and the position within the single Member State, promoting as much as possible an equivalence in terms of supervisory functions. One suggestion would be to include within the scope of AMLA direct supervision, all credit institutions that are currently under direct prudential supervision of the ECB/SSM as significant credit institutions[67]. This would create a common level playing field at the EU centralised level and allow for a more efficient coordination among the EU supervisory authorities. Discrepancies among national AML/CFT competent authorities in supervisory practice have already been identified as a disruptive factor for the ECB to offer a complete prudential assessment. The ECB has drawn attention to the need to overcome that "certain degree of heterogeneity" among national supervisory strategies and foster a common methodology in risk assessment to be factored into prudential supervision.

As for the ML/TF risk to be considered, the investment fund industry has observed that the criteria should be based on the residual risk, and not – as it is currently the case – on the inherent risk[68]. The former refers to the level of risk that remains after AML/CFT systems and controls are applied to address the inherent risk. The latter refers to the ML/TF risk in the subject sector before the application of the mitigating measures[69]. This position is mostly based on the FATF Guidance for a risk-based approach for supervisors[70], according to which an entity with high inherent risks may not necessarily be high-risk if strong AML/CFT controls are applied to mitigate the latter. Consequently, the assessment will focus on the residual risks, which are lowered, and these residual risks may influence the intensity or scope of supervision, and where necessary be used to prioritise between entities.

This option should be discussed and assessed according to the EBA Guidelines of December 2021, in which the definition of 'risk profile' has been revised to clarify that the latter may be developed for subjects of assessment and for sectors and subsectors.

The EBA Guideline no. 40 states that "Competent authorities should gather sufficient, relevant, and reliable information from the sources described in paragraphs 30 and 31[71] to develop an overall understanding of the inherent risk factors and factors that mitigate these risks within the sector and subsector, where relevant". The risk profile is not limited to the residual risk alone, as it was suggested in the existing guidelines, but may also be based on inherent risk, where, for example, the information on mitigating measures is not available to the competent authority at the time.

2.2. The process to select obliged entities under direct supervision

In order to select the obliged entities for the purpose of direct supervision, the AMLAR foresees a two-step procedure: a first inherent risk assessment on the obliged entities that are established in several countries (Article 12 AMLAR), and a second selection based on additional criteria related to their

---

66 For a different position – that does not consider reputational risks – see Transparency International, Policy Brief on the Proposed EU Anti-Money Laundering Package, January 2022, p. 3.

67 Council Regulation (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ 2013 L 287/63.

68 ALFI opinion on the EU Commission's "AML package", Association of the Luxembourg fund industry, available at: https://www.alfi.lu/getmedia/776f07b9-ddd4-47fa-8c08-77b870fe4789/alfi-opinionamlpackfinclean.pdf.

69 EBA, The Risk-Based Supervision Guidelines, 16 December 2021, available at: EBA/GL/2021/16 https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2021/EBA-GL-2021-16%20GL%20on%20RBA%20to%20AML%20CFT/1025507/EBA%20Final%20Report%20on%20GL%20on%20RBA%20AML%20CFT.pdf.

70 FATF Guidance on Risk-Based Supervision, available at: https://www.fatf-gafi.org/media/fatf/documents/Guidance-Risk-Based-Supervision.pdf, pp. 15-16

71 EBA, The Risk-Based Supervision Guidelines, 16 December 2021, EBA/GL/2021/16.

ML/TF specific risk and previous compliance failures.

The proposal specifies that the first risk assessment should be based on regulatory technical standards and a common methodology, which the Authority would develop for classifying the inherent risk profile[72]. Less clear is which organ would be in charge of such as assessment. It seems logical and coherent with the two-step procedure for this first assessment to be conferred to national authorities, as they are the best placed to have access to the required data. However, Articles 12(1) and 13(2) AMLAR refer to the AMLA as the organ to carry out a periodic assessment according to a specific timeline; the first selection process of which is set to start on 1 July 2025. The opposite solution, i.e. a centralised risk assessment involving all FOEs established in the EU, would ensure a fairer assessment and discrimination due to the different approach of national supervisors. However, it would also imply that the AMLA would take control over the risk assessment of an enormous amount of financial obliged entities. This operational challenge seems difficult to achieve without revisiting the limited budget and staff indicated in the proposal.

However, the system as designed in the proposal seems vulnerable to national bias on risk assessment: the lack of quality of national methods or less cooperative national supervisors might lead to imprecise results that might affect the very setting of the limited direct supervision conferred to the AMLA. In other words, as long as the risk-based selection is demanded of national authorities in the first place, the very same problems that had led to different reactions among Member States, justifying the establishment of a common organ, might reflect negatively on the future AMLA effective supervision. Risk assessment is a sensitive and highly technical exercise, whose operational requirements are still to be settled in literature[73]. Leaving it to national supervisors to conduct the initial screening to detect future SOEs without a background work on harmonising practices and culture seems inappropriate.

A possible corrective interpretation would be the following. First, national authorities may be in charge of selecting the obliged entities satisfying the geographical criteria. Second, the AMLA conducts the inherent risk assessment of the pre-selected ones. This would limit the number of the concerned entities.

Moreover, pursuant to Article 12 AMLAR, the Authority "shall carry out a periodic assessment of the (…) obliged entities", but it is clear that the first screening based on geographical impact and risk profile remains in the hands of national supervisors. Article 13 AMLAR refers hence to the duty for the Authority to "commence the first selection on 1 July 2025". It seems plausible that this represents the 'second step' once that the national supervisors have accomplished the first selection. An amendment to the proposal seems nonetheless necessary to make clear which authority – the AMLA or the national supervisor – oversees every step that is necessary to set up the crucial list of SOEs under direct supervision of the AMLA.

2.3. The AMLA takeover in case of risk deterioration of non-selected obliged entities: an important tool for shifting from indirect to direct supervision

An important tool of indirect supervision is for AMLA to take over the direct supervision of financial obliged entities that are not part of the primary selection. This possibility would allow the AMLA to intervene in cases of non-efficiency of the national supervisory actions that might entail a reputational

[72] Article 12(5) AMLAR.

[73] Levi, M., 2020, Evaluating the control of money laundering and its underlying offences: the search for meaningful data, in Asian Journal of Criminology, published online: 20 May 2020, retrieved at: https://doi.org/10.1007/s11417-020-09319-y.

risk for the Member State. Additionally, the possibility for AMLA to take over the supervision of a specific obliged entity, in case of insufficient national supervision, has the potential to ensure strong complementary oversight.

A first remark concerns the identification of the reputational risk as a factor to be considered in the decision on the transfer of direct supervision. While the criteria under which the SOEs are chosen is mostly based on their inherent ML/TF risk combined with their cross-border operational impact, the decision on the potential take-over seems to focus on the national dimension of the risk of deterioration. The two assessments could be aligned in considering the national impact as an additional reason to increase the SOEs according to the first listing.

This amendment would bring a twofold benefit: it would allow for an inclusion of nationally relevant obliged entities into the original list of SOEs and for an extension of the AMLA direct supervision to all the Member States, an opportune step in the development of a common supervisory culture.

Additional remarks concern the procedure to be followed for the potential AMLA take-over.

Article 30(1) AMLAR imposes on national supervisors the duty to notify the AMLA when the situation of a non-selected obliged entity "deteriorates rapidly and significantly". These two criteria are very strict and cumulative, whereas there might be cases in which a significant deterioration occurs slowly over a prolonged period of time. In such a case, the current version of Article 30 AMLAR would exclude notification from national supervisors, preventing prompt intervention from AMLA[74].

Moreover, the current proposal would require a specific initiative of the concerned Member State's financial supervisors as to the deterioration of the ML/TF risk[75], without clarifying whether this Member State where the initiative would be initiated from should be the one where the financial obliged entities is established. The rule merely refers to the Member State "where that entity operates"[76]. If we consider that the reputational impact to be considered for the take-over might also involve other Member States or the Union as a whole, it seems appropriate to allow any concerned national financial supervisor to alert the AMLA of the deterioration risk. This implies the possibility of receiving the alert from a Member State different from the one where the FOE is established. Opening the possibility of multiple alerts would increase the efficiency of the take-over to cover many more cases. Obviously, this would not entail an additional power to financial supervisors other than the competent one to adopt the necessary measures or to impose sanctions upon request of the AMLA, as foreseen by Article 30(2) AMLAR. These powers remain firmly linked to the territoriality principle.

Furthermore, the proposal excludes any possible internal referral (*autosaisine*) from the AMLA: only financial supervisors are entitled to launch the procedure that might lead to a take-over. However, the proposal should consider the case in which AMLA receives the information on the deterioration of the ML/TF risk of a specific financial obliged entity from sources other than national financial supervisors of the Member State, i.e. whistle-blowers or a non-financial supervisor.

As for the procedure to be followed for the take-over to be effective, the proposal correctly refers to the Commission as the organ in charge of granting permission to transfer the supervisory tasks from a national to a European Authority. This is in line with the revisited *Meroni* doctrine, which limits the discretionary powers of the EU agencies when criteria are not clearly defined. However, the Commission's permission seems unnecessary when the national financial supervisor consents to the

[74] ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 11.

[75] Article 30(1) AMLAR.

[76] Ibid.

transfer[77]. Some stakeholders suggest that the possibility for AMLA to take over direct supervision from national authorities "should be based on objective and pre-defined criteria and benchmarks". Once those criteria are clearly defined, the final decision may be left in the hands of the Executive Board, not the European Commission, as it would be compatible with the CJEU case-law in *Short Selling*[78].

As for the potential extension to non-financial entities, for the time being, it is left to national law whether non-financial entities would be required to register under financial supervisors. This creates discrepancies in terms of approach.

2.4. Direct supervisory powers: Testing their effectiveness

The set of supervisory powers conferred to the AMLA by Article 20 AMLAR seems coherent with its scope and in line with its tasks. A partial overlap with the ECB/SSM supervisory powers is possible with reference to Article 20(2)(f) AMLAR: when dealing with credit institutions, requiring changes in the governance structure implies the need of a coordinated effort with the ECB/SSM to avoid potential clashes or incoherent approaches among supervisors.

However, Article 20 AMLAR does not exhaust the list of supervisory powers conferred to the future Authority. The real extent of these powers depends on the interpretation of Article 20(3) AMLAR according to which "The Authority shall also have the powers and obligations which supervisory authorities have under relevant Union law". Should this Article be interpreted as limiting the powers to the ones provided for by directly applicable Union law? If this is the case, Article 20(3) AMLAR seems inconsistent with Article 5(6) AMLAR which states that the Authority "shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives"[79].

A mention should be made of the current EU framework concerning the power of the Commission to delegate executive powers to EU agencies, especially when the exercise of those powers implies a discretional assessment. The CJEU developed the so-called *Meroni* doctrine in 1958, and this was confirmed in the following *Romano* case, according to which no discretional power can be conferred to an agency[80]. The principles affirmed in the two cases "illustrate the test to preserve legality as set in the Treaties and exclude any undemocratic conferral of regulatory tasks on bodies that have no democratic legitimation or a solid legal basis in the Treaties"[81]. Through the so-called *Meroni-Romano* doctrine, the CJEU has applied the non-delegation doctrine to the domain of EU agencies. The CJEU has engaged in a partial revision of the interpretative boundaries of the *Meroni-Romano* doctrine concerning the non-delegation of regulatory powers on agencies, allowing the ESAs to exercise some substantive regulatory prerogatives. In a perspective of legal realism, the *Meroni-Romano* doctrine should therefore be interpreted as "requiring that European agencies and other EU specialised agencies and bodies may be granted powers implying a certain degree of discretion, and more

---

77 The need of a coherent approach at the EU level: the different rules of the SRM: no need to call into question the Commission. Article 7 SRM Reg: the SRB is not required to involve the commission and it is also an agency: inconsistency.

78 Case C-270/12 ESMA (Short selling) ECLI:EU:C:2014:18. Available at: https://curia.europa.eu/juris/liste.jsf?language=fr&num=C-270/12. See Botopoulos K., (2020), The European Supervisory Authorities: role-models or in need of re-modelling?, in ERA Forum 21:177–198, p. 189. According to the Author, What the ruling takes great care in not doing is admitting that the ESAs are vested with a "very large measure of discretion"—in fact it certifies the opposite34—, because that would be contrary both to the "Meroni-Romano principles" and, more importantly, to the Treaty itself. However, the "circumscribed systemic extension", by way of secondary legislation, which the ruling admits, might be a different legal notion, but ends up giving the ESAs, especially when measured in practical terms, not very different powers from those of EU "institutions".

79 See supra for our critical remarks, Section. 1.2.

80 See case C-9/56 Meroni ECLI:EU:C:1958:7, p. 154. See Chamon M., (2016), EU Agencies, Legal and Political Limits to the Transformation of EU Administration, OUP, pp. 175-249.

81 Simoncini, M., 2021, The Delegation of Powers to EU Agencies After the Financial Crisis, European Papers, Vol. 6, No 3, 1485-1503, p. 1489.

precisely a discretion framed by a previous EU legislative act in such a way to preclude an arbitrary exercise of power by the relevant EU body"[82].

After the entry into force of the Lisbon Treaty, the CJEU revisited the *Meroni-Romano* doctrine in the ESMA case[83], formulating a new delegation doctrine: EU agencies can be the recipients of executive discretionary powers if this discretion is limited. The delegation of clearly defined executive powers is permitted since the acts to be taken by the Authority – the ESMA in the specific case, the future AMLA by extension – are subject to "strict judicial review" provided that their exercise can be evaluated "in the light of the objective criteria determined by the delegating authority"[84].

Consequently, all the discretionary powers conferred to the future AMLA shall have a specific and detailed legal basis defining the contours of the power at stake in order to allow judicial control over the exercise the Authority has made of such a power, in particular when it comes to the definition of sanctions and their judicial review by the CJEU[85].

2.5. The Joint Supervisory Teams

The main role in supervisory activities will be conferred to the Joint Supervisory Teams. Largely inspired by the SSM model, the JSTs in AML/CFT supervision will have a mixed composition. They should be led by an AMLA staff member coordinating all supervisory activities of the team and include staff members of the national competent supervisor.

To ensure an adequate understanding of possible national specificities[86], "the JST coordinator shall be delegated from the Authority to the financial supervisor in the Member State where a selected obliged entity has its headquarters, upon agreement of the relevant financial supervisors"[87].

According to the documents accompanying the proposal, the term 'delegated' (referred to a team leader, or 'JST coordinator') should be understood as 'stationed' in the Member State on a permanent basis, instead of working at the AMLA.

This physical displacement seems unnecessary and potentially counterproductive. There are many arguments in favour of a physical presence of all the JSTs coordinators within the premises of the AMLA: first, they could fulfil their supervisory duties from a distance, being in charge of both off-site supervision and on-site inspections. Second, their proximity represents a key factor in developing a common supervisory culture and fostering the harmonisation of AML/CFT best practices[88]. Furthermore, the term 'delegated' only refers to the JST's coordinator working within the premises of the national supervisor, and shall not include to any extent a delegation of powers to the national authorities[89]. This would be detrimental to AMLA autonomous supervisory powers on SOEs.

---

82 Chiti, E., 2015, In the Aftermath of the Crisis – The EU Administrative System Between Impediments and Momentum, in Cambridge Yearbook of European Legal Studies, Vol. 17, 311 – 333, p. 317.

83 Opinion of Advocate General Jääskinen in Case C-270/12 ESMA (Short selling) ECLI:EU:C:2013:562.. AG Jääskinen in his Opinion recalled that some of the conditions set out in Meroni were overruled by the establishment of the Lisbon Treaty, especially concerning the fact that decisions and acts of agencies are now attackable before the CJEU, and the fact that agencies can and are vested with the power to take binding decisions (Opinion of AG Jääskinen, paras 73 and 74).

84 Case C-270/12 ESMA (Short selling) ECLI:EU:C:2014:18., para 90 and 91.

85 See infra, Section. 2.7.

86 Recital no. 21 AMLAR.

87 Article 15 AMLAR.

88 This is the suggestion coming from the ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 8.

89 ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 8.

2.6. The AMLA investigative powers: Beyond cosmetic compliance

The AMLA will be in charge of the ongoing off-site supervision based on the information reported by the SOEs under direct supervision.

These powers are complemented by additional investigative powers to conduct in-depth analyses and control the completeness and the accuracy of the reported information. The new proposal thus strengthens supervisory powers, abandoning the criticised approach of some national supervisors which limits their task to the so-called 'cosmetic supervision'. The current legal framework presents a fragmented picture as not all Member States' national legislation offer the same investigative powers at the national level. Even when the law authorises such investigative measure, the practice shows a very low frequency of anti-money laundering investigation.

The current proposal lists the investigative powers conferred to the JSTs in relation to the SOEs direct supervision. Here again it follows the SSM model and proposes an identical set of powers: the power to request information, the power of general investigations, and the possibility to activate an on-site inspection.

These measures represent the traditional operative powers conferred to supervisory authorities. Beyond the *littera legis*, it will be crucial for the AMLA to effectively use active investigative powers without limiting its supervisory role to the documents received from the SOEs placed under its direct supervision. The power to conduct on-site inspection is of crucial importance to compare the reported data with the reality of the compliance strategy of the single entity. A strong criticism has been raised against the reluctance of AML/CFT supervisors to become active and proceed to on-site inspections under the current framework[90].

In this regard, a necessary remark concerns the attribution to the same JST of off-site and on-site inspections toward the same obliged entity. This double mandate should be reviewed in favour of a separation among the two tasks. According to the ECB experience, it seems preferable to avoid the concentration of off-site and on-site tasks within the same team, because the knowledge previously acquired during off-site supervision might affect the independence of the on-site inspection and influence its findings[91].

Lastly, the present proposal seems to focus mostly on investigation on traditional obliged entities, in particular credit institutions, while it does not sufficiently cover the needs of a highly digitalised financial world. In particular, banks have been relying on Artificial Intelligence (AI) tools to assist analysts in highly repetitive AML/CFT frameworks. Machine learning tools can have a very positive impact in many segments of the monitoring system[92].

Financial obliged entities such as investment funds are mostly governed by algorithms that are also in charge of assuring the compliance with AML/CFT regulation. Some of the investigative measures of the AMLA proposal might prove ineffective when dealing with a highly automated financial entity.

---

[90] Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions, COM(2019) 373 final, p. 8: "In a number of cases, the anti-money laundering/countering the financing of terrorism supervisor appears to have often only relied on remote supervisory tools and to have carried out only few, limited or late on-site inspections even when the risk appeared to be high. Even in cases where on-site inspections were carried out, supervisors seem to have often only relied on documents submitted by the credit institutions, without carrying out sample checks to test whether the information submitted by the credit institutions was correct".

[91] ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 8.

[92] Bertrand, A., Maxwell, W., Vamparys, X., 2020, Are AI-based anti-money laundering (AML) systems compatible with European fundamental rights?, Research Paper by Operation AI Ethics, version November 2020, p. 15.

Investment funds do not always have a physical site[93]. This hinders the potential effect of on-site inspection. Moreover, compliance is more and more a goal to be pursued via a specific algorithmic design, adopting compliance-by-design technological solutions[94].

An effective supervisory strategy should take into consideration the technological developments of the financial markets. As algorithms are developed by private companies, their design is usually protected as intellectual property; thereby, software designers are not required to share the source code of their algorithms, from which their instructions derive. It therefore seems necessary to develop a solid legal basis for additional investigative measures that may remedy the lack of transparency of the algorithmic financial instruments used and overcome the obstacle of intellectual property. This would not mean making the source code of the software public, but rather communicating to the requesting Authority information on the elements taken into account by the algorithm, in a language that is easy to understand, in order to explain the decision-making process.

With regard to the single investigative measures, they seem appropriate to pursue the tasks conferred to AMLA. However, minor changes may prevent operational and legal problems in the future.

An optimal choice appears to be the inclusion of third parties to whom the SOEs have outsourced operation functions among the subjects to whom the Authority can address the request for information. Outsourcing being a frequent option in AML/CFT compliance, these companies may become a relevant source of useful information of internal compliance structure and management of the obliged entity.

Furthermore, a specific derogation of professional secrecy established at EU level would be useful in order to avoid a non-homogeneous application due to the fragmentation of national rules on this concern. Professional secrecy is indeed a very sensitive issue on which further research and consequent harmonisation would be needed. In the current picture, some Member States recognise the possibility for some professionals to shield behind professional secrecy and refuse to answer. In order to avoid an inconsistent application of investigative powers, the AMLA, as well as other centralised executive powers, should rely on common and consistent rules.

The rapid evolution of the ECtHR and CJEU case law on procedural safeguards in administrative punitive proceedings[95] needs to be taken into consideration when dealing with some of the powers of general investigations. Article 25 AMLAR lists the procedural safeguards to be respected during the procedure imposing an administrative pecuniary sanction, mirroring the provisions contained in the regulation related to banking supervision[96]. It generally refers to the rights of the defence, specifying, the right to access to the file and the right to be heard[97], and banning the participation of the investigatory team in the decision-making process on the sanction[98]. Considering the more recent decisions, additional safeguards should be contemplated. In particular, the right to silence as

---

93 The Investment funds industry observed that they rarely have a physical premise where they conduct their business, available at: https://www.alfi.lu/getmedia/776f07b9-ddd4-47fa-8c08-77b870fe4789/alfi-opinionamlpackfinclean.pdf.

94 Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious, CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. ii.

95 According to the *Engel* criteria, the procedure leading to administrative sanctions having a punitive nature should respect certain procedural safeguards traditionally linked to criminal enforcement. In particular, the following rights should be respected: the right to a public hearing, the right to counsel, the right to be heard, the right to access to the file, the right to a full judicial review. For the complete list of the relevant case-law, see Lasagni, G., 2020, Investigatory, supervisory and sanctioning powers within the SSM, in Allegrezza (ed), The Enforcement Dimension of the Single Supervisory Mechanism, Wolters Kluwer, p. 49 ff.

96 See Lasagni, G., 2019, Banking Supervision and Criminal Investigation, Comparing the EU and US Experiences, Springer, passim; Lasagni, G., 2020, Investigatory, supervisory and sanctioning powers within the SSM, in Allegrezza (ed), The Enforcement Dimension of the Single Supervisory Mechanism, Wolters Kluwer, p. 49 ff.

97 Article 25(3)(4) AMLAR.

98 Article 25(6) AMLAR.

elaborated by the CJEU in the *DB* case[99] suggests a certain caution in applying Article 17(1)(d) AMLAR, i.e. the power to obtain written or oral explanation from any person listed in Article 16 AMLAR. In the *DB* case the Court affirmed that natural persons who are subject to an administrative investigation for punitive administrative breaches have the right to remain silent when their answers might establish their liability for an offence that is punishable by administrative sanctions of a criminal nature, or their criminal liability. Even though AMLA is only competent to impose administrative punitive sanctions on legal entities, the cooperation with national financial supervisors and/or criminal enforcement authorities might lead to the use of those statements in administrative or criminal proceedings against the same natural person.

As for the power to proceed with on-site inspections, it seems necessary to amend Article 18 AMLAR to include a reference to the powers of general investigation provided for by Article 17 AMLAR. Without such reference, the mere power to enter coercively the premises of the obliged entity appears insufficient to authorise the investigative unit to proceed to a concrete investigation.

Article 19 AMLAR requires the Authority to apply for a judicial authorisation for an on-site inspection when this is imposed by national law. Following the blueprint of the SSM, the rule limits the power of national courts to ensure that the decision of the AMLA is not arbitrary or excessive, excluding whatsoever control over the proportionality or the necessity of the coercive measure, the latter being reserved to the review of the CJEU. This limited control left to national courts has already raised many concerns among scholars in terms of legality review. The current limitations alter the very nature of judicial authorisation, transforming the national control to a mere formality[100]. One might also consider that the subsequent possible control of the CJEU is often seriously affected to the deferential approach of that Court when dealing with technical decisions, which typically is the case in the field of AML/CFT.

2.7. Administrative sanctions for material breaches of AML/CFT directly applicable requirements and their judicial review

Article 21 AMLAR describes the type and amount of administrative sanctions the AMLA can impose to SOEs in case of intentional or negligent material breach of directly applicable requirements contained in AMLR1.

The provision completes the supervisory powers conferred to the Authority and will contribute to a more equal sanctioning policy among SOEs. Unfortunately, the positive effects would be limited to the latter, with the national financial supervisors still in charge of sanctions against non-SOEs. However, the harmonization effect of the transposition of the AMLD6[101] should contribute to reduce the huge differences in the amount signalled by the stakeholders' reports and highlighted in literature[102].

One important issue to be clarified is the exact concept of 'material breach' that might lead to the imposition of an administrative measure. According to the doctrine of delegation as elaborated by the *Meroni* doctrine and revisited by the CJEU in the ESMA case, there should be no discretional power to

---

99 CJEU (Grand Chamber), 2 February 2021, C-481/19 DB ECLI:EU:C:2021:84.

100 Voordeckers, O., 2020, Administrative and judicial review of supervisory acts and decisions under the SSM, in Allegrezza (ed), The Enforcement Dimension of the Single Supervisory Mechanism, Wolters Kluwer, p. 112 ff.; Witte, A., (2021), The application of national law by the ECB, including options and discretions, and its impact on the judicial review, in Zilioli C., Wojcik K-P., (2021), Judicial Review in the European Banking Union, Elgar, p. 236 ff.; on the CJEU case-law in relation to the SSM, see Martucci F., (2021), The Crédit Mutuel Ark.a case: central bodies and the SSM, and the interpretation of national law by the ECJ, in Zilioli C., Wojcik K-P., (2021), Judicial Review in the European Banking Union, Elgar, p. 504 ff., and Gortsos C.V., (2021), The Crédit Agricole cases: banking corporate governance and application of national law by the ECB, in Zilioli C., Wojcik K-P., (2021), Judicial Review in the European Banking Union, Elgar, p. 510 ff.

101 Article 39 ff AMLD6.

102 Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious, CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. 10.

determine the general conditions of the adoption the sanction, i.e., the *an* of the sanction. Conversely, the power to decide the sanction in the concrete case would stay within the hands of the Authority. Consequently, the concept of 'material' should be established by the Regulation following precise and objective criteria[103]. The current version of Article 21 refers to the Annex II of the AMLAR as concerns the list of the relevant breaches[104], but it does not define the concept of 'material'. A useful reference is offered by Article 40 AMLD6, according to which Member States shall ensure that administrative sanctions are applied in case of "serious, repeated or systematic breaches". These criteria should be adopted by the AMLA in imposing administrative sanctions and anchors to objective data in order to reduce the discretional power of the future Authority, in compliance with the *Meroni* doctrine.

An administrative pecuniary sanction adopted by the AMLA against the SOEs can be appealed before the ABoR[105].

The creation of a pre-judicial appeal procedure in the form of an internal ABoR for the decisions adopted by the Authority would be welcomed. The provision of an internal administrative appeal appears beneficial to the court system in terms of reduced caseload and for the remedy-seeking public by avoiding some of the disadvantages of the litigation. Recital 47 AMLAR is very explicit in affirming that the establishment of the ABoR aims "to protect effectively the rights of parties concerned, for reasons of procedural economy and to reduce the burden on the Court of Justice of the European Union". The independence and objectivity of the decisions taken by the ABoR should be ensured by the Board's composition of five independent and suitably qualified persons.

According to the Commission's proposal, the Executive Board should take into account the opinion of the ABoR, but not be bound by it[106]. However, EU law does not offer a general and defined concept of administrative review. Consequently, different models have been adopted and adapted to the different Authorities and procedures[107]. The current proposal follows the model of the SSM and confirms the non-binding nature of the ABoR decision, following the SSMReg. In this context, the limited value of the SSM ABoR decisions largely owes to the very nature of the ECB and the need to protect the independence of the General Board of the SSM. A more appropriate model, closer to the nature of the future AMLA, can be identified in the EBA, ESMA, EIOPA and SRM systems, where the appeal bodies have the power to adopt decisions that are binding for the organs that are competent to adopt the final decision.

Judicial review is finally attained by the possibility for the concerned SOE to appeal the ABoR decisions before the CJEU, the latter having "unlimited jurisdiction" in operating its review[108].

2.8. AMLA cooperation with other supervisory authorities: The case of the ECB

The complex institutional design of AML/CFT supervision as it emerges from the proposal under examination seems to multiply the channels of communication among the concerned authorities. This has been suggested in order to reduce the existing complexity by preventing the AMLA from becoming

[103] Simoncini, M., 2021, The Delegation of Powers to EU Agencies After the Financial Crisis, European Papers, Vol. 6, No 3, pp. 1485-1503, p. 1492.

[104] They correspond to the list of Article 40 AMLD6 which refers to breaches of the requirements laid down in the following provisions of AMLR1: (a) Chapter III (customer due diligence); (b) Chapter V (reporting obligations); (c) Article 56 (record-retention); (d) Section 1 of Chapter II (internal controls).

[105] Article 60 ff AMLAR.

[106] Article 62(3) AMLAR.

[107] See the contributions in Zilioli, C., Wojcik K-P., 2021, Judicial Review in the European Banking Union, Elgar.

[108] See D'Ambrosio, R., 2021, The legal review of SSM administrative sanctions, in Zilioli, C., Wojcik, K-P, Judicial Review in the European Banking Union, Elgar, p. 316 ff.

"an additional layer" in the information exchange among authorities[109]. The risk is to create an excessive and disproportionate reporting burden to obliged entities.

As for the cooperation with the ECB, Article 78(1) AMLAR indicates that AMLA must cooperate with non-AML/CFT authorities when this is necessary for the fulfilment of AMLA's tasks. In other words, the cooperation duties of AMLA appear to be limited by its mandate. This limited scope of cooperation should be removed as cooperation is multilateral by definition, and should include the needs of the counterparts. The necessity of the information for one of the participating authorities should be enough to establish the duty to cooperate, without requiring a double interest in sharing[110].

To this end, the ECB is proposing an amendment to Article 11 AMLAR to foster the duty to share information with non-financial supervisors for the purposes of facilitating their supervisory activities on a need-to-know or confidential basis.

Moreover, some of the supervisory powers conferred to AMLA and national supervisors by the reform package partially overlap with the ECB supervisory powers. This seems to be the case for the power to restrict or limit the business[111] or to require changes within the management team[112]. In those cases, it is important to avoid the uncoordinated cumulation of supervisory measures through a prior involvement of all the concerned authorities, both at European and national level[113], through an amendment of the AMLAR and AMLD6 rules.

Lastly, minor changes can improve information sharing and data transmission with non-financial supervisors. In particular, Article 11(2)(d) AMLAR should be amended as it does not currently nominate the ECB-SSM as a competent authority to transmit information on prudential and fit and proper requirements. Conversely, information stored in the future database that AMLA is going to establish should be disclosed to non-AML/CFT supervisors upon their request and on AMLA's initiative. As non-AML/CFT supervisors might not be aware of the information, the exchange cannot be limited to the formal requests; therefore, AMLA should be in power to disseminate on its own initiative. Many of the data that the AML/CFT supervisors are supposed to transfer to the AMLA database are also to be transmitted to several non-AML/CFT supervisors. For example, national AML/CFT authorities have the duty to transfer the very same information to AMLA, the SSM, and the SRM. A more open and accessible IT system allowing to share that information among all the concerned authorities would minimise the risk of duplicating the burden on AML/CFT supervisors, while granting efficiency and completeness to the entire supervisory mechanism.

[109] ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 4.

[110] Ibid, p. 5.

[111] Article 20(2)(d) AMLAR.

[112] Articles 20(2)(f) AMLAR and 41(1)(f) AMLD6.

[113] ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4), p. 5.

3. THE NEW STRATEGY ON FINANCIAL INTELLIGENCE: FIUs COORDINATION AND INFORMATION EXCHANGE

KEY FINDINGS

Financial Intelligence Units are financial intelligence hubs at national, European, and international level, crucial to preventing and identifying suspicious transactions. However, their capacity to counter the laundering and illicit transfer of funds still appears ineffective, especially in cross-border cases. Main obstacles have been identified in the model and powers of national FIUs, especially in the lack of common SARs and STRs templates and differences in data analysis. These divergences create fragmentation and inefficiencies.

The creation of a EU FIU would solve many of the existing problems. However, policy considerations suggest that the EU is still not equipped to take over operational intelligence. Financial intelligence needs flexibility and rapidity, goals better served at national level, especially as long as criminal law enforcement is still in the hands of national prosecutors. The current proposal promotes the AMLA as the main actor in coordinating the FIUs action and to manage their information exchange and joint analyses via hosting the FIU.net.

Additional attention should be given to the establishment of a strong data protection legal framework in order to support information sharing with financial and banking supervisors as well as with law enforcement agencies.

Financial Intelligence Units (FIUs)[114] are key elements of the AML/CFT international enforcement strategy: they collect and analyse suspicious financial transactions (STRs) and suspicious activities reports (SARs) received from private entities and disseminate the results to the competent law enforcement agencies for the necessary follow-up. The AMLD6 defines the FIU as "the single central national unit responsible for receiving and analysing suspicious transactions and other information relevant to money laundering, its predicate offences or terrorist financing submitted by obliged entities in accordance with Article 50 AMLR1 or reports submitted by obliged entities in accordance with Article 59(4), point (b) of AMLR1 and by customs authorities pursuant to Article 9 of Regulation (EU) 2018/1672"[115]. As such, the FIUs are the very financial intelligence hubs at national, European, and international level, crucial to preventing and identifying money laundering and terrorism financing.

Despite the pivotal role conferred to them by the FATF Recommendations and the European legislation, they have been identified as the real bottleneck in AML effectiveness[116]. Their capacity to counter the laundering and illicit transfer of funds still appears ineffective, especially in cross-border cases. The exchange of information in domestic and cross-border financial investigations and confiscation proceedings is often slow, complex, and inefficient due to legal and practical obstacles[117]. Even weaker is the criminal enforcement follow-up to the SARs reported by the FIUs: Europol's figures show that in 2019, only 10% of the 1.1 million transmitted SARs have been further investigated and

[114] 'Financial Intelligence Unit ("FIU")' means an FIU as established pursuant to Article 32 of Directive (EU) 2015/849.

[115] Article 17 AMLD6.

[116] Lannoo, K., Parlour R., 2021, Anti-Money Laundering in the EU Time to get serious., CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf.

[117] Brown, R. and Gillespie, S., 2015, Overseas Financial Investigation of Organised Crime, Journal of Money Laundering Control, Vol. 18 No. 3, pp. 371-381; Treverton, G., Wollman, M., Wilke, E., and Lai, D. (2011), Moving Toward the Future of Policing, RAND retrieved at: https://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1102.pdf.

only 1.1% of the illicit profits have been confiscated[118]. In the absence of detailed EU rules on FIUs for the better part of the last decade, the Member States have enjoyed ample discretion in choosing the model and powers of their respective FIUs. As a result, when one looks at FIUs across the EU, a picture of diversity emerges, as well as several shortcomings affecting their efficiency. The main issues FIUs face, as identified by stakeholders and scholars, can be grouped into two categories.

The first group concerns the receipt of STRs. More specifically, the system lacks a common template for the reporting of STRs; the electronic filing of such reports is not mandatory. Furthermore, reporting entities lack of knowledge on ML/TF typologies and they rarely receive effective feedback, guidance, and training from national supervisors.

The increasing use of AI by obliged entities in identifying suspicious transactions multiplies the amount of STRs generated and transmitted to the FIUs[119]. However, 90% of these reports are never analysed by law enforcement authorities, which suggests that they are largely useless. Scholars have observed that without detailed feedback from FIUs, banks and regulators remain in the dark on the actual effectiveness of monitoring systems[120].

Concerning the analysis and dissemination of STRs, a common format is also needed for information sharing in order to foster cooperation among EU FIUs as well as with third-country FIUs. Moreover, the practice indicates a scarce recourse to joint analyses, a frequent problem of understaffing, as well as insufficient material resources among national FIUs (including IT equipment and tools, archiving and data management, as well as exchange systems) or inadequate technical capacities in the context of new challenges. The growing demand for online services and related internet payment systems, as well as the new Fintech tools, are met with inadequate human and technical resources to conduct operational and strategic analysis. Other shortcomings concern, for instance, differences in structure and powers, the lack of effective cooperation with European prudential supervisors and with national competent authorities, including law enforcement and tax and customs authorities and the European Anti-Fraud Office (OLAF) along with the European Public Prosecutor's Office (EPPO), as well as data protection issues in relation to FIUs' operational activities and information sharing.

The unanimous opinion is that those obstacles will continue to exist until the tasks and cross-border cooperation obligations of the FIUs are more clearly spelled out in the EU AML/CFT legal framework. To this aim, this study will address all the aforementioned issues in light of the reform package presented in July 2021 in order to assess what improvements will come from the future regulation and whether the options of the Commission proposal are able to increase the effectiveness of the FIUs' action and possibly indicate better options. Finally, it will deal with the persistent lacunas currently not solved by the reform package.

3.1. Improving FIUs efficiency against ML/TF: What institutional design?

3.1.1. Policy option no. 1: The creation of a common EU FIU

A radical solution to the existing inefficiencies would have been the creation of a common EU FIU in charge of collecting all the STRs and SARs coming from European obliged entities, with the power to investigate and potentially sanction them throughout Europe. In its Resolution of 26 March 2019, the

[118] Quoted by Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU: Time to get serious, CEPS-ECRI Task Force Report. Available at: https://ssrn.com/abstract=3805607, p. 11.

[119] An attempt to quantify the STRs has been made by Lagerwaard P., (2018), Following Suspicious Transactions in Europe. Comparing the Operations of European Financial Intelligence Units (FIUs), Research Report, 2018 but data are limited to the years 2009-2014.

[120] Bertrand, A., Maxwell, W., Vamparys, X., 2020, Are AI-based anti-money laundering (AML) systems compatible with European fundamental rights?, Research Paper by Operation AI Ethics, version November 2020, p. 15.

Parliament called on the Commission to consider this opportunity to issue a legislative proposal for an EU FIU[121]. A common EU FIU "would create a hub for joint investigative work and coordination with its own remit of autonomy and investigatory competences on cross-border financial criminality, as well as an early warning mechanism"[122]. An EU FIU "should have the broad role of coordinating, assisting and supporting Member States' FIUs in cross-border cases in order to extend the exchange of information and ensure joint analysis of cross-border cases and strong coordination of work"[123].

Even though this option has not been retained in the current proposals, several arguments militate in its favour. In addition to what was highlighted by the Parliament's resolution, a common EU FIU would have a complete overview of suspicious transactions related to the EU obliged entities, granting coherence in terms of approach and efficiency, especially in cross-border cases. This would imply a common level playing field in terms of access to data, a complete monitoring of the adequacy of information in beneficial owners' registers[124], a standardised procedure in both checking the flagging exercise by private actors, the development of a common practice in exercising investigative, urgent suspensive measures, and feedback to obliged entities.

A common EU FIU would solve the issue of lack of IT equipment and sufficiently trained personnel currently affecting national units. It would allow the obliged entities – in particular credit institutions – that are already supervised by the ECB as significant banks to refer exclusively to European actors instead of referring to a multitude of national units.

An EU FIU acting as a single contact point would also have avoided "FIUs engaging in a high volume of cross-border reports and disseminations to other FIUs as the central reporting entity would undertake the dissemination or reports to all relevant FIUs"[125].

Additionally, it would assure a better information exchange with law enforcement authorities both at national and European level, solving the most urgent obstacle to an efficient AML/CFT preventive action. Finally, it could act as one voice in boosting the information exchange and cooperation with third countries.

3.1.2. Arguments against the creation of a common EU FIU

However, counter arguments do militate in favour of leaving the FIUs at national level. The need to preserve an intelligence-led approach to effectively mitigate money laundering risks and detect financial crime has been highlighted[126]. Preserving the 'intelligence' dimension of the FIUs' action means avoiding any form of bureaucratisation: the more flexibility that is granted to the FIUs operations, the more efficient their action can be. Being strongly embedded within the national context helps the local FIU to establish non-formalised relations with several other actors and facilitates rapid information exchange.

The time factor seems crucial: FIUs need to act promptly and avoid any delay. For instance, the recent

---

121 European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance (2018/2121(INI)), retrieved at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019IP0240.

122 Ibid.

123 Ibid.

124 Unger, B. et al., 2020, Improving Anti-Money Laundering Policy, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf, p. 15.

125 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, 24.7.2019, p. 6 retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf.

126 European Banking Federation feedback to the European Commission's proposed AML Package, retrieved at: https://www.ebf.eu/anti-money-laundering/ebf-feedback-to-the-european-commissions-proposed-aml-package/.

United States Treasury's FinCEN leaks seem to indicate that reporting entities, including large banks, continue serving clients and carrying out activities that they had themselves reported as being suspicious[127]. This shows the importance of rapid feedback from FIUs to the reporting entities in an effort to prevent the release of assets (i.e. conducting transactions) by reporting entities before they have feedback from the FIU.

Lastly, policy considerations suggest that the EU is still too immature to take over operational intelligence, which is a delicate matter[128] as it is strictly linked to sovereignty. Financial intelligence is not less sensitive than military intelligence, and as it is evident now, the EU did not accomplish a real harmonisation in any of these fields in which intelligence is crucial. Furthermore, the necessary follow-up in terms of criminal investigation still requires the intervention of national prosecutors, as the current EPPO has a very limited competence when it comes to money laundering and no competence for terrorism financing[129]. Bearing all these arguments in mind, a common financial intelligence unit would need a repositioning of sovereignty and the alignment with prosecutorial powers at the EU level[130].

Additional reasons were listed in the Commission report of 2019[131], according to which the FIUs' oppositions against a single contact point were: (i) linguistic barriers and risk of delays, particularly when urgent action is needed, e.g. "freezing" of funds; (ii) legal reasons relating to the principle of subsidiarity, the possible contrast with the Financial Action Task Force (FATF) standards in relation to the duty of obliged entities to report to the FIU where they are established and the principle of the FIUs' autonomy and independence; and (iii), the possible undermining of the existing trust that FIUs have built up with obliged entities established in their territory and the cooperation between Member States' FIUs. All these arguments remain valid.

Additionally, the creation of a supranational FIU seems more complicated and less urgent than the creation of a European supervisor. "Centralising the FIU function may be desirable in the longer term, but trying to do so now would burden and possibly cripple the urgent effort to establish an effective European AML supervisor"[132].

3.1.3. Policy option no. 2: Creating a stronger cooperation and information exchange among national FIUs: Examples from Eurojust and EPPO

Should the establishment of a common EU FIU be unattainable, the current reform package should be assessed keeping in mind the need for a stronger mechanism to coordinate and support cross-border cooperation and analysis of national FIUs. This assessment should verify the effectiveness of the proposed reforms in terms of powers to adopt legally binding standards, templates, and guidelines in

127 Financial Crime Enforcement Network (FATF).

128 Vervaele, J.A.E., 2013, Surveillance and Criminal Investigation: Blurring of Thresholds and Boundaries in the Criminal Justice System? in S. Gutwirth, R. Leenes, P. De Hert (eds), Reloading Data Protection. Multidisciplinary Insights and Contemporary Challenges, Springer, pp.115 ss.

129 Unger, B. et al., 2020, Improving Anti-Money Laundering Policy, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf.

130 Ibid.

131 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, 24.7.2019, retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf, p. 6.

132 Kirschenbaum, J., Véron, N., 2018, A better European Union architecture to fight money laundering, Bruegel, Retrieved at: https://www.bruegel.org/2018/10/a-better-european-union-architecture-to-fight-money-laundering/; Unger B., et al., (2020), Improving Anti-Money Laundering Policy, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies, retrieved at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf.

the operational fields of the FIUs, including certain aspects of centralised reporting and a more central capacity building based on new IT tools to strengthen and facilitate joint analysis[133].

In the absence of a common EU FIU, the current proposal intends to foster the efficiency of financial intelligence by integrating delegates of national FIUs into the future AMLA. Pursuant to Article 35 AMLAR, each FIU may delegate one experienced staff member to the new Authority, where they will be working on a permanent basis for three years keeping their original status and salary. The FIU delegate shall support the Authority in carrying out its tasks in relation to financial intelligence, i.e. to support and coordinate the work of the FIUs, improve the cooperation among them, select cases in which a joint analysis would be appropriate, and develop common procedures and methods for joint analysis in cross-border cases[134]. To this aim, FIUs delegates shall have access to any data accessible by their national FIU as well as to data and information collected by the Authority[135].

The current proposal mirrors the Eurojust model in the Area of Freedom, Security, and Justice. In a nutshell, Eurojust[136] is composed of 27 seconded national members selected among judges, prosecutors or, more rarely, police officers. They operate as a direct contact point with reference to their home country, whose legislation they are obliged to follow. Their main goal is to foster cooperation and information exchange, stimulating the coordination between the competent authorities of the Member States in investigations and prosecutions and improving the co-operation between the competent authorities of the Member States. To this end, the national members have access to the information in national criminal records. The College of Eurojust is meant to develop a common culture and solve potential issues in cross-border criminal investigations. Eurojust has proven to be a very efficient design offering a very efficient support to national authorities. Given its ample mandate, it has maintained a pivotal role even after the creation of the EPPO. Nevertheless, Eurojust is still lacking direct investigative and prosecutorial powers and has to rely on national delegates to transmit these orders to their national colleagues.

A more advanced option to integrate national FIUs in the future Authority would be to follow the institutional design of the EPPO[137], the new supranational body provided with investigative and prosecutorial powers throughout the territory of the participating Member States, albeit with the limited scope of investigating crimes affecting the European financial interests as defined by Directive 2017/1371[138]. The European Delegated Prosecutors (EDPs) represent the very heart of the entire mechanism. They are national prosecutors – at least two for each participating Member State – who are supposed to wear two hats -as part of both their national judicial system and the EPPO, being linked to the latter through a strong hierarchical relationship. The double-hat model can ensure both coherent (through central and hierarchical decision making) and effective prosecutorial action (through local law enforcement, the proximity of the EDPs to the field work of the investigation, and

[133] See Unger, B. et al., 2020, Improving Anti-Money Laundering Policy, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf.

[134] Article 5(5) AMLAR, recalled by Article 35(4) AMLAR.

[135] Article 35(4)(5) AMLAR.

[136] Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation, replacing and repealing Council Decision 2002/187/JHA) was adopted on 6 November 2018 and became applicable on 12 December 2019. In literature, see Suominnen A., (2008), The Past, Present And The Future Of Eurojust, 15 MJ 2, 217-234, p. 222 ff.

[137] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'); Allegrezza S., (2022), A European Public Prosecutor Office to Protect Common Financial Interests: A Milestone for the EU Integration Process, in Ambos K., Rackow P. (eds), Cambridge Companion on European Criminal Justice, CUP, (forthcoming).

[138] See Articles 3 and 4 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ 2017 L 198/29.

direct access to the national resources and law enforcement agencies)[139].

Following the EPPO model would mean creating a network of EU financial analysts that are part of the AMLA embedded in Member States' FIUs. This solution, however, would imply a shift in the way AMLA staff is regulated and powers are allocated between the EU and the national level. It would require a crypto-centralisation of financial intelligence via providing AMLA staff with the double-hat and equipping it with operational powers to be exercised at national level.

Concerning the operational efficiency, a mitigated form of centralisation could be obtained by asking the national FIUs to transmit – upon verification – all the STRs to one single contact point within the EU, which might be hosted by the AMLA. This would imply a partial centralisation of the collection of standardized STRs, leaving operational activities to the national level.

An additional alternative could be connecting the future AMLA supervisory function with the need to strengthen financial intelligence: in this last scenario, the centralisation of the STRs collection could be limited to those coming from the SOEs directly supervised by the future AMLA. This double-track system would assure the AMLA a better overview of the activities of the SOEs under its direct supervision, building a better bridge between supervision and financial intelligence.

3.2. Different structures and powers of FIUs: Impact on access to information

The reform package offers a partial solution to the problem of the different structure and powers of the FIUs at the national level. These divergences create fragmentation and inefficiencies, as the different models come with diverse sets of operational powers and differing access to data.

As highlighted in literature and in practice, the current legal framework leaves ample discretion to Member States to choose the model and powers of their FIUs. An FIU may be assigned to the finance ministry, the central bank, the national police, the interior ministry, the prosecutorial service, the customs service, or the justice ministry, or could be a dedicated independent agency with its own governance and accountability framework[140]. Three main models have been identified in literature: (i) the administrative or police model, adopted by 21 Member States; (ii) the hybrid model blending characteristics from multiple models, chosen by 5 Member States; and (iii) the judicial-type model, adopted by Luxembourg[141].

Differences in structure and power negatively reflect on the ability of the FIUs to accommodate requests for information from their foreign counterparts. Many reasons might impede effective cooperation. FIUs may lack access to the requested information, which risks triggering the "reciprocity conditions"[142]. They "may have to obtain clearance from a third party (e.g., a police authority) before

---

[139] Allegrezza, S., 2022, A European Public Prosecutor Office to Protect Common Financial Interests: A Milestone for the EU Integration Process, in Ambos K., Rackow P. (eds), Cambridge Companion on European Criminal Justice, CUP, (forthcoming).

[140] For a general overview on the nature and type of FIUs, see Thony J.F., Processing Financial Information in Money Laundering Matters: the Financial Intelligence Units, in European Journal of Crime, Criminal Law and Criminal Justice, 1996/3, p. 264. See also Kirschenbaum, J., Véron, N., 2018, A better European Union architecture to fight money laundering, Bruegel, Retrieved at: https://www.bruegel.org/2018/10/a-better-european-union-architecture-to-fight-money-laundering/ and Weber A., Money-Laundering Scandals Prompt EU Rethink on Policing Banks, Bloomberg, 2 October 2018.

[141] EU FIUs Platform, "Mapping exercise of Gap Analysis on FIU's powers and obstacles for obtaining and exchanging information" (2016), 5-7, cited by Mouzakiti, F., (2020), Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, p. 354; Quintel T., (2019), Follow the money, if you can, University of Luxembourg Law Working Paper Series, Paper no. 2019-001. Further indications in Demetriades P., Vassileva R., (2020), Money laundering and central bank governance in the European Union, Journal in International Economic Law, 23, 509-533.

[142] Pavlidis, G., 2020, Financial Information in the Context of Anti-Money Laundering: Broadening the Access of Law Enforcement and Facilitating Information Exchanges, Journal of Money Laundering Control, 11 March 2020, p. 5.

sharing information with other FIUs, preventing future FIU cooperation"[143]. Additionally, limits to the use of that information might be imposed, prohibiting its usability for fiscal or criminal investigation of other crimes[144].

This problem of fragmentation does not find any definite solution in the reform package, but rather partial ones. Article 17 AMLD6 mostly reproduces Article 32 AMLD5, with the additional requirement that every Member State must establish a "single central national unit" acting as an FIU, which shall be "operationally independent and autonomous" from "political, government or industry influence or interference"[145]. When the FIU is located within the existing structure of another authority, and this is the case in the large majority of the Member States, "the FIU's core functions shall be independent and operationally separated from the other functions of the host authority"[146]. Therefore, all the existing FIUs models seem compatible with the current proposal in that sufficient independence and function separation are granted, bearing in mind that a compromised independence of the FIU does not have just negative implications for the country in which they are based, but expands over multiple jurisdictions, as recent scandals have proved[147]. However, the differences in the institutional design have a direct consequence on the type of data, and on the FIU's process of accessing them.

Previous reports have signalled further differences among FIUs on direct access to data sources: some FIUs have direct access to more than 30 sources of information, while others have less than five[148]. Those differences hinder the effectiveness of the FIU itself as well as its capacity to act promptly in cross-border cases when cooperation is needed.

Timely access to relevant information is essential for FIUs to undertake their functions properly. When needed, FIUs should be able to obtain additional information from reporting entities, as well as financial, administrative, law enforcement and other sources. Direct access to various databases (i.e. personal records, travel data, real estate information, vehicle registers, and others) should be encouraged as much as the right to privacy allows. Among others, access to central bank account registers or retrieval systems is an important component in the AML/CFT fight. As such, it is foreseen by AML4 and by Directive 2019/1153 on rules facilitating the use of financial and other information for the prevention, detection, investigation, or prosecution of certain criminal offences[149]. The Commission has signalled the need for a future EU-wide interconnection of bank account registries and data retrieval systems to facilitate the cross-border cooperation of the competent authorities involved in the fight against money laundering, terrorist financing, and other serious crimes[150]. However, the improved power to access centralised bank accounts is not accompanied by similar powers with regard to tax authorities and anti-corruption agencies as the Directive does not cover administrative investigations,

---

143 Ibid.

144 Ibid., commenting the European Commission Report on "Improving cooperation between EU Financial Intelligence Units", Commission Staff Working Document, 26.6.2017, SWD(2017) 275, final, and the European Commission (2018), "Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA", Commission Staff Working Document, 17.4.2018 SWD(2018) 114.

145 Article 17(4) AMLD6.

146 Ibid. Critical remarks in Demetriades P., Vassileva R., 2020, Money laundering and central bank governance in the European Union, Journal in International Economic Law, 23, 509-533, p. 518.

147 Ibid, p. 519.

148 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, 24.7.2019, p. 8, retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf.

149 Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

150 Report from the Commission to the EU Parliament and the Council on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the member states on bank accounts COM(2019)372 final.

with the exception of those conducted by FIUs for AML/CFT purposes[151].

The recent Commission initiative presented in July 2021[152] proposes an amendment to Directive (EU) 2019/1153 allowing designated competent authorities responsible for the prevention, investigation, detection, or prosecution of criminal offences to access and search Member States' centralised bank account registers through a single access point. Member States shall ensure that "the information from centralised bank account registries is available through the bank account registers (BAR) single access point to be developed and operated by the Commission. By interconnecting centralised bank account registries, authorities with access to the BAR single access point would be able to establish quickly whether an individual holds bank accounts in other Member States without having to ask all their counterparts in all Member States"[153]. Eventually, this would enable them to establish almost immediately whether an individual holds bank accounts in other Member States and identify to which one they should make a formal request for additional information[154].

This proposal should to be read in conjunction with the new AMLD6, which will provide access to the BAR single access point only to FIUs. As it has been observed, "in order to permit effective financial investigations to be undertaken and to fight better against serious crime, access to the BAR single access point needs to be widened to include the competent authorities responsible for the prevention, detection, investigation or prosecution of criminal offences"[155].

Such an amendment would allow FIUs to be more effective in cross-border cases as they would not only be able to identify bank accounts for the analysis of domestic cases, but also able to cooperate in joint analyses between FIUs to detect cross-border money laundering/terrorist financing, using assets and bank accounts held in multiple jurisdictions.

By contrast, the current system of identifying bank accounts of suspects in a criminal investigation or for asset recovery purposes is slow and ineffective. FIUs can request bank account information from other FIUs, but responses can often be slow to arrive. In contrast to the instantaneous transfers of assets possible under the banking system, the Egmont Group of FIUs recommends a one-month response period to reply to requests for information, and even that is not always observed, as a report by the

---

151 Pavlidis, G., 2020, Financial Information in the Context of Anti-Money Laundering: Broadening the Access of Law Enforcement and Facilitating Information Exchanges, Journal of Money Laundering Control, 11 March 2020. The Author highlights that in an earlier initiative (July 2016), the Commission proposed amendments to the rules on administrative cooperation in the field of taxation to grant tax authorities access to centralised bank account registries, but due to the hesitation of Member States the proposal was not included in the final text adopted by the Council (6 December 2016).

152 Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point {SWD(2021) 210 final}, Brussels, 20.7.2021, COM(2021) 429 final, 2021/0244(COD). See also the Commission Staff Working Document Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point: "As for data protection, the Commission is of the view that the impact on the right to privacy is limited given that the information available via the single access point to the BARs is already available by means of police and judicial cooperation channels and the accessible and searchable data does not include financial transactions or the account balance. It provides access to information which is limited only to that which is required 'to establish with which bank(s) in other Member States the subject of an investigation holds an account'. The Commission recognises that the information on bank accounts constitutes the personal data of natural persons. As a result, access to this data through the single access point would represent the processing of personal data. It would therefore be subject to Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data. This is the case for data accessed under the current version of Directive 2019/1153".

153 Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point (SWD(2021) 210 fina)l, Brussels, 20.7.2021, COM(2021) 429 final, 2021/0244(COD).

154 Neville, A., 2022, Proposal to amend Directive (EU) 2019/1153: Single access point to bank account registries, EPRS, PE 729.425, p 7. https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729425.

155 Ibid.

Commission shows[156].

However, even considering how important it would be to have a single access point for BARs, it should be noted that the many initiatives and reform proposals should be coherent and avoid overlapping. In particular, in its opinion of 15 March 2022[157], the ECON Committee recommended the deletion of Article 9 Directive 2019/1153, which refers to the exchange of information between FIUs of different Member States to avoid inconsistency regarding the legal basis for the exchange of information between EU FIUs. The opinion expressed that Article 53 of AMLD5 and its replacement, Article 24 of the Commission proposal for AMLD6, should be the sole legal basis for exchange of information between EU FIUs[158]. It stated that, while Directive 2019/1153 was adopted on the basis or Article 87(2) TFEU, the entire AML/CFT reform package is based on Article 114 TFEU, Article 9 of Directive (EU) 2019/1153, representing an inconsistency regarding the legal basis for the exchange of information between FIUs in the EU. To avoid legal uncertainty, it should be deleted, and Article 53 of the AMLD5 – together with its replacing Article 24 of the Commission proposal for AMLD6 – should be the sole legal basis for exchange of information between FIUs. A consistent legal basis would avoid additional problems in relation to information sharing among several authorities.

Furthermore, in order for the competent authorities to have a complete data collection, the various national electronic databases should be interconnected. This would include the European Criminal Records Information System (ECRIS), the European car and driving licence information system (EUCARIS), the EU-wide interconnection of insolvency registers (IRI), the Business Registers Interconnection System (BRIS), the Land Registers Interconnection (LRI), European Business Ownership and Control Structures (EBOCS), and the e-CODEX system (e-Justice Communication via Online Data Exchange)[159].

The Commission has observed the high fragmentation of the legal framework concerning the different IT systems in terms of accessibility and interoperability. "Looking at the existing systems, it is apparent that the accessibility of the user-facing system interacting with the interconnected IT system is determined by the purpose for which it is established. Where the interconnection was established with the aim to enhance the transparency of information for businesses in the internal market (BRIS, IRI), the system is publicly accessible. Where the objective of the interconnection is to improve cross-border cooperation between competent authorities for law enforcement or public administrative purposes, such as in the case of ECRIS or the Prüm service of EUCARIS, the access is restricted"[160].

At national level, the determination of the domestic authorities which have direct access to the national registries varies significantly, as it depends on national law. As the Commission has observed, "this

---

[156] Egmont Group of Financial Intelligence Units. Operational guidance for FIU activities and the exchange of information. Retrieved at: https://egmontgroup.org/wp-content/uploads/2021/09/Egmont_Group_of_Financial_Intelligence_Units_Operational_Guidance_for_FIU_Activities_and_the_Exchange_of_Information.pdf; Guidance Response no. 21: As deemed appropriate and timely, consistent with the urgency of the request, or within one month if possible. Additional time is reasonable if there is need to query external databases or third parties. Ideally, negative responses are provided as soon as possible.

[157] Opinion of the Committee on Economic and Monetary Affairs for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point (COM(2021)0429 – C9-0338/2021 – 2021/0244(COD)), retrieved at: https://www.europarl.europa.eu/doceo/document/ECON-AD-700736_EN.pdf.

[158] Ibid.

[159] For a detailed explanation and legal framework references, see the Report from the Commission to the EU Parliament and the Council on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the member states on bank accounts COM(2019)372 final, p. 5.

[160] Report from the Commission to the EU Parliament and the Council on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the member states on bank accounts COM(2019)372 final, p. 5.

might lead to a discrepancy, as certain types of authorities might get access in one Member State but not in another. In a cross-border exchange through the EU-wide interconnection system, this could lead to a situation where an authority is requesting information from the registry of another Member State, where that search is denied to a similar authority"[161].

The levels of integration between an FIU's database and databases maintained by other government agencies vary but should not, in any event, impede data gathering or an FIU's power to request information from other agencies. One option could be that the same authorities, which will be provided with direct access to the centralised mechanisms in accordance with the AMLD and Directive 2019/1153, will be provided with access to the interconnection platform. Another option would be that access rights to the interconnection system would be given to the same types of authorities in all Member States, which could be achieved by a harmonised and closed list at EU level of the types of authorities specified in accordance with the purpose of the access to the information[162].

The proposed AMLD6 is quite innovative in this regard, providing for partial harmonisation of the data that the FIUs can easily access. In particular, it stipulates that the duty of the Member States is to ensure that their FIUs have immediate and direct access to several types of information listed in Article 18 AMLD6, including several databases with financial and administrative information. The list is mandatory in indicating the data source as well as the duty to allow immediate and direct access.

The beneficial effect will be twofold: a major increase in effectiveness of operational efficiency and better and smoother cooperation with their EU counterparts. Once a common legal framework is applicable to all the Member States, national differences would not hinder information sharing among EU FIUs.

However, the AMLD6 still tolerates restrictions on the access to some sensitive but rather essential data: it imposes an immediate, but not direct, access to information on wire transfers and information held by national financial supervisors and regulators[163]. For these categories, the difficulties for FIUs in collecting data will remain higher, and the obstacles previously observed will persist.

Furthermore, law enforcement data constitute an additional case for which the pre-existing problems do not find an answer. Currently, the different structure and nature of national FIUs results in huge differences in relation to the type of law enforcement data which the specific FIU has direct and immediate access to: the closer the FIU is to law enforcement agencies (in particular financial police or prosecutorial authorities), the easier it is for the FIU to access law enforcement data. Conversely, the closer the FIU is to financial or banking supervisors, the easier the process is to directly access data related to financial transactions.

These differences are only partially mitigated by the AMLD6 proposal. In particular, the new proposal does not impose an obligation onto the Member States to grant the FIUs a direct and immediate access to law enforcement data. According to AMLD6, Article 18(1c), Member States shall grant "direct or indirect" information or data which is already held by competent authorities – public or private – in the context of preventing, detecting, investigating, or prosecuting criminal offences. These data are extremely relevant in the field of AML as they "may include criminal records, information on investigations, information on the freezing or seizure of assets or on other investigative or provisional measures and information on convictions and on confiscations"[164].

[161] Ibid, p. 6.

[162] Ibid.

[163] Article 18(1)(a)(b) points (ii) and (xiv) AMLD6.

[164] Article 18(c) AMLD6.

A noteworthy innovation concerns the powers conferred to the FIUs to accomplish their tasks. Under Article 20 AMLD6, FIUs may have additional tools such as the power to suspend or withhold consent to a transaction or to suspend an account. This provision states that such powers are necessary to allow for urgent action to be taken by the FIU on its own initiative or at the request of an FIU from another Member State. This helps prevent the "flight of suspect funds or assets beyond the reach of national law enforcement and prosecutorial authorities during the time it takes for those national authorities to seek and obtain a freezing or seizing order from the judicial or other competent authorities"[165]. If a suspicious transaction is not suspended, even for a short time pending further inquiries or until a judicial freezing order can be obtained, the funds in question simply 'disappear'. Article 20 indicates that "such suspension shall be imposed on the obliged entity within 48 hours of receiving the suspicious transaction report in order to analyse the transaction, confirm the suspicion and disseminate the results of the analysis to the competent authorities". Moreover, the suspension cannot exceed a period of a maximum of 15 calendar days from the day of the imposition of such suspension to the obliged entity.

3.3. Cooperation between FIUs and reporting entities: Harmonisation of STRs

Since 2016, the EU FIUs' Platform [166] has been working on a project with Europol to develop a common template for STRs to be used on a uniform basis throughout the EU [167]. A uniform template would facilitate reporting for obliged entities and the dissemination of reports from one FIU to another. The AMLAR proposal states that the future AMLA will develop draft regulatory standards including the development of a uniform template[168]. However, a certain flexibility should be maintained; this should not be the only way for obliged entities to communicate intelligence to FIUs [169].

A common template should be attained by the duty to use electronic filing of reports by obliged entities to all the FIUs throughout the Union as a mandatory procedure [170]. This would allow the FIUs to process them more efficiently and to facilitate their transmission to other FIUs when necessary.

A pivotal duty for the FIUs is to provide specific feedback to obliged entities on the effectiveness and the follow-up of those reports they transmitted. The 2019 Commission Report[171] (among other studies) stressed the fact that very few FIUs are cultivating tailor-made follow-up with obliged entities or

---

165 Stroligo, K., Intscher, H., Davis-Crockwell, S., 2014, Suspending Suspicious Transactions. World Bank, Washington, DC. World Bank, available at: https://openknowledge.worldbank.org/handle/10986/15804, License: CC BY 3.0 IGO.

166 See Article 51 AMLD4, see also 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, 24.7.2019, retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf: "the Commission established an informal expert group in 2006 - the EU FIUs' Platform - composed of representatives from Member States' FIUs. The meetings of the Platform facilitate the cooperation among FIUs by creating a forum for them to exchange views and where advice is provided on implementation issues relevant for FIUs and reporting entities. The role of the Platform has been reconfirmed in article 51 of the 4th Anti-Money Laundering Directive. More info: http://ec.europa.eu/transparency/regexpert/ - EU Financial Intelligence Units' Platform (reference E03251).

167 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, 24.7.2019, p. 5, retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf.

168 Recital 78, AMLAR.

169 Lannoo K., Parlour R., (2021), Anti-Money Laundering in the EU Time to get serious, CEPS, p. iii, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf.

170 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, 24.7.2019, p. 5, retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf.

171 Ibid, p. 6.

provide enough detailed information as a feedback. They rarely engage in regular meetings with stakeholder groups or offer specific trainings, limiting their feedback to the dissemination of FATF guidelines and other relevant documents instead. Even more rare is the practice to provide for feedback to obliged entities on reports that have been forwarded by an FIU to another FIU in cross-border cases. In this concern, the new reform package offers a significant innovation in imposing constant and precise feedbacks [172].

3.4. Cooperation and information sharing between Member States' FIUs

3.4.1. Identified weaknesses of the current framework related to information sharing between FIUs

In the last decade, stakeholders and scholars have identified many weaknesses in the communication and information exchange between FIUs, or between FIUs, supervisors, and third-country counterparts. In particular, they highlighted the differences in the STRs model, the lack of secure channels of communication, and the inefficient system of request for cooperation, caused by the reluctance of national FIUs to respond promptly. These weaknesses lead to vulnerabilities in the European AML/CFT strategy, particularly in cross-border cases.

Before the reform package of July 2021, there have been many efforts to improve the FIUs' cooperation and information exchange at the EU level: the development of the FIUs' Platform [173] and the establishment of the FIU.net [174] have proven to be very important to share best practices and improve communication exchanges.

Cooperation between the national FIUs has also been improved with the adoption of Directive 2019/1153 on facilitating the use of financial information for the prevention, detection, investigation, or prosecution of certain criminal offences, including money laundering. An important step to increase inter-agency cooperation, the Directive intends to complement the rules on the exchange of information at the preventive levels of AMLD4 and AMLD5 with provisions on police cooperation, thus building a bridge between the two enforcement fields [175]. It also contributes to facilitating the exchange of information between FIUs of different Member States, and between a FIU and law enforcement authorities of the same Member State, allowing a direct access of law enforcement authorities to centralised bank account registries. According to the Recital 9, "Member States should assist each other in the widest possible way and ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing Union legal framework". With reference to the exchange of information between FIUs of different Member States, Article 9 Directive 2019/1153

[172] Article 21 AMLD6.

[173] See Article 51 4th AML Directive; 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: the Commission established an informal expert group in 2006 - the EU FIUs' Platform - composed of representatives from Member States' FIUs. The meetings of the Platform facilitate the cooperation among FIUs by creating a forum for them to exchange views and where advice is provided on implementation issues relevant for FIUs and reporting entities. The role of the Platform has been reconfirmed in article 51 of the 4th Anti-Money Laundering Directive. More info: http://ec.europa.eu/transparency/regexpert/ - EU Financial Intelligence Units' Platform (reference E03251)

[174] Lannoo K., Parlour R., (2021), Anti-Money Laundering in the EU Time to get serious., CEPS, p.19, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf. EU Commission Report COM(2019) 371 final FIU.net became operational in 2007 and was co-financed until 2015 by the European Commission (since 1 January 2016 embedded into Europol.) It is specifically referred to in the 4th Anti-Money Laundering Directive as the recommended channel of communication between FIUs and it allows the FIUs to create de-personalized lists that can be used to determine approximation matches (hit/no hit) so as to match data with that of the other FIUs that are connected to the system with the aim of detecting subjects of FIUs' interests in other Member States. This is done through so called "ma3tch filters" without the need to share or expose personal data. MIO See the European Data Protection Officer removing the FIU.Net from EUROPOL. The FIU.Net is currently under the umbrella of the EU Commission.

[175] Directive (EU) 2019/1153 Directive 2019/1153 on facilitating the use of financial information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA.

provides that Member States shall ensure that "in exceptional and urgent cases, their FIUs are entitled to exchange financial information or financial analysis that may be relevant for the processing or analysis of information related to terrorism or organised crime associated with terrorism". However, the Directive has a limited scope[176], as it restricts the mandatory exchange to the information related to terrorism and associated organised crime, and does not indicate specific time limits to be respected by the FIUs when requested to cooperate with a counterpart. Article 9 of Directive 2019/1153 merely says that they must exchange such information "promptly". No possibility to refuse is given, but efficiency is affected by the limited scope and by the fact that the Directive does not provide any precise deadlines which would make the information sharing effective[177].

3.4.2. The principle of territoriality and its implications

The duty of obliged entities to report suspicious transactions to the FIU is governed by the territoriality principle defined by Article 33(2) AMLD4: information must be transmitted "to the FIU of the Member State in whose territory the obliged entity transmitting the information is established". The principle is imposed by the FATF Recommendations and has hence been confirmed by Article 50(6) AMLR1, which grants certainty and avoids potential forum shopping on the side of the obliged entities, were they left free to choose where to file the report.

However, the territoriality principle based on the formal company establishment might clash with the freedom to provide services in the entire Union, which allows companies established in one Member State to offer their services in every Member State. As a consequence, the suspicious transaction might be reported in a country different from the one in which the events might have occurred. Consequently, "the FIU of the Member State in which the suspicious activity takes place does not receive the information, whereas the FIU that does receive it cannot do much about it, since it concerns events that occurred in a different MS"[178].

An innovative approach could be to duplicate the duty for the obliged entities to report to both the FIU where the latter is established, and the FIU determined according to a sort of *locus commissi delicti* principle, meaning the FIU of the country where the potential suspicious transaction has occurred or where the suspicious activity has taken place. A duplication of the duty to report would be in line with the FATF requirements and would allow for a better dissemination of the STRs. Were this option retained, a coordination effort among the concerned FIUs would be necessary to decide how to follow up with law enforcement agencies should the suspicion be confirmed.

3.4.3. A more robust cooperation and information-sharing system

Even more crucial for concrete improvement of FIUs cooperation are the rules dedicated to the specific request of information among FIUs. Pursuant to the principle of equivalence, Member States shall

---

[176] Pavlidis G., (2020), Financial Information in the Context of Anti-Money Laundering: Broadening the Access of Law Enforcement and Facilitating Information Exchanges, Journal of Money Laundering Control, 11 March 2020.

[177] Neville A., (2022), Proposal to amend Directive (EU) 2019/1153: Single access point to bank account registries, EPRS, PE 729.425, p 7, retrieved at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729425/EPRS_BRI(2022)729425_EN.pdf.
The limitations imposed on the exchange of data between FIUs, and the absence of deadlines, reflect the views of the Council in the negotiation of the Directive in trilogue with the Parliament and Commission. When Parliament adopted the current text of Directive 2019/1153, two statements from the Parliament and Commission were annexed to the text. They indicated that the two institutions regretted the removal of the 'rules on precise deadlines and IT channels for the exchange of information between Financial Intelligence Units of different Member States'. They also expressed regret as to the reduced scope of the possibility for FIU cooperation, limited to cases of terrorism and organised crime associated with terrorism, which 'does not cover all types of serious criminal offences, as originally proposed'.

[178] Mouzakiti, F., 2020, Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, pp. 351 – 374, 358.

ensure that, in this case, the FIU to whom the request is made is required to use all the powers which it would normally use domestically for receiving and analysing information. When an FIU seeks to obtain additional information from a specific obliged entity established in another Member State, the competent FIU shall obtain information accordingly and transfer the answers promptly. In order to make this obligation more compelling, Article 24 AMLD6 foresees specific deadlines: 7 days that may be extended to a maximum of 14 days. In exceptional, justified, and urgent cases, the AMLD6 imposes the duty to transfer the information no later than 24 hours after the receipt of the request, if the information is held in a database or registry directly accessible by the requested FIU or if it is already in its possession.

The current system is based on the duty to share information of suspicious transactions with the foreign counterparts. This duty has been confirmed by Article 24(1) AMLD6, according to which when an FIU receives a report "which concerns another Member State", that FIU shall "promptly forward the report, or all the relevant information obtained from it to the FIU of that Member State". Information exchange is a duty, whether spontaneously or upon request of a European FIU[179].

The scope of information sharing is very large: it includes all sorts of information related to AML/CFT or related predicate offences even when they are not yet identified; it might refer to natural or legal persons, not exclusively to obliged entities. The request may concern information already available by the receiving FIU or information to be collected by an obliged entity for which the latter is competent.

The AMLD6 indicates the necessary elements to be included in the request: the relevant facts, background information, the reasons for the request, and how the information will be used. The AMLD6 envisages that within two years, AMLA will set up common technical standards and adopt a common format for the exchange of information[180]. This very opportune reform will facilitate the exchange and increase the efficiency of the mechanism.

The duty to share spontaneously the information with other FIUs is triggered by an STR that 'concerns' another Member State. It seems pivotal that the assessment shall be based on objective factors, depending exclusively on the recognition that the information received "concerns another Member State". In particular, the "sharing should not be made subject to the outcomes of the FIU's analysis or to further evaluations concerning, for example, the relevance of the case, the appropriateness of the suspicion, a proportionality judgment"[181].

An additional case of information sharing in cross-border cases is when an FIU spontaneously disseminates, upon its discretionary decision, information or analysis that is relevant to another Member State. The EU FIUs' Platform indicates again the need to determine the criteria qualifying the "cross-border" nature of the STR as FIUs may interpret the "relevance" criterion in very divergent ways[182].

Despite the fact that the sharing of STRs is mandatory since 2017, practice shows a very low number of exchanges[183]. Even when the FIUs are willing to cooperate, timeliness is highly unsatisfactory, as most of them reply to other FIUs requests for information within one month as reported by the Egmont

[179] Article 24(1) AMLD6.

[180] Ibid.

[181] 2016 FIU Mapping Report pp. 171 and 174.

[182] 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, p. 7.

[183] 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, p. 7.

group[184].

The current proposal for AMLD6 provides many improvements to these concerns: Article 24(2) AMLD6 requires AMLA to develop a draft implementing technical standards to specify the format to be used for the exchange of the information.

Also extremely relevant are the guidelines that AMLA is required to draft on the relevant factors to be taken into consideration when determining whether a report 'concerns' another Member State, the procedures to be put in place when forwarding and receiving that report, and the follow-up to be given (Article 24(3) AMLD6).

The new proposed set of rules is undoubtedly making the cooperation among FIUs more robust. Nevertheless, no consequence is foreseen in case of refusal to cooperate, and no sanction or consequence in case of delay. However, the centralisation of cooperation will be fostered by the very institutional design of AMLA in relation to financial intelligence. In particular, the AMLA General Board in its FIU composition[185] will be composed, *inter alia*, by all the heads of FIUs, offering a seminal occasion to develop collegiality as a way to foster cooperation. Collegiality, even within organs deprived of direct enforcement – Eurojust is an excellent example –, is a model which the EU used in several fields and which proved to be very effective.

3.5. FIU.net: A crucial tool for the effectiveness of the information exchange among FIUs

FIU.net is the dedicated IT system that provides a secure channel of communication between the Member States' FIUs. It enables them to send regular case file requests, forward cross border reports, and disseminate reports that concern other Member States' FIUs. Regulated by Article 56 of AMLD4, the FIU.net is a network with a decentralised nature, meaning that each national European FIU maintains its own database in which they store STRs and SARs that they received from the obliged entities. Once connected to FIU.net, the FIU's database is 'shared' with the other European counterparts but national data are still located in the premises of individual FIUs. Once the databases are connected on FIU.net, the latter relies on the Ma3tch technology[186] to identify information that is relevant for the other FIUs connected to the network. Ma3tch "enables FIUs to match their data with the data of their counterparts to determine whether they hold information that are of interest to them"[187].

The technology of Ma3tch is considered as a 'privacy by design' solution, as the data sharing will only intervene in case of a positive match and only on data that are absolutely necessary[188]. Despite it being

---

[184] Directive 2019/1153 replacing Council Framework Decision 2006/960/JHA, published in OJ L 386, 29.12.2006, p. 89–100 on exchanges of information between law enforcement authorities provides for replies to requests to be given in 3 days, Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. OJ 2014 L 130, 01.05.2014 provides for a one-week deadline.

[185] See Article 46(3) AMLAR.

[186] The Ma3tch technology "is empowered by a decentralized information-oriented architecture: a `privacy by design' framework that uses distributed agents to facilitate decentralized but integrated information access, processing and analysis. It shapes a `virtual information cloud' between autonomous organizations that enables secure, integral and intelligent real time information analysis. Relevant information and knowledge distributed between autonomous organizations is automatically detected and applied throughout the network as soon as it emerges"; see Udo Kroon, Ma3tch: Privacy and knowledge: 'Dynamic networked collective intelligence', Conference: Big Data, 2013 IEEE International Conference, retrieved at: https://ieeexplore.ieee.org/document/6691683.

[187] Mouzakiti, F., 2020, Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, pp. 351 – 374, 361, referring to Balboni P. and Macenaite M., (2013), Privacy by Design and Anonymisation Techniques in Action: Case Study of Ma3tch Technology, 29 Computer Law and Security Review, p. 330.

[188] Mouzakiti, F., 2020, Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, pp. 351 – 374.

introduced in April 2014, allowing additional cross match functionalities, it took years and several Europol encouragements to persuade the FIUs to exploit the advantages of the new technology[189]. Moreover, FIU.net itself experienced some difficulties in the past: FIUs used the Egmont Secure Web as an alternative for requests and information exchanges with other Member States' FIUs.

Previous reports[190] have identified the lack of IT tools as the main obstacle to the efficiency and effectiveness of information exchange among FIUs. A number of FIUs have maintained paper-based working procedures, causing difficulties for FIUs to effectively process and analyse information, especially when the volume of STRs increases. In order to exploit the full potential of such a technology, it is necessary for the FIUs to utilise advanced and efficient IT tools and to connect routinely to the FIU.net as the protected channel of communication. In light of this, the FIU.net may expand its capacity to become a trusted source for statistics and risk-related data analyses. This would represent a great opportunity for operational horizontal cooperation among FIUs.

In this regard, the AMLD6 indicates that Member States shall ensure that any exchange of information is transmitted using FIU.net. Only in case of technical failure may other channels granting a high level of security be used.

As for the additional potential use of the FIU.net, we should consider the tormented recent history of the network and its sensitive data protection regulation.

The FIU.net was hosted by Europol beginning in 2016 and it later migrated under the umbrella of the Commission in compliance with a decision of the European Data Protection Supervisor (EDPS)[191]. Triggered by the many concerns of some national FIUs in relation to data protection, the EDPS stated that the Europol Regulation[192] did not provide a sufficient legal basis for Europol to process personal data for the purpose of performing the role of technical administrator of FIU.net. This decision concerned the nature of the information rather than its volume, i.e. the fact that FIU.net contains personal data which go beyond the list of data which Europol can process under its Regulation[193].

In that sense, the provisions of Article 27 AMLAR[194], which state that the new agency will host the FIU.net, must be welcomed. This implies the possibility to access advanced technology and secure constant maintenance of the network. The migration from the Commission is envisaged within three years from the entry into force of the AMLD6.

This centralisation of FIU.net will ensure the highest technological standards and daily technical support to the MSs FIUs, with the hope to solve the system crashes that occurred in the past.

However, technology is not the only concern to be addressed when dealing with the AMLA

---

189 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, p. 8. In December 2017, 18 FIUs used this functionality, up from 15 in February 2017.

190 Ibid.

191 EDPS Annual Report 2019.

192 Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016.

193 EDPS Annual Report 2019. "On 19 December 2019, we imposed a ban on processing operations carried out by Europol in the technical operation of FIU.net. We found these processing operations to have breached the provisions governing the processing of personal data. FIU.net is a decentralised information network designed to support national Financial Intelligence Units (FIUs) in their fight against money laundering and the financing of terrorism. It can be used for the exchange of data on individuals involved in suspicious monetary transactions", p. 41. The EDPS further observed that "At issue was the question of whether Europol could act as the technical administrator of this network, considering the restrictions outlined in the Europol Regulation on the categories of individuals about whom Europol can process personal data. To comply with the rules, individuals involved in suspicious transactions would have to be considered as suspects. FIUs, however, act before the start of any criminal proceeding or investigation has begun".

194 Confirmed by Article 23 AMLD6.

management of the network. As the EDPS suggested, "the proposal establishing the mechanism for the support and coordination of the FIUs (should) clarify the conditions for access to and sharing of information on financial transactions"[195]. The current reform package clarifies only a part of these requirements.

As national FIUs have different natures, their data protection regimes vary accordingly. Some of them follow the General Data Protection Regulation (GDPR), whereas others deem more appropriate to use the Law Enforcement Directive (LED). These differences still persist. This is the reason why the EDPS has suggested the imposition of the GDPR as the sole legal basis for the processing of personal data for the aim of exchanging information among FIUs and well as between FIUs and competent authorities[196].

In fact, as for the content, FIU.net will host not only all information exchange among intra-EU FIUs but also their "communications with FIUs counterparts in third countries and with other authorities and Union bodies"[197]. It is well known that the EU offers the highest standards worldwide when it comes to data protection. Accordingly, once the network is open to information coming from countries with a lower level of protection, an effective protection of personal data should be put in place.

If one considers how ample the duty is to cooperate among EU FIUs, and how many kinds of information and documents are transmitted via the network, it is clear that specifying who has access to it and for what goals is a delicate matter. In particular, as long as AMLA is not an EU centralised FIU, its access to the network would be limited to maintenance, i.e. to exclude access to the content of the information sharing to the parallel supervisory organs of AMLA. For example, AMLA should not have direct access to law enforcement data to which some of the national FIUs have direct access. Only a specific legal basis, implying a radical shift in the current proposal and forcing the many actors to adopt the same legal framework, would allow AMLA to access certain financial intelligence data. This would be particularly beneficial for the Authority, in particular with reference to those SOEs submitted to direct supervision of the new agency.

3.6. FIUs cooperation with financial and banking supervisors

The recent reforms, cooperation agreements, and the new rules of the current proposal are making information sharing more broad and more robust. However, the effectiveness of such information channels requires trust among different authorities. In the past, FIUs complained that they rarely received feedback from supervisors on the use made of the information provided and on the outcome of inspection performed based on that information. Prudential supervisors, especially banking supervisors, did not involve FIUs in the fit and proper assessment of management of credit institutions for which they are competent under the CRR-CRD system. As the 2019 Commission report observed, stronger involvement of FIUs by the prudential supervisors in this process would be important[198].

Recent scandals have revealed the scarce flow of information between FIUs and prudential supervisors, both at European and national level. As revealed by the 2019 Commission report, FIUs may sometimes have domestic legal impediments which prevent them from sharing information with the supervisors; for example, the analysis conducted by the FIU may be considered to be criminal intelligence and only

[195] EDPS Opinion 5/2020 on the European Commission's action plan for a comprehensive Union policy on preventing money laundering and terrorism financing, p. 3.

[196] EDPS, Opinion 12/2021 on the anti-money laundering and countering the financing of terrorism (AML/CFT) package of legislative proposals, § 37.

[197] Article 23 AMLD6.

[198] 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, p. 11, retrieved at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf.

shareable with law enforcement authorities. On the other hand, prudential supervisors had, until recently, legal obstacles at EU level in their exchange of information with FIUs.

Thanks to an amendment to the CRD IV, the ECB/SSM can now share information with the "authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 for compliance with that Directive, as well as with financial intelligence units"[199].

Conversely, banking and financial supervisors, FIUs, and AML authorities "shall cooperate closely with each other within their respective competencies and shall provide each other with information relevant for their respective tasks (…) provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the competent authority, financial intelligence unit is located"[200]. This means that limits to the information exchange are still linked to specific limits imposed by the necessity, for example, to protect the secret of criminal investigation, specific privileges, or procedural fundamental rights such as the privilege against self-incrimination.

3.7. Information exchange with third countries

Information exchange with third countries does not seem to be improved by the reform package. According to Article 22 AMLD6, Member States shall ensure that FIUs cooperate with each other and with their counterparts in third countries to the greatest extent possible, regardless of their organisational status. However, the Commission already has observed that cooperation of FIUs with third countries for AML/CFT purposes "falls within the exclusive external competence of the EU, as FIUs are regulated exhaustively by the AML Directive"[201]. There is therefore an inconsistency between the nature of the EU external competence and the practice of the national FIUs to conclude international agreements or memoranda of understanding with FIUs of third countries without the involvement of the EU institutions. However, FIUs are bound by international commitments within the FATF and the Egmont group to sign agreements which are not limited to operational issues.

The main concern refers to data protection. According to the Commission, FIUs should apply the GDPR in general, including when exchanging information with third countries. In fact, Chapter V of the GDPR sets out the rules for the transfer of personal data to third countries. In the absence of adequacy decisions, transfers can be authorised if there are appropriate safeguards or if they fall under derogations. However, the Commission has observed that "only four Member States out of the 24 that replied to their questionnaire reported as to provisions in their national legislation that require guarantees from counterparts in third countries on the adequate level of data protection in their jurisdictions and no Member State claimed to be using the derogations of the GDPR to justify transfers of information to third countries"[202].

As a matter of fact, most FIUs do not take the GDPR into consideration and rather apply the LED (Directive (EU) 2016/680) instead, or both the GDPR and the LED[203]. Scholars have observed that since FIUs were established, a prevailing uncertainty has hung over the data protection framework that governs their daily work and their cross-border activities. "Unfortunately, the recent data protection

[199] Article 56(g) CRD IV.

[200] Article 117 CRD IV.

[201] 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, p. 11.

[202] Ibid, p. 12.

[203] 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, p. 12.

reform did not bring about any clarity on that front; if anything, it has complicated matters"[204]. The differences on data protection regime are usually strictly linked to the type of FIU, so that that the administrative ones apply the GDPR whereas the others refer to the LED. However, this approach might be misleading "as firstly, all FIUs could be considered competent authorities within the scope of the LED and secondly, the respective data protection instrument should apply in accordance with the purposes of the processing"[205]. As FIUs are processing data in order to prevent and detect criminal activities, they would fall within the scope of the LED[206].

While the issue of the correct framework for AML/CFT data protection applies to the entire work of FIUs and to their duty to share information with European counterparts, it is particularly salient in relation to cooperation with the third countries, where the requirements and conditions for the exchanges are different under the LED. Even though the Principles of the Egmont Group[207] do protect confidentiality and security of the data processed and provide for restrictions to their use, in the view of the Commission they "do not guarantee that appropriate safeguards exist in terms of the enforceability or available remedies of data subject rights"[208].

A specific sensitive issue on data protection relates to the so-called public-private partnerships for the sharing of operational information on intelligence suspects by law enforcement authorities with obliged entities. According to the EDPS, this exchange would result in a high risk for privacy rights and data protection. For example, when FIUs receive information from law enforcement agencies, or they identify effective beneficial owners thanks to their financial analysis, it appears problematic to share this with private entities. To curtail these risks, specific rules and limits are needed.

3.8. FIUs joint analysis as a new tool to increase the effectiveness in case of cross-border cases

Joint analyses have been introduced by Article 51 AMLD4 as a new tool to move beyond the traditional exchange of information for purposes of detection and analysis of suspicious AML/CFT cases.

Essentially, joint analyses are conducted by staff of different FIUs aiming to gather information on suspicious transactions which have a cross-border impact.

The special composition of the team allows not only for an immediate information sharing, but also for a contextual analytical activity. According to the Commission Report of 2019, the new technique immediately showed considerable benefits compared to the ordinary cooperation on information sharing. In fact, it might reveal a broader interconnection of facts which in isolated consideration at national level would be left undetected[209]. However, several problems have been highlighted as concrete obstacles to the actual realisation of a fully-fledged joint analysis. The main issues are the differences in national laws on the capacity and powers of the FIU to access information, the different sets of information sources available, and confidentiality restrictions to share information stemming

[204] Mouzakiti, F., 2020, Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, 363.

[205] Quintel, T., 2019, Follow the money, if you can, University of Luxembourg Law Working Paper Series, Paper no. 2019-001, 3.

[206] Mouzakiti, F., 2020, Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive, New Journal of European Criminal Law, Vol. 11, No. 3, p. 363; Quintel T., (2019), Follow the money, if you can, University of Luxembourg Law Working Paper Series, Paper no. 2019-001, 3 ff.

[207] See the Egmont Group of Financial Intelligence Units Principles For Information Exchange Between Financial Intelligence Units, available at: https://egmontgroup.org/wp-content/uploads/2021/09/Egmont-Group-of-Financial-Intelligence-Units-Principles-for-Information-Exchange-Between-Financial-Intelligence-Units.pdf.

[208] 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, p. 12.

[209] 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, p. 9.

from national law. Additional challenges have emerged from the different working methodologies applied by the FIUs (e.g. understanding of the analytical task, the weight assigned to the "law enforcement" or the "financial" elements, depending on the status and nature of the FIU, and different objectives and procedures)[210].

The Commission report recalls that these arguments were raised in a position paper of the FIUs in which they noted the need for the EU to intervene to foster future cooperation mechanism at EU level. In particular, the EU should "support and facilitate FIUs who wish to conduct joint analyses by preparing common procedures on how to carry out joint analyses that can be consistently applied with necessary adaptions across all future exercises, and by hosting dedicated human resources as well as IT solutions to be made available for Member States' FIUs who want to enter into this type of work"[211].

The regulatory and operational support of the AMLA can offer concrete benefits in terms of establishment of common procedures and IT solutions. Pursuant to Article 33(4) AMLAR, the Authority shall provide all the necessary tools and operational support required for the conduct of the particular joint analysis, in accordance with the developed methods and procedures. In particular, the Authority shall set up a dedicated, secured channel of communication for the performance of the joint analysis, and shall provide the appropriate technical coordination, including IT support, budgetary support, and logistical support.

However, the Commission Report and the FIUs position paper raised additional points in need of convergence. In particular, they suggested that harmonisation was needed in:

(i) Setting the criteria to determine the types of cross-border cases suitable for joint analysis;

(ii) Identifying a common ground for the "analysis" function to be performed in a coordinated and productive manner (a baseline "methodology");

(iii) Determining the steps and sequences for the deployment of information powers and analytical tools;

(iv) Agreeing on relevant objectives to achieve and outcomes to produce for appropriate follow-up through dissemination by FIUs at the national level[212].

The reform package regulates in detail the cases, tasks, goals, and limits of a joint analysis. However, the legal framework is divided between the AMLD6, dictating the rules that Member States should implement in order for their FIU to participate effectively, and the AMLAR, describing how the joint analyses shall be conducted and the role of the Authority.

Article 25(3) AMLD6 identifies two alternative situations in which national FIUs may set up a joint analysis:

a) when the FIU's operational analyses require difficult and demanding analyses having links with other Member States; and

b) when several FIUs are conducting operational analyses in which the circumstances of the case necessitate coordinated, resolute action in the Member States involved.

The first case focuses on operational difficulties as a criterion to set up a joint analysis. However, it leaves room for subjective assessment by the individual FIU on the difficulty of the case or how it may be influenced by IT or staff issues that the FIU is facing. The cross-border nature of a suspicious transaction

[210] Ibid.
[211] Ibid.
[212] Ibid.

should be enough to determine the need to set a joint analysis, especially when FIU.net signals that a related analysis is being conducted by another national FIU of the EU. This will contribute to bridge the gap of fragmentation of STRs.

This brings us to suggest a stronger role of the Authority in relation to joint analyses. The current AMLAR Proposal is not sufficiently ambitious in these regards. Further powers can be attributed to the future Authority to foster the efficacy of joint analyses. They might include amending Article 33(1) AMLAR, as suggested by the opinion of the Committee on Constitutional Affairs[213], making the Authority's role more central in setting and leading a joint analysis. The AMLA should be responsible for the establishment and the composition of joint analysis teams, for the coordination of the conduct of joint analysis, and for the settlement of potential disagreement between participating FIUs. A second amendment of the same provision would make it easier for the AMLA staff supporting the FIUs' JST to grant access to all the data pertaining to the subject matter of the joint analysis and to process them. This goal would thus be achieved by eliminating the need for the participating FIUs to consent to such data sharing.

3.9. Some remarks on public-private partnerships in AML/CFT

The reform package builds upon pre-existing legislation and aims to improve the many weaknesses with regard to public-private partnerships in AML/CFT. However, the package does not address some fundamental dimensions of information sharing which must leverage new technologies and involve all actors of the AML ecosystem, including law enforcement and public-private partnerships[214]. This means bringing together the different entities involved in AML/CFT from the public and the private sector in a joint task force. Europol has suggested the development of this new approach to further tackle financial crime, relying on previous positive examples[215]. This new model has been adopted by some Member States such as the Dutch Anti-Money Laundering Centre (AMLC), which brought together Sweden and Denmark[216]. The private sector is also offering interesting examples of joint initiatives among the financial institutions, such as the Transaction Monitoring Netherlands which includes five Dutch banks cooperating in the AML/CFT, the Swedish Anti-Money Laundering Intelligence Initiative, and others in Denmark and Finland[217]. These joint private-sector initiatives should be carefully considered in a comprehensive approach in AML/CFT. Another positive example is the UK Joint Money Laundering Intelligence Taskforce, which combines law enforcement agencies and major banks in an initiative to improve intelligence sharing and cooperation with encouraging results. Connecting the many actors, including the private sector, facilitates rapid information exchange, joint analysis, and more efficient investigation.

Europol has actively supported these initiatives and has replicated them at an EU level with the Europol Financial Intelligence Public Private Partnership project (EFIPPP). Currently run by the European Financial and Economic Crime Centre (EFECC), the EFIPPP was created in 2017 to strengthen cross-border cooperation and information exchange between Europol, competent authorities (including FIUs and law enforcement agencies), and regulated financial service entities such as banks.

The EFIPPP is the first transnational information sharing mechanism established in the field of AML/CFT.

---

213 Draft Opinion of the Committee on Constitutional Affairs, 2021/0240(COD), 11 February 2022, pp. 15-16.

214 European Banking Federation feedback to the European Commission's proposed AML Package, available at: https://www.ebf.eu/anti-money-laundering/ebf-feedback-to-the-european-commissions-proposed-aml-package/.

215 Europol, 2017, Financial Intelligence Group, From Suspicion To Action. Converting financial intelligence into greater operational impact, p. 40.

216 Lannoo K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious, CEPS, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf, p. 19.

217 Ibid., p. 26.

According to the EFECC, by the end of 2021, EFIPPP had brought together 79 institutions spanning over 18 EU and non-EU countries, a significant development from the 28 institutions (8 countries) registered when the initiative was launched in 2017[218].

The EFIPPP is a global public–private partnership; a European partnership between investigative services, FIUs, and banking institutions which give insight into financial crime and money laundering. The EFIPPP's objectives are as follows: supporting national public-private partnerships, thereby also operating as a network; developing shared intelligence images and understanding threats and risks; facilitating tactical and operational information sharing; exploring new possibilities in sharing information; supporting, coordinating, and initiating international actions; and lastly, promoting the use of new tools and technology[219].

Further developing these cooperation agreements with the industry and re-directing even a fraction of the considerable resources of the regime under a more targeted approach would almost certainly yield greater benefits[220].

[218] See European Financial and Economic Crime Centre (EFECC), retrieved at: https://www.europol.europa.eu/about-europol/european-financial-and-economic-crime-centre-efecc.

[219] Riondet, S., 2018, The value of public-private partnerships for financial intelligence, Journal of Financial Compliance, 2 (2), pp. 148-154.

[220] Europol, Financial Intelligence Group, From Suspicion To Action. Converting financial intelligence into greater operational impact, 2017, p. 40, Lannoo, K., Parlour, R., 2021, Anti-Money Laundering in the EU Time to get serious, CEPS, p. 26, retrieved at: https://www.ceps.eu/wp-content/uploads/2022/06/IPOL_STU2022703360_EN.pdf.

REFERENCES

- Adamski, D., 2014, *The ESMA doctrine: a constitutional revolution and the economics of delegation*, European Law Review, pp. 812 – 834.
- Allegrezza, S., 2022, *A European Public Prosecutor Office to Protect Common Financial Interests: A Milestone for the EU Integration Process*, in Ambos K., Rackow P. (eds), Cambridge Companion on European Criminal Justice, CUP, (forthcoming).
- Allegrezza, S., 2022, *European Strategies against Money Laundering: A Critical Overview of Current and Future Enforcement*, in Crijns J., Haentjens M., Haentjens R., The Enforcement of EU Financial Law, Hart, (forthcoming).
- Amicelle, A., Iafolla, V., 2018, *Suspicion-in-the-Making: Surveillance and Denunciation in Financial Policing*, British Journal of Criminology, Vol. 28, pp. 845 – 863.
- Amtenbrink, F., 2019, *The application of national law by the European Central Bank: challenging European legal doctrine?*, ECB legal conference, pp. 136 – 151. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3524826.
- Association of the Luxembourg Fund Industry, 2021, *ALFI opinion on the EU Commission's "AML package"*. Available at: https://www.alfi.lu/getmedia/776f07b9-ddd4-47fa-8c08-77b870fe4789/alfi-opinionamlpackfinclean.pdf.
- Balboni, P. and Macenaite, M., 2013, *Privacy by Design and Anonymisation Techniques in Action: Case Study of Ma3tch Technology*, 29 Computer Law and Security Review, p. 330
- Bergström, M., 2016, *Money Laundering,* in Mitsilegas V., Bergström M., Konstantinides A., Research Handbook on EU Criminal Law, Elgar, pp. 335-354.
- Bertrand, A., Maxwell, W., Vamparys, X., 2020, *Are AI-based Anti-Money Laundering (AML) Systems Compatible with European Fundamental Rights?,* Telecom Paris Research Paper Series. Available at: https://hal.archives-ouvertes.fr/hal-02884824/document.
- Biondi, A., Spano, A., 2020, *The ECB and the Application of National Law in the SSM: New Yet Old…*, European Business Law Review, Vol. 31, No. 6, pp. 1023–104.
- Boucon, L., Jaros, D., 2018, *The Application of National Law by the European Central Bank within the EU Banking Union's Single Supervisory Mechanism: a New Mode of European Integration?*, European Journal of Legal Studies, Special Issue, pp. 155-187. Available at: https://cadmus.eui.eu/bitstream/handle/1814/59868/5.-EJLS-Special-Issue-2018-Boucon-Jaros.pdf?sequence=1&isAllowed=y.
- Botopoulos, K., 2020, *The European Supervisory Authorities: role-models or in need of re-modelling?,* in ERA Forum 21:177–198.
- Brown, R. and Gillespie, S., 2015, *Overseas Financial Investigation of Organised Crime*, Journal of Money Laundering Control, Vol. 18 No. 3, pp. 371-381.
- C-106/77 *Simmenthal* ECLI:EU:C:1978:49. Available at: https://curia.europa.eu/juris/liste.jsf?language=fr&num=c-106/77&td=ALL.
- C-14/83, *Von Colson* ECLI:EU:C:1984:153, para. 26. Available at: https://curia.europa.eu/juris/liste.jsf?language=en&num=C-14/83.

- C-176/12 *Association de médiation sociale* ECLI:EU:C:2014:2. Available at: https://curia.europa.eu/juris/liste.jsf?language=fr&num=C-176/12.
- C-257/99 *Barkoci and Malik*, ECLI:EU:C:2001:491. Available at: https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-257/99&jur=C.
- C-261/20 *Thelen Technopark Berlin GmbH* ECLI:EU:C:2022:33. Available at: https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-261/20.
- C-334/92 *Wagner Miret* ECLI:EU:C:1993:945. Available at: https://curia.europa.eu/juris/liste.jsf?language=en&num=C-334/92.
- C-385/17 *Hein* ECLI:EU:C:2018:1018. Available at: https://curia.europa.eu/juris/liste.jsf?num=C-385/17.
- C-453/99 *Courage v Crehan*, ECLI:EU:C:2001:465. Available at: https://curia.europa.eu/juris/liste.jsf?language=en&num=C-453/99.
- C-456/98 *Centrosteel* ECLI:EU:C:2000:402. Available at: https://curia.europa.eu/juris/liste.jsf?language=fr&num=C-456/98.
- C-481/19 *DB* ECLI:EU:C:2021:84. Available at: https://curia.europa.eu/juris/liste.jsf?num=C-481/19.
- C-63/99 *Gloszczuk* ECLI:EU:C:2001:488. Available at: https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-63/99&jur=C.
- C-9/56 *Meroni* ECLI:EU:C:1958:7. Available at: https://curia.europa.eu/juris/documents.jsf?num=C-9/56.
- C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 *Euro Box Promotion and Others* ECLI:EU:C:2021:1034. Available at: https://curia.europa.eu/juris/liste.jsf?num=C-357/19&language=en.
- C-573/17 *Popławski* ECLI:EU:C:2019:530. Available at: https://curia.europa.eu/juris/liste.jsf?num=C-573/17&language=EN.
- Case C-270/12 *ESMA (Short selling)* ECLI:EU:C:2014:18. Available at: https://curia.europa.eu/juris/liste.jsf?language=fr&num=C-270/12.
- Case C-430/21 *RS* ECLI:EU:C:2022:99. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=254384&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=2373231.
- Chiti, E., Teixera, P.G., 2013, *The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis*, Common Market Law Review, Vol. 50, pp. 683 – 708. Available at: https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\COLA\COLA2013081.pdf
- Chiti, E., 2015, *In the Aftermath of the Crisis – The EU Administrative System Between Impediments and Momentum,* in Cambridge Yearbook of European Legal Studies, Vol. 17, 311 – 333.
- Chiti, E., 2018, *Decentralized Implementation. European Agencies*, in Schütze, R., Tridimas, T., Oxford Principles Of European Union Law: The European Union Legal Order: Volume I, OUP, 748-776;
- Coman-Kund, F., Amtenbrink, F., 2018, *On the Scope and Limits of the Application of National Law by the European Central Bank within the Single Supervisory Mechanism*, Banking & Finance Law Review, Vol. 33, No. 2, pp. 133-172.

- Council Regulation (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ 2013 L 287/63. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1024.
- D'Ambrosio, R., 2021, *The legal review of SSM administrative sanctions*, in Zilioli, C., Wojcik, K-P, Judicial Review in the European Banking Union, Elgar, p. 316.
- Demetriades, P., Vassileva, R., 2020, *Money laundering and central bank governance in the European Union*, Journal of International Economic Law, Vol. 23, pp. 509-533.
- De Vido, S., 2015, *Anti-Money Laundering Measures versus European Union Fundamental Freedoms and Human Rights in the Recent Jurisprudence of the European Court of Human Rights and the European Court of Justice*, German Law Journal, Vol. 16, No. 5, pp. 1271 – 1292. Available at: https://www.cambridge.org/core/services/aop-cambridge-core/content/view/5C926A2D6D80AFF0309F145953143E2A/S207183220002112Xa.pdf/anti-money-laundering-measures-versus-european-union-fundamental-freedoms-and-human-rights-in-the-recent-jurisprudence-of-the-european-court-of-human-rights-and-the-european-court-of-justice.pdf.
- Di Bucci, V., 2018, *Quelques questions concernant le contrôle jurisdictionnel sur le mécanisme de surveillance unique*, in Tizzano, A., *Liber Amicorum: De la Cour CECA à la Cour de l'Union: le long parcours de la justice européenne*, Torino, pp. 317-331.
- Directive (EU) 2013/36 of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance, OJ 2013 L 176/338. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036.
- Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), OJ 2015, L 141/73. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=EN.
- Directive (EU) 2017/1371of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive), OJ 2017 L 198/29. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017L1371.
- Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, OJ 2018 L 284/22. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L1673.
- Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, OJ 2019 L 186/122. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1153.
- Distefano, M., 2017, *L'effetto diretto delle fonti dell'ordinamento giuridico dell'Unione europea*, Editoriale Scientifica.

- EBA, 2021, *The Risk-Based Supervision Guidelines*, EBA/GL/2021/16. Available at: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2021/EBA-GL-2021-16%20GL%20on%20RBA%20to%20AML%20CFT/1025507/EBA%20Final%20Report%20on%20GL%20on%20RBA%20AML%20CFT.pdf.
- ECB Opinion of the 16 February 2022 on a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, (COM/2022/4). Available at: https://www.ecb.europa.eu/pub/pdf/other/en_con_2022_4_f_sign~785e1ee044..pdf.
- Egmont Group of Financial Intelligence Units, 2013, *Egmont Group of Financil Intelligence Units Principles for Information Exchange between Financial Intelligence Units*. Available at: https://egmontgroup.org/wp-content/uploads/2021/09/Egmont-Group-of-Financial-Intelligence-Units-Principles-for-Information-Exchange-Between-Financial-Intelligence-Units.pdf.
- European Banking Federation, 2022, *EBF feedback to the European Commission's proposed AML package*. Available at: https://www.ebf.eu/anti-money-laundering/ebf-feedback-to-the-european-commissions-proposed-aml-package/.
- European Commission, 2019, *Report from the Commission to the European Parliament and the Council assessing the framework for cooperation between Financial Intelligence Units*, COM(2019)371 final. Available at: https://ec.europa.eu/info/sites/default/files/report_assessing_the_framework_for_financial_intelligence_units_fius_cooperation_with_third_countries_and_obstacles_and_opportunities_to_enhance_cooperation_between_financial_intelligence_units_with.pdf.
- European Commission, 2019, *Report from the Commission to the European Parliament and the Council on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the Member States on bank accounts*, COM(2019) 372 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0372.
- European Commission, 2021, *Commission Staff Working Document Impact Assessment Accompanying the Anti-money laundering package*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0190&from=EN.
- EUROPOL, 2017, Financial Intelligence Group, *From Suspicion To Action. Converting financial intelligence into greater operational impact*, p. 40.
- FATF, 2021, *Guidance on Risk-Based Supervision*. Available at: https://www.fatf-gafi.org/media/fatf/documents/Guidance-Risk-Based-Supervision.pdf.
- Fauzi, F., Szulczyk, K., Basyith, A., 2018, *Moving in the right direction to fight financial crime: prevention and detection*, Journal of Financial Crime, Vol.25, No. 8, pp. 362-368. Available at: http://eprints.binadarma.ac.id/4034/1/Moving%20in%20the%20right%20direction%20to%20fight%20financial%20crime_%20Prevention%20and%20detection.pdf.
- Fernandez-Bollo, E., 2021, *Democratic accountability within the framework of the SSM and the SRM as a complement to judicial review*, in Zilioli, C., Wojcik, K-P., Judicial Review in the European Banking Union, Elgar, 17-27, p. 23.
- Ferran, E., Babis, V.S.G., 2013, *The European Single Supervisory Mechanism,* 13(2) Journal of Corporate Law Studies, 255.

- Friedrich, C., Quick, R., 2019, *An analysis of anti-money laundering in the German non-financial sector*, Journal of Management and Governance, Vol. 23, pp. 1099 – 1137. Available at: https://intercostos.org/wp-content/uploads/2018/01/FRIEDRICH.pdf.
- Gortsos, C.V., 2021, *The Crédit Agricole cases: banking corporate governance and application of national law by the ECB,* in Zilioli, C., Wojcik, K-P., 2021, Judicial Review in the European Banking Union, Elgar, p. 510.
- Hörnqvist, M., 2014, *Repositioning sovereignty? Sovereign encounters with organized crime and and money laundering in the realm of accountants*, Theoretical criminology, Vol. 18, No. 4, pp. 528 – 545.
- Incalza, T., 2014, *National anti-money laundering legilsation in a unified Europe: Jyske*, Common Market Law Review, Vol. 51, No. 6, pp. 1829 – 1850. Available at: https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/51.6/COLA2014140.
- Kirschenbaum, J., Véron, N., 2018, *A better European Union architecture to fight money laundering*, Policy Contribution, No. 19. Available at: https://www.bruegel.org/2018/10/a-better-european-union-architecture-to-fight-money-laundering/.
- Kornezov, A., 2016, *The application of national law by the ECB – a maze of (un)answered questions*, ESCB Legal Conference, Frankfurt am Main, pp. 270-282. Available at: https://www.ecb.europa.eu/pub/pdf/other/escblegalconference2016_201702.en.pdf.
- Koster, H., 2020, *Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework*, Journal of Money Laundering Control, Vol. 23, no. 2, 379-386.
- Lagerwaard, P., 2018, *Following Suspicious Transactions in Europe. Comparing the Operations of European Financial Intelligence Units (FIUs),* Research Report, 2018.
- Lannoo, K., Parlour, R., 2021, *Anti-Money Laundering in the EU: Time to get serious*, CEPS-ECRI Task Force Report. Available at: https://ssrn.com/abstract=3805607.
- Lasagni, G., 2019, *Banking Supervision and Criminal Investigation, Comparing the EU and US Experiences*, Springer, p. 366.
- Lasagni, G., 2020, *Investigatory, supervisory and sanctioning powers within the SSM*, in Allegrezza (ed), The Enforcement Dimension of the Single Supervisory Mechanism, Wolters Kluwer, p. 49.
- Leczykiewicz, D., 2015, *Effectiveness of EU Law before National Courts: Direct Effect, Effective Judicial Protection, and State Liability*, in Chalmers, D., Arnull, A., *The Oxford Handbook of European Union Law*, Oxford University Press.
- Lehmann, M., 2017, *Single Supervisory Mechanism Without Regulatory Harmonisation? Introducing a European Banking Act and a 'CRR Light' for Smaller Institutions'*, 3 EBI Working Paper Series 7-8;
- Lenaerts, K., Corthaut, T., 2008, *Towards an Internally Consistent Doctrine on Invoking Norms of EU Law*, in Prechal, S., van Roermund, B. (eds), *The Coherence of EU Law: The Search for Unity in Divergent Concepts*, Oxford University Press.
- Levi, M., Reuter, P., 2006, *Money Laundering*, Crime and Justice: A Review of Research, Vol. 34, pp. 289 – 376. Available at: https://orca.cardiff.ac.uk/id/eprint/3154/1/Levi%202006.pdf.
- Levi, M., 2020, *Evaluating the Control of Money Laundering and Its Underlying Offences: the Search for Meaningful Data*, Asian Journal of Criminology, Vol. 15, pp. 301 – 320. Available at: https://link.springer.com/content/pdf/10.1007/s11417-020-09319-y.pdf.

- Levi, M., Antonopoulos, G., 2022, *Through a glass darkly': Organised Crime and Money Laundering Policy Reflections - An introduction to the special issue*, Trends in Organized Crime 24, pp. 1-5. (10.1007/s12117-020-09403-w).
- Maciariello, E., 2019, *EU Agencies and the Issue of Delegation: Conferral, Implied powers and the State of Exception,* European Papers, Vol. 4, No. 3, pp. 723 – 752. Available at: https://www.europeanpapers.eu/en/system/files/pdf_version/EP_eJ_2019_3_5_Articles_Elio_Maciariello_00338.pdf.
- Magliari, A., 2015, *The Implications of the Single Supervisory Mechanism on the European System of Financial Supervision. The Impact of the Banking Union on the Single Market* in Chiti, E., Vesperini, G. (eds), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives,* il Mulino, 185.
- Martucci, F., 2021, *The Crédit Mutuel Ark.a case: central bodies and the SSM, and the interpretation of national law by the ECJ*, in Zilioli, C., Wojcik, K-P., Judicial Review in the European Banking Union, Elgar, p. 504.
- Mitsilegas, V., Hufnagel, S., Moiseienko, A., 2019, *Research Handbook on Transnational Crime*, Elgar.
- Mouzakiti, F., 2020, *Cooperation between Financial Intelligence Units in the European Union: Stuck in the middle between the General Data Protection Regulation and the Police Data Protection Directive*, New Journal of European Criminal Law, Vol. 11, No. 3, pp. 351 – 374. Available at: https://journals.sagepub.com/doi/pdf/10.1177/2032284420943303.
- Murdoch, J., 1998, *The Spaces of Actor-Network Theory*, Geoforum, Vol. 29, No. 4, pp. 357 – 374. Available at: https://www.sciencedirect.com/science/article/pii/S0016718598000116.
- Neville, A., 2022, *Proposal to amend Directive (EU) 2019/1153: Single access point to bank account registries*, EPRS, PE 729.425, p. 7. Available at: https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729425.
- Opinion of Advocate General Jääskinen in Case C-270/12 *ESMA (Short selling)* ECLI:EU:C:2013:562. Available at: https://curia.europa.eu/juris/liste.jsf?language=fr&num=C-270/12.
- Pavlidis, G., 2020, *Financial Information in the Context of Anti-Money Laundering: Broadening the Access of Law Enforcement and Facilitating Information Exchanges*, Journal of Money Laundering Control, 11 March 2020.
- Pescatore, P., 1983, *The Doctrine of Direct Effect: An Infant Disease of Community Law*, European Law Review, Vol. 8, pp. 155 et seq.
- Prechal, S., 2000, *Does Direct Effect Still Matter?*, Commonn Market Law Review, Vol. 37, pp. 1047 – 1069. Available at: https://kluwerlawonline.com/journalarticle/Common+Market+Law+Review/37.5/274964.
- Prinssen, J.M., Schrauwen, A., 2002, *Direct Effect. Rethinking a Classic of EC Legal Doctrine*, Europa Law Publishing, 2002.
- Proposal for a new containing directly applicable AML/CFT rules, including a revised EU list of entities subject to AML/CFT rules and a revised policy on third countries whose AML/CFT approach pose a threat to the EU's financial system (COM(2021) 420) (AMLAR). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0420.

- Proposal for a recast of Regulation 2015/847 on Transfers of Funds (COM(2021) 422). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0422.
- Proposal for a Regulation establishing an EU AML/CFT Authority in the form of a decentralised EU regulatory agency (COM(2021) 421). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0421.
- Proposal for a sixth AML Directive, replacing the existing EU AML/CFT Directive (Directive 2015/849 as amended) and containing provisions which are not appropriate for a Regulation, and requiring national transposition, e.g., rules concerning national supervisors and Financial Intelligence Units in Member States (COM(2021) 423). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0423.
- Quintel, T., 2019, *Follow the Money, if you can*, University of Luxembourg Law Working Paper No. 2019-001. Available at: https://ssrn.com/abstract=3318299.
- Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ 2014 L 225/1. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0806.
- Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions, COM(2019)373 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0373&from=en.
- Riondet, S., 2018, *The value of public-private partnerships for financial intelligence, Journal of Financial Compliance*, 2 (2), pp. 148-154.
- Scholten, M., van Rijsbergen, M., 2015, The Limits of Agencification in the European Union, German Law Journal, Vol. 15 n. 7, 1223-1255.
- Schütze, R., *Direct Effects and Indirect Effects,* in Schütze, R., Tridimas, T., 2018, *Oxford Principles of European Union Law*, Oxford University Press, 2018.
- Seyr, S., 2008, *Der effet utile in der Rechtsprechung des EuGH*, Duncker & Humblot.
- Simon, D., 2001, *Le système juridique communautaire*, PUF, 3rd edn, pp. 383–469.
- Simoncini, M., 2021, *The Delegation of Powers to EU Agencies After the Financial Crisis, European Papers*, Vol. 6, No 3, pp. 1485-1503.
- Squintani, L., Lindeboom, J., 2019, *The Normative Impact of Invoking Directives: Casting Light on Direct Effect and the Elusive Distinction between Obligations and Mere Adverse Repercussions*, Yearbook of European Law, Vol. 38, pp. 18-72. Available at: https://academic.oup.com/yel/article/doi/10.1093/yel/yez004/5543611.
- Stroligo, K., Intscher, H., Davis-Crockwell, S., 2014, *Suspending Suspicious Transactions*. World Bank, Washington, DC. © World Bank. Available at: https://openknowledge.worldbank.org/handle/10986/15804. License: CC BY 3.0 IGO.
- Suominnen A., 2008, *The Past, Present And The Future Of Eurojust*, 15 MJ 2, 217-234, p. 222 ff.

- Teixeira, P.G, 2014, Europeanising Prudential Banking Supervision. Legal Foundations and Implications for European Integration. in Fossum J.E., Menéndez A.J. (eds), *The European Union in Crisis or the European Union as Crises?* (ARENA Centre for European Studies 528.
- Tesauro, G., 2012, *Diritto dell'Unione Europea*, CEDAM, pp. 161–182.
- The EU FIUs' Platform's "Mapping exercise and Gap Analysis on FIUs' Power and Obstacles for obtaining and exchanging information", endorsed by FIUs of all Member States on 11 December 2016.
- Thony, J.F., 1996, *Processing Financial Information in Money Laundering Matters: the Financial Intelligence Units*, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 3, pp. 257 – 282.
- Treverton, G., Wollman, M., Wilke, E., and Lai, D., 2011, *Moving Toward the Future of Policing*, RAND, retrieved at: https://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1102.pdf.
- Tridimas, T., 2012, *Financial Supervision and Agency Power: Reflections on ESMA*, in Shuibhne, N., Gormley, L.W. (eds), From Single Market to Economic Union: Essays in Memory of John A. Usher, OUP, 55.
- Tridimas, T., 2019, *The Constitutional Dimension of Banking Union,* in Stefan Grundmann and Hans-Wolfgang, Micklitz (eds), *The European Banking Union and Constitution. Beacon for Advanced Integration or Death-Knell for Democracy?*, Hart 25, pp. 46-47.
- Unger, B., Ferwerda, J., van den Broek, M. and Deleanu, I., 2014, *The Economic and Legal Effectiveness of the European Union's anti-Money Laundering Policy*, Edward Elgar.
- Unger, B. et al., 2020, *Improving Anti-Money Laundering Policy*, Publication for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648789/IPOL_STU(2020)648789_EN.pdf.
- Van de Broek, M., 2014, *Designing Supervision under the Preventive Anti-Money Laundring Policy in the European Union*, Utrecht Law Review, Vol. 10, No. 5, pp. 151 – 167. Available at: https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.306/.
- Van de Broek, 2015, *Preventing Money Laundering*, Eleven.
- Vervaele, J.A.E., 2013, *Surveillance and Criminal Investigation: Blurring of Thresholds and Boundaries in the Criminal Justice System?* in S., Gutwirth, R., Leenes, P. De Hert (eds), *Reloading Data Protection. Multidisciplinary Insights and Contemporary Challenges*, Springer, pp.115 ss.
- Voordeckers, O., 2020, *National Banking Law Within the European Single Supervisory Mechanism. Stumbling Block or Stepping Stone?,* University of Luxembourg PhD thesis, retrieved at: https://orbilu.uni.lu/handle/10993/44296.
- Voordeckers, O., 2020, *Administrative and judicial review of supervisory acts and decisions under the SSM*, in Allegrezza (ed), The Enforcement Dimension of the Single Supervisory Mechanism, Wolters Kluwer, p. 112.

- Weber, A., 2018, *Money-Laundering Scandals Prompt EU Rethink on Policing Banks*, Bloomberg.
- Winter, J.A., 1972, *Direct Applicability and Direct Effect: Two Distinct and Different Concepts in Community Law*, Common Market Law Review, Vol. 9, pp. 425 – 439. Available at: https://www.law.kuleuven.be/personal/mstorme/Winter,CMLR1972.pdf.
- Witte, A., 2014, *The Application of National Banking Supervision Law by the ECB: Three Parallel Modes of Executing EU Law*, Maastricht Journal of European and Comparative Law, Vol. 21, No. 1, pp. 89-109.
- Witte, A., 2021, *The application of national law by the ECB, including options and discretions, and its impact on the judicial review*, in Zilioli, C., Wojcik, K-P., 2021, Judicial Review in the European Banking Union, Elgar, p. 236.
- Wymeersch, E., 2022, *The Implementation and Enforcement of European Financial Regulation*, in Crijns, J., Haentjens, M., Haentjens, R., The Enforcement of EU Financial Law, Hart, (forthcoming).

This study evaluates selected aspects of the Commission's AML/CFT reform package presented on 20 July 2021, focusing on two main topics. First, it analyses the AML Authority direct supervisory powers and their effectiveness. Second, it illustrates how the reform package intends to foster coordination and information sharing among the FIUs. Recommendations are provided in order to remedy the gaps and weaknesses identified.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies at the request of the committee on Economic and Monetary Affairs (ECON).

PE 733.968
IP/A/ECON/2022-37

Print ISBN 978-92-846-9679-6 | doi:10.2861/19062 | QA-08-22-264-EN-C
PDF ISBN 978-92-846-9680-2 | doi:10.2861/52607 | QA-08-22-264-EN-N