



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Trends in the prudential supervision of money laundering and terrorism financing (ML/TF) risks

Compliance Talks

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Agenda

- 1 ML/TF risks and evolution of ECB Banking Supervision's role
- 2 The European Commission's new action plan
- 3 European Banking Authority (EBA) initiatives
- 4 Conclusion

Although the ECB's supervisory role is solely prudential...

Prudential framework

Prudential supervisor

- Ensure the safety and soundness of credit institutions to protect depositors' money and maintain financial stability.

Main goal

- Capital Requirements Regulation (CRR)
- Capital Requirements Directive (CRD)¹
- SSM Regulation

Main applicable legislation

AML/CTF framework

AML/CTF supervisor(s)

- Verify that banks (obliged entities) have adequate internal AML/CTF procedures in place; ensure compliance through administrative sanctions and corrective measures, etc.

- Anti-Money Laundering Directive (AMLD)^{1,2}

Financial Intelligence Unit (FIU)

- Collect and analyse suspicious transaction reports (STRs) and inform law enforcement authorities

- AMLD^{1,2}

Law enforcement authorities (LEAs)

- Investigate and prosecute ML/TF, other crimes and tax offences.
- Courts can impose criminal sanctions on natural persons and, in some cases, also on legal entities.

- EU Directives on combating ML/TF through the use of criminal law^{1,3}
- National criminal law

The ECB's prudential supervisors will not perform tasks outside the prudential framework

1. As transposed into national law.

2. Directive (EU) 2015/849 and successive modifications.

3. Directive (EU) 2018/1673 on combating money laundering by criminal law and Directive (EU) 2017/541 on combating terrorism.

... recent changes in the EU framework envisage an enhanced role for prudential supervisors in AML/CFT

AMLD5

- Clarified the legal basis for the exchange of information between prudential and AML/ CFT supervisors; required support for the conclusion of an AML agreement

See next slide

CRD V

- Introduced new AML/CFT-related requirements for prudential supervisors regarding authorisation and withdrawal procedures and the Supervisory Review and Evaluation Process (SREP); obligation to cooperate with AML/CFT supervisors and FIUs and notify the EBA under certain conditions

Amendment to ESAs' regulations

- Reinforced the EBA's mandate to prevent the use of the financial system for money laundering and terrorist financing (ML/TF) and introduced new reporting requirements

ESA guidelines on AML/CFT colleges

- Established AML/CFT colleges to which prudential supervisors should be invited as observers

The AML Agreement

The AML Agreement

- In accordance with the AMLD5, the ECB signed an agreement in January 2019 establishing the practical arrangements for the **exchange of information with around 50 national AML/CFT competent authorities** in the European Economic Area.
- The Agreement allows for a **structured exchange of information** between the ECB and the AML/CFT competent authorities:
 - at the participants' request;
 - on the participants' own initiative, which “should” take place for specific cases, e.g. imposed sanctions or measures, but “may” also take place for other reasons, e.g. to provide information on a business model.
- In all cases, the information shared must be “**relevant and necessary**” for the receiving entity to fulfill its respective role as prudential or AML/ CFT supervisor.

Implementation

- **The ECB actively transmits information to AML/CFT competent authorities under the AML Agreement**
 - The information transmitted to AML/CFT competent authorities mainly comprises excerpts from SREP letters, on-site inspection reports and findings from off-site analyses.
- **AML/CFT competent authorities also share information with the ECB regularly and on an ad hoc basis**
 - Primarily AML/CFT risk assessments, supervisory measures and excerpts from on-site inspection reports.

In total, more than 700 exchanges have taken place.²

1. [Multilateral agreement on the practical modalities for exchange of information pursuant to Article 57a\(2\) of Directive EU 2015/849](#), European Supervisory Authorities, January 2019.

2. As at April 2021.

The AML/CFT colleges provide for a key cooperation tool

Relevant regulatory tool

The key regulatory tool is the ESAs' **AML/CFT colleges guidelines**, which are addressed to AML/CFT supervisors. Colleges will be established when an institution operates in at least **three EU Member States**.

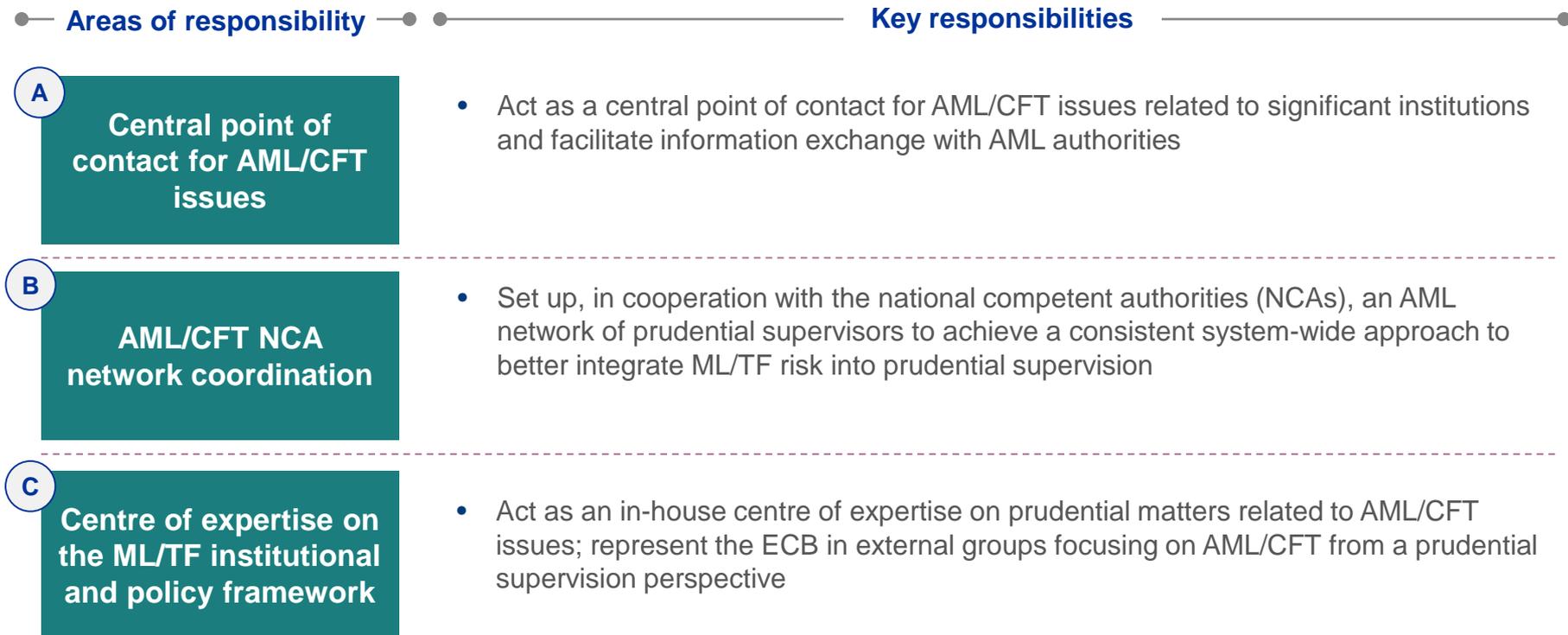
Members and observers

- **AML/CFT supervisors** and the **EBA** will be **members** of the colleges.
- The **ECB** can be invited as **observer** upon signature of individual **Terms of Participation**.
- Participation in a college enables the ECB to:
 - be informed of AML/CFT **supervisory outcomes** in the institution and discuss their **prudential implications**;
 - **exchange information** on ML/TF concerns identified during prudential supervision.

Interaction with CRD colleges

To be agreed between the lead AML/CFT supervisor and the consolidating supervisor for each college.

To comply with the enhanced framework, the ECB has set up a horizontal AML coordination function...



... and updated its supervisory methodologies

Off-site methodology

- An approach on how to **reflect ML/TF risk in the SREP** was developed.

On-site methodology

- The **on-site methodology was enhanced** to raise inspectors' awareness of ML/TF-related risks (always within the prudential mandate).

Authorisation procedures

- **Existing policies were enhanced** to take a more proactive approach to ML/TF-related issues (including in the areas of qualifying holding acquisitions, fit and proper assessments and withdrawals of authorisation)

In 2019 the European Commission carried out specific analysis after AML incidents involving European banks

European Commission analysis

- Although the EU has developed a solid regulatory framework, a number of AML incidents involving European banks with potential systemic implications led **the European Commission to launch an assessment to identify areas of weaknesses** and related mitigating measures.
- Outcomes of the Commission's analysis have been clustered in **four reports**,¹ which assess:
 1. Supranational risk
 2. Interconnection of national centralised automated mechanisms of the Member States on bank accounts
 3. Recent alleged ML cases involving EU credit institutions
 4. The framework for cooperation between FIUs

Summary of outcomes (focus on ML cases involving EU credit institutions)

The selected cases revealed substantial failures by credit institutions to comply with core requirements of the AML Directive, e.g.:

- Many banks **pursued risky business** from an AML/CFT perspective, without establishing commensurate controls and risk management.
- Many cross-border **banking groups organised their AML/CFT functions locally**, without rigorous and consistent implementation of group policy and control processes.
- In some instances employees or the management **deliberately lowered defences** in quest of profitable but highly suspect business.

1. (i) [Report on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities](#); (ii) [Report on the interconnection of national centralised automated mechanisms \(central registries or central electronic data retrieval systems\) of the member states on bank accounts](#); (iii) [Report on the assessment of recent alleged money laundering cases involving EU credit institutions](#); (iv) [Report assessing the framework for cooperation between Financial Intelligence Units](#), European Commission, 2019.

Taking into consideration the outcomes of its analysis, the Commission published an Action Plan on AML/CFT safeguards in 2020

- On 7 May 2020 the European Commission published its **Action Plan for a comprehensive Union policy on the prevention of money laundering and terrorist financing**.
- In this Action Plan, the Commission sets out its point of **view on a future AML/CFT framework** that promotes the integrity of the EU financial system.

The Commission's Action Plan builds on **six pillars**:

- I. Effective implementation of existing rules**
- II. A single EU rulebook**
- III. EU-level supervision**
- IV. A support and cooperation mechanism for FIUs**
- V. Better use of information to enforce criminal law**
- VI. A stronger EU in the world**

Some of the pillars mentioned will be further detailed in an AML package expected to be published by the Commission in 2021.

Focus: Action Plan pillars (1/2)

Pillars

Details

I

Effective implementation of existing rules

- Ensure that EU rules are rigorously and effectively implemented by Member States, competent authorities and obliged entities through:
 - monitoring **effective implementation of the AML Directives** and the establishment of centralised registers of bank accounts and registers of beneficial ownership;
 - monitoring the ability of Member States to **prevent and combat** ML and TF;
 - setting up a supervisory authority at European level to **strengthen compliance**.

II

A single EU rulebook

- Adoption of a more **harmonised set of rules** in order to reduce differences in application due to the different interpretation by Member States. EU legislation should be better articulated, precise and less subject to divergent implementation; in order to limit divergences in the interpretation and application of the rules, certain parts of the AML Directive should be transformed into directly applicable provisions established by a regulation.

III

EU-level supervision

- Establishment of an **AML/CFT supervisory system at EU level**.

Focus: Action Plan pillars (2/2)

Pillars

Details

IV

A support and cooperation mechanism for FIUs

- Establishment of a **coordination mechanism at European level** to (i) identify suspicious transactions having a cross-border scope, facilitate joint analysis of cross-border cases, and identify trends and relevant factors for assessing risks at national and supranational level; (ii) coordinate the work of national FIUs and support their activities; and (iii) strengthen cooperation between authorities.

V

Better use of information to enforce criminal law

- Issuing of guidance to **clarify and improve information sharing** between authorities, FIUs and the private sector.

VI

A stronger EU in the world

- Intensifying **EC work with the Member States** and **its participation in the Financial Action Task Force**, so that the EU can play a stronger role globally while enabling the Member States speak with one voice.

The EBA is contributing to the development of the European AML/CFT framework through technical advice and...

- In August 2020 the **EBA published its response to the Commission's public consultation on the AML/CFT Action Plan**,¹ focused mainly on establishing an EU-level AML/CFT supervisor, for which the EBA recommended:
 - combining the existing role of national AML/CFT authorities with an EU-level AML/CFT supervisor in a **hub and spoke approach**, building on national AML/CFT authorities' expertise and resources, and complementing this with effective EU-level oversight aiming at a consistent approach with comparable outcomes;
 - using the **EU's existing AML/CFT infrastructure**, including the EBA's policy, data and information technology resources as well as the EBA's European and international supervisory cooperation networks.
- In September 2020, the **EBA also published an opinion on the future AML/CFT framework in the EU**,² which mainly considered the harmonisation of the framework and the parts that should, according to the EBA, be transferred into a regulation or be kept in a Directive. In particular, the EBA recommended:
 - **harmonising the EU legal framework** in a regulation in the area of customer due diligence and wider AML/CFT systems and controls requirements, as well as for those rules governing key supervisory processes (ML/TF risk assessments, cooperation and enforcement);
 - **strengthening aspects of the current AML/CFT Directive** where existing provisions are insufficiently robust or specific, e.g. on competent authorities' supervisory powers;
 - **reviewing the list of obliged entities** currently within the scope of the EU's AML/CFT regime;
 - **clarifying provisions in sectoral financial services** legislation to ensure they are compatible with the EU's AML/CFT objectives, e.g. by making sure that ML/TF risk is addressed consistently across all sectors.

1. [Response to the European Commission's public consultation on an AML/CFT action plan and the establishment of an EU level AML/CFT supervisor](#), European Banking Authority, August 2020.

2. [Opinion of the European Banking Authority on the future AML/CFT framework in the EU](#), European Banking Authority, September 2020.

... the adoption of regulatory instruments

- In May 2021, the **EBA launched a public consultation on draft Regulatory Technical Standards (RTS) on a central database on anti-money laundering and countering the financing of terrorism (AML/CFT) in the EU¹**. This central database will contain **information that will be used by individual competent authorities and the EBA to make the fight against ML/TF in the EU more targeted and effective in the future**; in particular:
 - AML/CFT weaknesses that competent authorities across the EU have identified in respect of individual financial institutions;
 - measures that competent authorities have taken to rectify those material AML/CFT weaknesses.

The EBA has a legal duty to lead, coordinate and monitor the AML/CFT efforts of all EU financial services providers and competent authorities. It works to strengthen AML/CFT supervision and compliance through guidelines, training, cooperation and bilateral feedback, and sets out how prudential supervisors should take ML/TF risks into account, including at authorisation and in the SREP.

1. [Draft on Regulatory Technical Standards under Article 9a \(1\) and \(3\) of Regulation \(EU\) No 1093/2010 setting up an AML/CFT central database and specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained therein](#), European Banking Authority, May 2021.

Conclusion

- **Money laundering and terrorist financing risks pose a danger to the sustainability of banks and can seriously damage people's trust in the banking sector.** This is why the ECB will continue, within the remit of its supervisory functions, to look at any risks that are flagged to us by the national AML/CFT supervisors.
- **The ECB has communication channels with these authorities and updated supervisory methodologies in order to better incorporate AML/CFT-related concerns in prudential supervision.** The AML Agreement and the upcoming AML colleges will enhance the exchange of information and identification of risk. Building on the experience gained over the past two years, the ECB will continue enhancing its internal policies and processes to facilitate the sharing of information with AML/CFT authorities.
- **The ECB takes the prudential implications of money laundering and terrorism financing risks seriously and supports the further strengthening of the EU's AML/CFT framework.** For example, the prudential implications of the risks flagged by the AML/CFT authorities, or in other warnings from different sources, are now:
 - accounted for in the SREP;
 - considered in authorisation procedures and fit and proper assessments.
- **The Commission's Action Plan lays out very important considerations for a comprehensive EU policy on preventing money laundering and terrorist financing.**
 - By offering clear regulatory guidance and stronger supervisory powers, further harmonisation of the rulebook could address current EU Member State divergences and strengthen enforcement of AML/CFT compliance.
 - Conferring AML/CFT supervisory tasks to an existing or new EU authority or body could help address fragmentation.



Thank you for
your attention!
