



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

ECB Banking Supervision's role in AML/CFT



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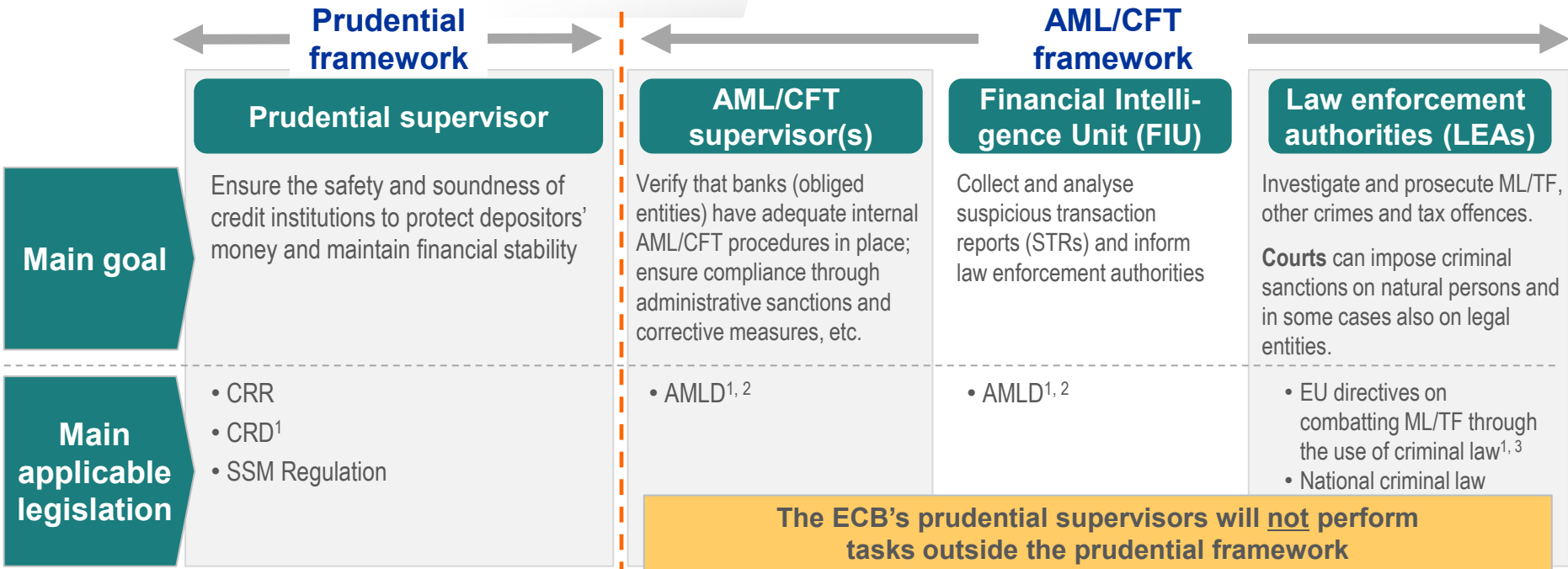
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Boundaries of AML/CFT and prudential supervision

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



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; Directive (EU) 2017/541 on combating terrorism by criminal law

... the EU framework envisages 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

CRD V

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

EBA GLs & RTS

- EBA has developed new guidelines that enhance AML related prudential requirements. In particular, the EBA SREP GLs, the EBA GLs on cooperation, the EBA RTS on the database and EBA GLs on CCO

EC's AML package

- The EC launched a legislative proposal involving 1) a new AML authority (AMLA), 2) a new regulation on AML/CFT, 3) a 6th directive on AML/CFT (AMLD6), and 4) a revision of the 2015 regulation on transfer of funds

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The European Commission's Action Plan and AML Package

Following several incidents, 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. Enforcing use of information to enforce criminal law**
- VI. Strengthening the international dimension of the EU AML/CFT framework**

...and proposed an AML/CFT legislative package to implement the pillars of the Action Plan in July 2021

Commission AML/CFT legislative package¹



Regulation establishing a new EU authority (AMLA)

The document provides for the creation of a new EU authority that will transform AML/CFT supervision in the EU and enhance cooperation among the FIUs. It will be the central authority coordinating national authorities to ensure the private sector correctly and consistently applies EU rules.

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New AML6, replacing Directive 2015/849/EU

The document provides for an update of the AML5 Directive, to be transposed into national law, containing rules on national supervisors and FIUs in the Member States.



Regulation on AML/CFT with directly applicable rules (AMLR)

The document provides for specific rules to harmonize the areas of customer due diligence and beneficial ownership; it also includes the setting up of an EU-wide limit of €10,000 to large cash payments.



Revision of the Regulation on transfers of funds

The document provides for an update of the Regulation 2015/847 to make it possible to trace transfers of crypto-assets.

The AMLA aims to implement pillars 3 and 4 of the Commission Action Plan (EU-level supervision; a support and cooperation mechanism for FIUs) while the AMLD6, together with the AMLR and the revision of the Regulation on transfers of funds, fulfils the objective of establishing an EU single rulebook (pillar 2 of the Commission Action Plan).

The package is currently being discussed by the European Parliament and Council.

¹ [Anti-money laundering and countering the financing of terrorism legislative package](#), European Commission, 2021. In the website the link to each document is available

Focus on regulation establishing a new EU authority (AMLA)

Scope

Creation from 2023 of a new European supervisory authority in the AML / CFT area with direct supervisory tasks on some entities starting from 2026. The powers of the EBA in the AML area will be transferred to this new authority.

Main contents

Supervision

- **Directly supervision of AMLA on financial institutions** that operate in a significant number of Member States and/or have high risk profiles in several of the Member States. Irrespective of such criteria, AMLA may take over supervision of an individual financial entity in the event of **relevant AML/CFT issues**. **For the staffing of AMLA, the number of entities under direct supervision by the Authority** is currently under discussion.

Coordination among FIUs

- **Power of AMLA to impose** to the supervised financial institutions **binding decisions as well as administrative sanctions** (up to a maximum of 10% of the turnover or €10 million, whichever is higher)
- **Support of AMLA in the cooperation among FIUs**, by establishing standards for reporting and information exchange as well as by supporting joint cross-border analyses

Organization & Governance

- **Governance through two collegial governing bodies:**
 - the **General Board**, which will define regulations
 - the **Executive Board**, which will take decisions towards individual financial institution
- **Direct supervision** on financial institutions carried out by **Joint Supervisory Teams, led by staff of AMLA and including staff of the relevant national supervisors**

Financial provisions

- Once the Authority has reached the necessary staff numbers, **fund contribution from the EU budget and from the supervised financial institutions**



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Collaboration tools between ECB and AML/CFT authorities

The AML Agreement¹

- 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.**

1. Multilateral agreement on the practical modalities for exchange of information pursuant to Article 57a(2) of Directive EU 2015/849.

The AML Agreement - 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 1000 exchanges have taken place¹

1. As of June 2022.

AML/CFT Colleges – A key cooperation tool

Relevant regulatory tool

The key regulatory tool are ESAs **AML/CFT Colleges Guidelines**, which are addressed to AML/CFT supervisors; colleges are established when an institution operated in at least **three Member States**

Members and Observers

- **AML/CFT supervisors** and the **EBA** are **members** to the colleges.
- The **ECB** can be invited as **observer** upon the signature of individual **Terms of participation (ToPs)**.
- The participation in a college enables the ECB to:
 - Learn AML/CFT **supervisory outcomes** in the institution and discuss their **prudential implications**;
 - **Exchange information** on ML/TF-related concerns identified in the performance of prudential supervision.

Interaction with CRD colleges

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

European Reporting system for material CFT and AML Weaknesses (EuReCA)

EBA published its [draft RTS on a central database on anti-money laundering and countering the financing of terrorism \(AML/CFT\)](#) in the EU. The European Reporting system for material CFT/AML weaknesses (EuReCA) will be an additional tool to prevent and counter ML/TF in the EU.

Scope of information to be submitted	Participants	Analysis and onward sharing	Use of the database
<ul style="list-style-type: none"> • Material weaknesses related to AML/CFT (i.e. breaches, potential breaches and ineffective applications) • Related to financial operators identified by Competent authorities • And measures taken in response to those weaknesses 	<p>Direct submitters:</p> <ul style="list-style-type: none"> • AML/CFT authorities • Prudential authorities (incl. ECB, EIOPA, ESMA) • SRB <p>Indirect submitters</p> <ul style="list-style-type: none"> • Payment Institutions Authorities • Conduct of business authorities • Resolution authorities • Designated authorities 	<p>The EBA is responsible for:</p> <ul style="list-style-type: none"> • Analysing the information on a risk-based approach and • Making it available to relevant authorities on a risk based approach 	<ul style="list-style-type: none"> • Information present in the database can be requested with a reasoned request. • The request must specify how the information is needed to prevent the use of the financial system for ML/TF

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Reflection of ML/TF risks in prudential supervision

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

Areas of responsibility

Key responsibilities

A Central point of contact for AML/CFT issues	<ul style="list-style-type: none">• Act as a central point of contact for AML/CFT issues related to significant institutions and facilitate information exchange with AML authorities• Support Joint Supervisory Teams in their participation as observers in the AML/CFT colleges
B AML/CFT NCA network coordination	<ul style="list-style-type: none">• Set up, in cooperation with the national competent authorities (NCAs), an AML network of prudential supervisors to achieve a consistent system-wide approach to better integrate ML/TF risk into prudential supervision
C Centre of expertise on the ML/TF institutional and policy framework	<ul style="list-style-type: none">• Act as an in-house centre of expertise on prudential issues related to AML/CFT issues; represent the ECB in external groups focusing on AML/CFT from a prudential supervision perspective

... 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 (AUT) procedures

- **Existing policies 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 withdrawal of authorisation).

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Conclusion

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 ECB will continue to enhance its cooperation tools taking also into account future regulatory developments (EBA).
- **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.**
- **Upcoming changes based on the European Commission's package of legislative proposals to strengthen the EU's anti-money laundering and countering terrorism financing rules will increase harmonisation.**
 - By offering clear regulatory guidance and stronger supervisory powers, further harmonisation of the rulebook will address current EU Member State divergences and strengthen enforcement of AML/CFT compliance.
 - The new authority (**AMLA**) will establish an integrated system of AML/CFT supervision across the EU, based on common supervisory methods and convergence of high supervisory standards.