



# An anti-money laundering authority for the European Union: a new center of gravity in AML enforcement

Stanisław Tosza<sup>1</sup> · Olivier Voordeckers<sup>2</sup>

Accepted: 22 August 2024 / Published online: 30 September 2024  
© The Author(s) 2024



## Abstract

The establishment of an Anti-Money Laundering Authority (AMLA) heralds a milestone in the European Union's (EU) institutional framework for the enforcement of anti-money laundering and countering the financing of terrorism (AML/CFT) rules. This contribution explores the competence and powers of the new AML/CFT supervisor. While AMLA is a true enforcement actor with investigative and sanctioning powers to address breaches of AML/CFT requirements, the scope of AMLA's enforcement powers will be limited. AMLA will nevertheless have an important regulatory impact and it will enhance the fight against cross-border financial crime by supporting the work of other bodies and agencies in the field.

**Keywords** Anti-money laundering · Countering the financing of terrorism · AMLA · Supervision · Enforcement

---

✉ S. Tosza  
[stanislaw.tosza@uni.lu](mailto:stanislaw.tosza@uni.lu)

O. Voordeckers  
[olivier.voordeckers@uni.lu](mailto:olivier.voordeckers@uni.lu)

<sup>1</sup> Associate Professor in Compliance and Law Enforcement, Department of Law, Faculty of Law, Economics and Finance, University of Luxembourg, 4 rue Alphonse Weicker, L-2721, Luxembourg, Luxembourg

<sup>2</sup> Postdoctoral researcher, Department of Law, Faculty of Law, Economics and Finance, University of Luxembourg, 4 rue Alphonse Weicker, L-2721, Luxembourg, Luxembourg

## 1 Introduction

Combating money laundering and the financing of terrorism (ML/FT) is considered a significant priority for the EU.<sup>1</sup> In the past years, important money laundering scandals with a cross-border dimension involving EU banks have triggered a debate on how to reinforce the EU's institutional design for AML/CFT.<sup>2</sup> In 2018, the Council invited the Commission to review alleged money laundering cases and to propose actions.<sup>3</sup> Among other issues, the Commission identified the established model of decentralised AML/CFT supervision by national authorities as inadequate to handle cases of money laundering involving banks and financial institutions operating in several Member States (MS), due to ineffective cooperation and coordination between national AML/CFT supervisors and Financial Intelligence Units (FIUs) in the face of cross-border financial crime.<sup>4</sup> In July 2021, the Commission officially proposed to tackle this issue by conferring the competence of AML/CFT supervision to an EU authority: the Authority for Anti-Money Laundering and Countering the Financing of Terrorism.<sup>5</sup> With its founding regulation formally adopted on 31 May 2024,<sup>6</sup> AMLA will assume most of its tasks and powers from 1 July 2025 and direct supervision should commence as of 2028 from its Frankfurt-based headquarters.<sup>7</sup>

As a Union body with legal personality,<sup>8</sup> AMLA will be able to act in its own capacity as AML/CFT supervisor of banking and financial institutions with cross-border operations in several MS and having a high exposure to ML/FT risks. As a true enforcement actor equipped with investigative and sanctioning powers to tackle non-compliance with AML/CFT requirements, AMLA marks a significant change in the geography of AML enforcement in the EU. In addition, AMLA has been given important regulatory prerogatives to harmonise regulatory standards and supervisory approaches throughout the EU. This new authority will therefore become the new centre of gravity in AML policymaking and enforcement.

The objective of this contribution is to identify the salient features of this new model of AML/CFT supervision and enforcement. The article starts with an overview

<sup>1</sup>Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing 2020/C 164/06.

<sup>2</sup>Lo Schiavo G, 'The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities' (2002) 23 *Journal of Banking Regulation* 91.

<sup>3</sup>Anti-Money Laundering Action Plan – Council Conclusions (4.12.2018), available at <https://www.consilium.europa.eu/media/37283/st15164-en18.pdf> (last accessed 6.2.2024).

<sup>4</sup>Commission, 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).

<sup>5</sup>Proposal for a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010 (COM/2021/421 final) (AMLA Proposal).

<sup>6</sup>Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31.5.2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 [2024] OJ L2024/1620 (AMLA Regulation; AMLAR).

<sup>7</sup>AMLAR, Articles 4 and 108; recitals 8 and 86.

<sup>8</sup>AMLAR, Article 3(1).

of the EU legal framework on AML/CFT, defining its main components and introducing recent developments and reforms (2). It then presents the main responsibilities that AMLA will have in the field of AML/CFT, including AMLA's internal organisation (3). Against that background, the contribution delves into the supervisory mandate of AMLA, focussing mainly on the scope of the entities that will be affected by AMLA's supervisory powers (4.1), as well as the exact content of those powers (4.2). The arrangements for cooperation between AMLA and other EU enforcement actors will also be examined briefly (5), followed by concluding remarks (6).

## 2 The legal framework governing AML/CFT – components and recent reforms

Money laundering and terrorist financing being criminal offences, the AML/CFT legal framework naturally incorporates a repressive objective. The criminalisation of money laundering and terrorist financing is an obligation under international law.<sup>9</sup> At EU level, Directive 2018/1673 harmonises the repressive framework for AML by setting out minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.<sup>10</sup> Directive 2017/541 on combating terrorism does the same for terrorist financing.<sup>11</sup> The bulk of rules in the area of AML/CFT are, however, preventive in nature. The preventive legal framework consists of rules intended to avert ML/FT, which may be substantive or supervisory in nature.

Regarding substantive rules, the preventive framework requires financial institutions, as well as other types of entities or persons whose professional activities are prone to being used for ML/FT purposes ('obliged entities'),<sup>12</sup> to implement due diligence measures with a view to, *inter alia*, knowing the identity and characteristics of their customers, including the agents and beneficial owners of their customers ('Know Your Customer'; KYC), understanding the purpose and intended nature of the business relationship, and conducting ongoing monitoring thereof, including monitoring transactions for suspicious activity ('Know Your Transaction'; KYT). Obligated entities must report suspicions of ML/FT to the competent national FIU for further analysis.

Turning to supervisory rules, the preventive framework includes the requirement for MSs to designate national supervisory authorities (NSAs) competent for monitoring ML/FT risks, to confer supervisory and enforcement powers on NSAs to ensure

<sup>9</sup>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna 1988), Article 3(1)(b); United Nations International Convention for the Suppression of the Financing of Terrorism (New York 1999), Article 4.

<sup>10</sup>Directive (EU) 2018/1673 of the European Parliament and of the Council of 23.10.2018 on combating money laundering by criminal law [2018] OJ L 284/22.

<sup>11</sup>Directive (EU) 2017/541 of the European Parliament and of the Council of 15.3.2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [2017] OJ L 88/6.

<sup>12</sup>For instance, auditors, external accountants and tax advisors, notaries (in the context of financial or real estate transactions), estate agents, providers of gambling services, and persons trading in goods when sums of cash involved are of EUR 10 000 or more.

that obliged entities comply with the applicable substantive requirements, and to impose cooperation and exchange of information duties on NSAs.<sup>13</sup> Furthermore, MSs must establish FIUs responsible for receiving and analysing suspicious transaction reports and disseminating the results thereof to the competent enforcement authorities.<sup>14</sup>

The EU preventive legal framework is the outcome of several legislative initiatives taken by the EU over the past 30 years, largely with a view to implementing international recommendations of the Financial Action Task Force (FATF).<sup>15</sup> The EU adopted the first anti-money laundering directive (AMLD) in 1991, aimed at preventing the use of the financial system for laundering the proceeds of drug crimes.<sup>16</sup> To that end, the Directive required financial institutions to identify their customers and to examine their transactions. It was amended by a second AMLD in 2001,<sup>17</sup> and eventually repealed and replaced by a third AMLD in 2005.<sup>18</sup> Those modifications mainly had the effect of expanding the scope of the underlying or predicate criminal offences included in the definition of money laundering beyond the case of drug crimes, broadening the categories of obliged entities, and imposing new rules to combat the financing of terrorism.

Since 2015, the preventive framework has been composed mainly of two Directives, known as the fourth<sup>19</sup> and the fifth<sup>20</sup> AMLD respectively. The fourth AMLD (AMLD4) contained the entire substantive and supervisory framework, with the fifth

<sup>13</sup>For an overview, see Lo Schiavo G, 'The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities' (2002) 23 *Journal of Banking Regulation* 91, 96-97.

<sup>14</sup>For a comprehensive analysis of the role, tasks, and organisation of FIUs under the current legal framework, see Siena FA, 'The European anti-money laundering framework – At a turning point? The role of financial intelligence units' (2022) 13(2) *New Journal of European Criminal Law* 216.

<sup>15</sup>Allegrezza S, 'The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment' (2022) 11; Schlarb D, 'Rethinking anti-money laundering supervision: The Single Supervisory Mechanism – a model for a European anti-money laundering supervisor?' (2022) 13(1) *New Journal of European Criminal Law* 69; Lo Schiavo G, 'The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities' (2002) 23 *Journal of Banking Regulation* 91, 93.

<sup>16</sup>Council Directive 91/308/EEC of 10.6.1991 on prevention of the use of the financial system for the purpose of money laundering [1991] OJ L 166/77.

<sup>17</sup>Directive 2001/97/EC of the European Parliament and of the Council of 4.12.2001 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.

<sup>18</sup>Directive 2005/60/EC of the European Parliament and of the Council of 26.12.2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2005] OJ L 309/15.

<sup>19</sup>Directive (EU) 2015/849 of the European Parliament and of the Council of 20.5.2015 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 [2015] OJ L 141/73 (AMLD4).

<sup>20</sup>Directive (EU) 2018/843 of the European Parliament and of the Council of 30.5.2018 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 (AMLD5).

AMLD amending it, particularly to expand the scope of application of AMLD4 to providers of exchange and wallet services regarding virtual currencies.<sup>21</sup> In addition to these instruments, the EU adopted a regulation in 2015 requiring providers of payment services to ensure that transfers of funds are accompanied by information on payers and payees ('Transfers of Funds Regulation'; TFR).<sup>22</sup> Lastly, the supervisory framework has been supplemented since 2019 with a new set of supervisory rules conferring a monitoring and coordinating role on the European Banking Authority (EBA).<sup>23</sup> The EBA's powers are concerned mostly with indirect supervision (*i.e.*, overseeing the work of the NSAs, including the power to give instructions to NSAs, for instance with a view to exercising their investigatory or sanctioning powers over obliged entities), except for the EBA's power to impose an individual decision directly on an obliged entity where the relevant NSA fails to comply with the EBA's prior instructions.<sup>24</sup>

At least two features of the preventive legal framework have played an important role in the EU's decision to establish AMLA and in the proposed delineation of its supervisory mandate. Firstly, the rules set out in AMLD4 constitute minimum harmonisation and supervision is mainly a national competence. This combination led to significant variations in regulatory standards, supervisory practices and resources across MSs, resulting in uneven quality and effectiveness of AML/CFT supervision, inconsistent approaches to cases of ML/FT with a cross-border dimension, and ineffective cooperation in such cases.<sup>25</sup> To tackle these issues, the Commission adopted an Action Plan in 2020,<sup>26</sup> announcing legislative proposals to (i) deliver a 'single rulebook' on AML/CFT to fully harmonise the substantive rules contained in

<sup>21</sup>For a detailed analysis, see Lars Haffke, Mathias Fromberger, and Patrick Zimmerman, 'Cryptocurrencies and Anti-Money Laundering: The Shortcomings of the Fifth AML Directive (EU) and How to Address Them' (2020) 21(2) *Journal of Banking Regulation* 125; Valentina Covolo, 'The EU Response to Criminal Misuse of Cryptocurrencies: The Young, already Outdated 5th Anti-Money Laundering Directive' (2020) 28(3) *European Journal of Crime, Criminal Law and Criminal Justice* 217.

<sup>22</sup>Regulation (EU) 2015/847 of the European Parliament and of the Council of 20.5.2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 [2015] OJ L 141/1 (TFR).

<sup>23</sup>Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18.12.2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds [2019] OJ L 334/1.

<sup>24</sup>See also Lo Schiavo G, 'The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities' (2002) 23 *Journal of Banking Regulation* 91, 97-98.

<sup>25</sup>Allegrezza S, 'The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment' (2022) 12; Schlarb D, 'Rethinking anti-money laundering supervision: The Single Supervisory Mechanism – a model for a European anti-money laundering supervisor?' (2022) 13(1) *New Journal of European Criminal Law* 69.

<sup>26</sup>Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing [2020] OJ C 164/21.

AMLD,<sup>27</sup> (ii) amend AMLD4 and limit its material scope primarily to organisational and supervisory requirements,<sup>28</sup> and (iii) to establish an EU authority responsible for AML/CFT supervision.<sup>29</sup>

Secondly, since the adoption of the third AMLD, AML/CFT regulation and supervision have been risk-based. Under the risk-based approach, all obliged entities must carry out ML/FT risk assessments at the level of their business as a whole at the level of their individual customers, in order to determine the appropriate intensity of their AML/CFT control measures. Supervision, also, must be risk-based, in the sense that NSAs should allocate more resources to the supervision of sectors, types of entities, or services that involve a higher exposure to ML/FT risks, as determined in accordance with national risk assessments.<sup>30</sup> Combined with minimum harmonisation and national supervision, the risk-based approach has given rise to diverging methodologies and supervisory standards across the MSs. As will be discussed below, the intention to further harmonise the implementation of the risk-based approach is reflected clearly in the scope of AMLA's proposed supervisory and regulatory competences.

The legislative proposals announced by the Commission in its Action Plan of 2020 led to the recent adoption of an AML/CFT reform package comprising three legislative acts that mark a major overhaul of the EU preventive framework in terms of both substantive and supervisory rules. For the first time in the history of EU AML policy, the EU adopted an AML Regulation (AMLR) covering the substantive rules previously contained in AMLD.<sup>31</sup> The adoption of a regulation was considered necessary to overcome, through a directly applicable single rulebook, the fragmented approach along national lines which had emerged over the past three decades under

<sup>27</sup>Proposal of the European Commission of 20.7.2021 for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (COM/2021/420 final).

<sup>28</sup>Proposal of the European Commission of 20.7.2021 for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the MSs for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (COM/2021/423 final).

<sup>29</sup>The proposed legislative package was furthermore accompanied by a proposal for a regulation on information accompanying transfers of funds and certain crypto-assets, which in the meantime has been adopted. See Proposal of the European Commission of 20.7.2021 for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (COM/2021/422 final); Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31.5.2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 [2023] OJ L 150/1; Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31.5.2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 [2023] OJ L 150/40.

<sup>30</sup>On the process of risk-based AML/CFT supervision, see Schlarb D, 'Rethinking anti-money laundering supervision: The Single Supervisory Mechanism – a model for a European anti-money laundering supervisor?' (2022) 13(1) *New Journal of European Criminal Law* 69.

<sup>31</sup>Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31.5.2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2024] OJ L2024/1624 (AML Regulation; AMLR). On the impact of the AMLR on the extension of the scope of AML/CFT enforcement see: Tosza S, 'Enforcement of international sanctions as the third pillar of the anti-money laundering framework. An unannounced effect of the AML reform and the Sanctions Directive' (2024) *New Journal of European Criminal Law* (forthcoming).

the previous five AML Directives.<sup>32</sup> A sixth AML Directive (AMLD6) was adopted to lay down organisational requirements applicable to registers of beneficial ownership, bank accounts, custodial crypto-asset accounts, and real estate, as well as supervisory requirements concerning the powers of NSAs and cooperation duties and mechanisms.<sup>33</sup> In addition to those two acts, the EU adopted the founding regulation of AMLA (AMLA Regulation; hereinafter AMLAR), which is the focus area of the rest of this contribution.

### 3 Main responsibilities and organisation of AMLA in a nutshell

In general terms, the AMLAR entrusts AMLA mainly with three types of responsibilities in the field of AML/CFT supervision. Firstly, AMLA will be tasked with the direct AML/CFT supervision of a limited number of credit and financial institutions with a high ML/FT risk profile in several MSs, including crypto-asset service providers. Those entities will qualify as ‘selected obliged entities’ (SOEs, see 4.1. for explanations on how they will be selected).<sup>34</sup> Direct supervision implies that AMLA will be competent to impose supervisory acts, including investigations, administrative measures and sanctions, in a direct manner on SOEs, which will be discussed in more detail under 4.2 below.

Secondly, AMLA will be responsible for overseeing, coordinating and facilitating the supervisory work of NSAs in the financial and non-financial sectors. To avoid conflicts with the EBA’s indirect supervisory competences, the latter’s tasks in AML/CFT supervision are abolished.<sup>35</sup> Still regarding coordination, AMLA will act as a mediator in settling disagreements between supervisors in cross-border situations.<sup>36</sup> In respect of financial supervisors, that role includes the power to address a binding decision to the NSAs concerned, and to require them to revoke or amend a prior supervisory decision or to make use of their supervisory powers.<sup>37</sup>

Thirdly, AMLA must facilitate the work of, and cooperation and exchange of information between FIUs in different ways (*e.g.*, supporting the identification of cases and the development of methods for joint analyses of cross-border cases,<sup>38</sup> making available IT AI-services and tools to FIUs,<sup>39</sup> promoting expert knowledge on sus-

<sup>32</sup>AMLR, recital 2.

<sup>33</sup>Directive (EU) 2024/1640 of the European Parliament and of the Council of 31.5.2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive(EU) 2019/1937, and amending and repealing Directive (EU) 2015/849 [2024] OJ L2024/1640 (AML Directive; AMLD6).

<sup>34</sup>AMLAR, Articles 12-13.

<sup>35</sup>AMLAR, Article 103.

<sup>36</sup>AMLAR, Articles 5(3)(h), 6(1)(e), 33, 38.

<sup>37</sup>AMLAR, Article 33(5).

<sup>38</sup>AMLAR, Articles 40 and 42-43.

<sup>39</sup>AMLAR, Article 5(5)(i).

picious transactions,<sup>40</sup> providing specialised training,<sup>41</sup> mediating between FIUs,<sup>42</sup> etc).<sup>43</sup>

The NSAs will still play a crucial role after the establishment of AMLA, but will form with it a new supervisory setting. Together with AMLA, they will constitute the ‘AML/CFT supervisory system’.<sup>44</sup> NSAs will retain full responsibility and accountability for the direct AML/CFT supervision of non-SOEs.<sup>45</sup> They will, however, exercise this responsibility under the oversight of AMLA, which should monitor their supervisory work through periodic performance assessments and, on that basis, issue guidelines or recommendations to the relevant NSAs.<sup>46</sup> In individual cases, AMLA may request NSAs to act in exceptional circumstances and will ultimately be able to take over direct supervision in case of inaction (see 4.1.3 below).<sup>47</sup> While remaining responsible for the supervision of non-SOEs, albeit under indirect AMLA supervision, the NSAs will also be involved in different ways in AMLA’s direct supervisory activities. In fact, to take into account jurisdiction-specific ML/FT risks as well as local supervisory expertise,<sup>48</sup> direct supervision of SOEs will take place in the form of joint supervisory teams (JSTs) composed of staff of the local NSA and led and coordinated by a staff member of AMLA.<sup>49</sup>

In addition to its supervisory powers, AMLA will also have a quasi-regulatory role. It will be mandated to adopt different instruments with a general scope of application specifying how AML/CFT requirements must be interpreted and/or applied (e.g., developing methodologies for carrying out business-wide risk assessments), such as regulatory and implementing technical standards (RTS/ITS; subject to endorsement by the Commission by means of delegated acts), guidelines, recommendations and opinions – thus assuming regulatory powers previously conferred on EBA.<sup>50</sup> Based on these instruments, AMLA must also adopt a harmonised supervisory methodology, including for carrying out risk assessments and determining the ML/FT risk profile and categorisation of obliged entities.<sup>51</sup>

To exercise its supervisory and quasi-regulatory competences, the AMLA will adopt its decisions via two collegial governing bodies, namely, the General Board

<sup>40</sup>AMLAR, Article 5(5)(j).

<sup>41</sup>AMLAR, Articles 5(5)(k) and 45.

<sup>42</sup>AMLAR, Article 46.

<sup>43</sup>As the present contribution focuses on the supervisory powers of AMLA, its powers with regard to FIUs will not be examined in more detail. For an extensive analysis, see Siena FA, ‘The European anti-money laundering framework – At a turning point? The role of financial intelligence units’ (2022) 13(2) *New Journal of European Criminal Law* 216-246; Allegrezza S, ‘The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment’ (2022) 35-55.

<sup>44</sup>AMLAR, Articles 7-10 and recital 16.

<sup>45</sup>AMLAR, recital 33.

<sup>46</sup>AMLAR, Article 30.

<sup>47</sup>AMLAR, Article 32.

<sup>48</sup>AMLAR, recital 27.

<sup>49</sup>AMLAR, Article 16.

<sup>50</sup>Allegrezza S, ‘The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment’ (2022) 16.

<sup>51</sup>AMLAR, Article 8.

and the Executive Board.<sup>52</sup> The supervisory mandate of AMLA is mainly the task of the Executive Board, which is responsible for the overall functioning and execution of AMLA's supervisory tasks.<sup>53</sup> It adopts all supervisory decisions, drafted by JSTs, towards SOEs or, in the case of indirect supervision, towards NSAs.<sup>54</sup> The Executive Board is composed of five independent full-time members, a chairperson, and a Commission representative (the latter can only participate when AMLA decides on matters of internal administration, such as the adoption of budgets, activity reports, strategies, rules of procedures, *etc.*).<sup>55</sup> The General Board, by contrast, is responsible for the exercise of AMLA's quasi-regulatory powers.<sup>56</sup> It is composed of representatives of the MSs, a chairperson, and a non-voting Commission representative.<sup>57</sup> When adopting general acts relating to supervision, the General Board will sit in supervisory composition, in which case the MS representatives are the heads of the national authorities competent for AML/CFT supervision.<sup>58</sup> For acts relating to FIUs, it will sit in FIU composition, with the heads of the national FIUs representing the MSs.<sup>59</sup> Where the General Board sits in supervisory composition, it may provide its opinion on any decision concerning SOEs before adopting the final decision by the Executive Board, thus participating in the supervisory function of AMLA.<sup>60</sup>

In addition to the General and Executive Boards, AMLA will have an Administrative Board of Appeal for the internal review of individual supervisory decisions, controlling their substantive and procedural conformity with the AMLAR.<sup>61</sup> The Administrative Board may propose to alter or substitute the Executive Board's original decision.<sup>62</sup> The Executive Board must take into account the opinion of the Administrative Board, but will not be bound by it.<sup>63</sup> Thus, the Administrative Board's objective seems essentially to have a pre-litigation mechanism to ensure the quality of supervisory decisions and, as such, prevent the implementation of acts that are voidable in court.<sup>64</sup>

This brief overview indicates that the establishment of AMLA introduces many novelties to the conduct of AML/CFT regulation and supervision in the EU. A nov-

<sup>52</sup>On the governance structure of AMLA, see also Pavlidis G, 'The birth of the new anti-money laundering authority: harnessing the power of EU-wide supervision' (2023) *Journal of Financial Crime*.

<sup>53</sup>AMLAR, Article 64.

<sup>54</sup>AMLAR, Article 64(2) and (3).

<sup>55</sup>AMLAR, Article 63(1).

<sup>56</sup>AMLAR, Article 60.

<sup>57</sup>AMLAR, Article 57(2) and (3).

<sup>58</sup>AMLAR, Article 57(2).

<sup>59</sup>AMLAR, Article 57(3).

<sup>60</sup>AMLAR, Article 60(2).

<sup>61</sup>AMLAR, Article 72(1).

<sup>62</sup>AMLAR, Article 74(3).

<sup>63</sup>AMLAR, Article 74(3).

<sup>64</sup>For the same reasoning regarding the Administrative Board of Review of the Single Supervisory Mechanism, see Brescia Morra C, 'The Administrative and Judicial Review of Decisions of the ECB in the Supervisory Field' (2016) 81 *Banca d'Italia Quaderni di Ricerca Giuridica* 109, 127; 571 Koupepidou E, 'Administrative pre-litigation review mechanism in the SSM: The Administrative Board of Review' in Zilioli C and Wojcik K-P, *Judicial Review in the European Banking Union* (Edward Elgar 2021) 28.

entity that stands out is that AMLA will have direct decision-making powers, including sanctioning powers, over certain obliged entities. This suggests that the AMLAR gives birth to a new enforcement authority in the area of financial crime. The remaining sections will therefore examine the direct supervisory and enforcement powers of AMLA and its position in the EU enforcement landscape.

## 4 AMLA's direct supervisory mandate

### 4.1 Which entities are concerned?

AMLA will be responsible for the direct AML/CFT supervision of a limited number of cross-border credit and financial institutions with a high ML/FT risk profile in multiple MSs. To select those institutions, AMLAR foresees a two-step process: first a risk assessment of obliged entities that operate in several countries, followed by a selection based on criteria related to their specific ML/FT risk profile.

#### 4.1.1 Risk assessment of obliged entities

Regarding the risk assessment phase, AMLA must periodically evaluate all credit and financial institutions, along with groups of such institutions, that operate in at least six MSs. This includes both their home MS and the MSs where they operate through local branches or by offering services remotely, whether or not they have a physical presence in those territories.<sup>65</sup> AMLA will develop draft RTS specifying the minimum activities a credit or financial institution must perform under the freedom to provide services for it to be considered as operating in a MS other than the MS where it is established.<sup>66</sup>

Regarding institutions that are identified as operating in at least six MSs, AMLA will have to assess and classify their inherent and residual ML/FT risk profile.<sup>67</sup> For the inherent risk assessment, AMLA must apply a methodology with benchmarks that are based on risk factors related to customers, products, services, transactions, delivery channels, and geographical areas.<sup>68</sup> It appears that the assessment would largely implement EBA's currently applicable ML/TF Risk Factor Guidelines.<sup>69</sup>

The residual risk assessment, in turn, requires AMLA to determine the ML/FT risk profile of obliged entities after implementation of their AML/CFT control measures. This assessment must be based on benchmarks for the assessment of the quality of their internal policies, controls and procedures.<sup>70</sup> Based on those assessments, AMLA must classify the inherent and residual risk profile of institutions or groups

---

<sup>65</sup> AMLAR, Article 12(1).

<sup>66</sup> AMLAR, Article 12(7)(a).

<sup>67</sup> AMLAR, Article 12(3).

<sup>68</sup> AMLAR, Article 12(5).

<sup>69</sup> EBA/GL/2021/02 of 1.3.2021, as amended by EBA/GL/2024/01 of 16.1.2024.

<sup>70</sup> AMLAR, Article 12(6).

as low, medium, substantial, or high.<sup>71</sup> To that end, AMLA must develop an RTS setting out a methodology with benchmarks for classifying inherent and residual risk profiles, and submit them to the Commission for adoption through a delegated act.<sup>72</sup> That means that the EBA's ML/TF Risk Factor Guidelines, which are currently not binding and subject to national implementation by the NSAs in accordance with a 'comply or explain' mechanism, will be replaced by a binding, generally applicable act of Union law in the near future.

While the assessment of inherent ML/FT risk exposure is already subject to rather elaborated, harmonised supervisory guidance, determining the residual risk exposure of an entity may become a more difficult exercise considering the lack of harmonisation and, expectedly, the existence of a high variety of practices and methodologies within the MS and amongst obliged entities. In sum, the fact that AMLA must develop a common methodology for inherent and residual risk assessments of obliged entities for selection purposes, is expected to have significant regulatory implications for all financial obliged entities, including non-selected ones.

#### 4.1.2 Selection of obliged entities for direct supervision

After classifying the ML/FT risk exposure of the financial obliged entities concerned, AMLA will proceed to the second step of the selection process, namely, the ultimate listing of the SOEs. For that purpose, institutions and groups thereof shall qualify as SOEs if their residual risk profile has been classified as high.<sup>73</sup> Where more than 40 SOEs are identified, AMLA may, in consultation with the NSAs, decide to select more than 40 entities or groups.<sup>74</sup> Pursuant to AMLA's decision on the maximum number, the SOEs shall be the qualifying obliged entities and groups which are operating in the highest number of MS.<sup>75</sup> Should the application of that criterion lead to a number of SOEs that is higher than the maximum number determined by AMLA, it must select the entities that have the highest ratio of transactions with third countries.<sup>76</sup>

It could happen that a MS does not have a single obliged entity that qualifies as an SOE, for instance because there are no financial institutions that operate in more than six MS. In such event, an additional selection process (including an inherent and residual risk assessment) must be carried out. The institution whose risk profile qualifies as high will be selected for direct supervision by AMLA.<sup>77</sup> If it turns out that there are several institutions with a high risk profile, then the selected institution will be the one operating in the highest number of MS.<sup>78</sup> Where several of those

---

<sup>71</sup> AMLAR, Article 12(3).

<sup>72</sup> AMLAR, Article 12(7)(b).

<sup>73</sup> AMLAR, Article 13(1).

<sup>74</sup> AMLAR, Article 13(2).

<sup>75</sup> AMLAR, Article 13(2), third subparagraph.

<sup>76</sup> AMLAR, Article 13(2), fourth subparagraph.

<sup>77</sup> AMLAR, Article 13(3).

<sup>78</sup> AMLAR, Article 13(3), third subparagraph.

institutions operate in the same number of MS, the entity with the highest ratio of transactions with third countries shall qualify as an SOE.<sup>79</sup>

#### 4.1.3 Exceptional cases of supervisory takeover

In two situations subject to specific conditions, a non-SOE may temporarily be brought under direct AMLA supervision, either upon the request of an NSA or upon the request of AMLA.

NSAs may request AMLA to exercise direct supervision in respect of a non-SOE in order to address at Union level a heightened risk or compliance failures at a non-SOE, and to ensure the consistent application of high supervisory standards.<sup>80</sup> In three situations, such a request must be accepted by AMLA. That would be the case, firstly, if the relevant NSA can demonstrate that there are important regulatory breaches that could not be remedied effectively by supervisory measures imposed on the non-SOE. Secondly, AMLA will also have to accept the request when the NSAs responsible for the supervision of a non-SOE group agree that coordinated supervisory action at Union level would be more effective to address a heightened risk of ML/FT or important regulatory breaches affecting several entities within that group. Thirdly, where an NSA can demonstrate that it faces a temporary and objective lack of capacity to address ML/FT risks of a non-SOE in an adequate and timely manner, AMLA must accept the NSA's request to exercise direct supervision.<sup>81</sup>

Besides the transfer of supervision upon the request of an NSA, AMLA may also request to take over direct supervision. Where a non-SOE's AML/CFT compliance and ML/FT risk exposure deteriorates rapidly and significantly, the relevant NSA must notify AMLA. That is particularly the case where the deterioration may negatively impact several MS or the Union as a whole, or undermine the integrity of the Union's financial system.<sup>82</sup> Following such a notification, AMLA may request the relevant NSA to remedy the situation by making use of its supervisory powers (*e.g.*, carrying out investigations, adopting supervisory measures, or imposing sanctions), if AMLA has indications of serious, repeated or systemic breaches by the relevant non-SOE. Such indications may be based not only on the notification of the NSA, but also on information collected by AMLA itself, or on information received from Union institutions, bodies, or any other reliable and credible information source.<sup>83</sup> Where the NSA fails to follow AMLA's instructions, AMLA may request the Commission to grant permission to temporarily transfer the entity under direct supervision by AMLA.<sup>84</sup> The need to involve the Commission in this situation – contrary to the case of a transfer of supervision upon the request of an NSA – is based on

<sup>79</sup> AMLAR, Article 13(3), third subparagraph.

<sup>80</sup> AMLAR, Article 14(1).

<sup>81</sup> AMLAR, Article 14(4).

<sup>82</sup> AMLAR, Article 32(1); For a critical assessment of the applicable criteria and procedure, see Allegranza S, 'The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment' (2022) 27-28.

<sup>83</sup> AMLAR, Article 32(2) and (3).

<sup>84</sup> AMLAR, Article 32(5).

the consideration that the transfer of direct supervision upon the request of AMLA would require a discretionary decision on the part of AMLA, which could violate the *Meroni* doctrine.<sup>85</sup> If the Commission grants permission, it must include a time limit to the exercise of direct supervision by AMLA with a maximum of three years. The Commission may extend its permission only once.<sup>86</sup>

## 4.2 The supervisory powers of AMLA

The AMLAR empowers AMLA to impose a wide range of supervisory and enforcement measures on SOEs. A distinction can be made between investigative measures, administrative measures, periodic penalty payments, and administrative pecuniary sanctions. In addition to these measures, the AMLAR also entitles AMLA to exercise the powers conferred on NSAs under Union law.

### 4.2.1 Investigative measures

As part of its supervisory mandate, AMLA may require SOEs to provide all information that is necessary to carry out the tasks conferred on it. The obligation to provide the information requested applies not only to the SOEs themselves, but also to their staff (*i.e.*, any natural or legal person belonging to an SOE) and their service providers (*i.e.*, any third party to whom the SOE has outsourced operational functions or activities, including any natural or legal person affiliated to such a third party).<sup>87</sup> Furthermore, AMLA may conduct all necessary investigations of any SOE. That includes investigations of any natural or legal person employed by or belonging to an SOE and established or located in a MS.<sup>88</sup> AMLA's power to conduct investigations includes a wide range of different prerogatives, such as requiring the submission of documents, examining and taking copies of books and (electronic) records, obtaining access to reports, software, databases or IT tools, *etc.*<sup>89</sup> Its investigative powers also enable AMLA to carry out written or oral interviews with the SOE, their representatives or staff, as well as any other person who consents to be interviewed for investigative purposes.<sup>90</sup>

In addition to its information gathering powers, AMLA may also conduct on-site inspections. It is empowered to enter any of the business premises and land of national and legal persons that are either SOEs, their staff members or service providers.<sup>91</sup> Such on-site inspections can be carried out without prior announcement, if that is required by the proper conduct and efficiency of the investigation.<sup>92</sup> However, before

---

<sup>85</sup>Allegrezza S, 'The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment' (2022) 27-28.

<sup>86</sup>AMLAR, Article 32(8) and (9).

<sup>87</sup>AMLAR, Article 17(1).

<sup>88</sup>AMLAR, Article 18(1).

<sup>89</sup>AMLAR, Article 18(1).

<sup>90</sup>AMLAR, Article 18(1).

<sup>91</sup>AMLAR, Article 19(1) and (3).

<sup>92</sup>AMLAR, Article 19(1).

carrying out an on-site inspection, AMLA has to notify the relevant NSA, whose staff must actively assist AMLA's officials. For instance, where a person opposes an on-site inspection, the NSA's staff have to make use of their power to seal business premises and books or records to the extent necessary for the inspection.<sup>93</sup>

On-site inspections can be carried out without prior judicial authorisation, subject to two exceptions. If AMLA wants to carry out an on-site inspection at business premises that are the same as a person's private residence, judicial authorisation must be obtained.<sup>94</sup> That is also the case where judicial authorisation is required in accordance with national law.<sup>95</sup> Importantly, the competent national judge can only review the authenticity and proportionality of AMLA's decision to carry out an on-site inspection, but not its necessity or the lawfulness, which can only be reviewed by the Court of Justice of the European Union.<sup>96</sup>

In regular day-to-day supervision, AMLA's investigative powers will be exercised by the relevant JSTs. However, an investigatory team must be appointed from the moment that there are serious indications of the possible existence of facts that may constitute one or more breaches for which AMLA can impose fines (see 4.2.4 below). The investigatory team must be independent, which means that it cannot be involved or have been involved in the direct supervision of the entity concerned, and that it must perform its functions independently from the Executive Board.<sup>97</sup> That investigatory team may exercise all AMLA's investigative powers, including the power to conduct on-site inspections, and it has access to all documents and information gathered by the JST in its supervisory activities.<sup>98</sup> Upon completion of the investigation, it must submit a complete file with its findings to the Executive Board.<sup>99</sup>

In sum, there is a distinction between investigative acts carried out as part of regular, ongoing supervision by the JSTs, and investigations of potential breaches subject to fines, for which an independent investigatory team must be appointed.<sup>100</sup> This distinction reflects the need to ensure the independence and impartiality of subsequent punitive decision-making by the Executive Board.<sup>101</sup> It will be important that matters are referred to the investigatory team in time, in order to avoid that the subsequent use of JST-findings in penalty proceedings would affect the requirements of independence and impartiality. In supervisory practice, however, it may not always

<sup>93</sup> AMLAR, Article 19(1) and (6).

<sup>94</sup> AMLAR, Article 19(1) and (3).

<sup>95</sup> AMLAR, Article 20.

<sup>96</sup> AMLAR, Article 20.

<sup>97</sup> AMLAR, Article 27(1).

<sup>98</sup> AMLAR, Article 27(2).

<sup>99</sup> AMLAR, Article 27(2).

<sup>100</sup> The same set-up can be found in the SSM. See Wissink L, *Effective Legal Protection in Banking Supervision. An Analysis of Legal Protection in Composite Administrative Procedures in the Single Supervisory Mechanism* (Europa Law Publishing 2021) 28, 51.

<sup>101</sup> The same set-up and reasoning can be found in the context of the investigative and sanctioning powers of the ECB within the Single Supervisory Mechanism (SSM). See Giulia Lasagni, 'Investigatory, Supervisory and Sanctioning Powers within the SSM' in S Allegrezza (ed), *The Enforcement Dimension of the Single Supervisory Mechanism* (2020 Wolters Kluwer) 49, 76-81.

be straightforward to determine whether ongoing supervision will eventually be followed by an investigatory phase and potentially by a punitive sanction.<sup>102</sup>

#### 4.2.2 Administrative measures

The exercise of investigative powers may lead to the finding that an SOE does not meet the applicable AML/CFT requirements, or that a breach is likely to occur. It may also lead to the observation that the internal control measures of an SOE are not commensurate to its ML/FT risk exposure. In such cases, AMLA can adopt administrative measures with a view to remedying the breach or preventing it from occurring.<sup>103</sup> The administrative measures applied must be effective, proportionate and dissuasive.<sup>104</sup>

The supervisory measures that AMLA can take are manifold. They include the power to issue recommendations, to order an SOE to comply or to implement specific corrective measures, or to issue a cease-and-desist order.<sup>105</sup> In more practical terms, these measures enable AMLA, for instance, to impose additional or more frequent reporting requirements, to require the reinforcement of internal policies and procedures, or the implementation of control measures to reduce the entities' exposure to ML/FT risks.<sup>106</sup> Such control measures could include the application of a specific treatment to categories of clients transactions, activities or delivery channels that pose high ML/FT risks.<sup>107</sup>

AMLA may also adopt more intrusive measures, for instance by restricting or limiting the business, operations or network of institutions comprising the SOE, by requiring the divestment of certain activities, or by instructing certain changes in the SOE's governance structure.<sup>108</sup> Such changes may involve a temporary ban against any person with management responsibilities in the SOE, or any other natural person to whom the breach can be attributed, from exercising managerial functions in obliged entities.<sup>109</sup> AMLA can furthermore decide to have resort to 'naming and shaming' by issuing a public statement identifying the natural or legal person and the nature of the breach.<sup>110</sup> In more serious cases, AMLA can propose the withdrawal of the licence of an SOE to the authority that has granted such licence.<sup>111</sup>

---

<sup>102</sup>Wissink L, *Effective Legal Protection in Banking Supervision. An Analysis of Legal Protection in Composite Administrative Procedures in the Single Supervisory Mechanism* (Europa Law Publishing 2021) 258.

<sup>103</sup>AMLAR, Article 21(1).

<sup>104</sup>AMLAR, Article 21(6).

<sup>105</sup>AMLAR, Article 21(2).

<sup>106</sup>AMLAR, Article 21(3).

<sup>107</sup>AMLAR, Article 21(3).

<sup>108</sup>AMLAR, Article 21(2).

<sup>109</sup>AMLAR, Article 21(3).

<sup>110</sup>AMLAR, Article 21(2)(c).

<sup>111</sup>AMLAR, Article 21(2).

### 4.2.3 Periodic penalty payments

The effectiveness of AMLA's investigative decisions and administrative measures depends on the compulsion that can be exercised to ensure that the relevant SOE will effectively comply with AMLA's supervisory demands. Therefore, to compel an SOE to supply requested information or submit to an investigation, or put an end to a breach following a prior administrative measure, AMLA's Executive Board may impose a periodic penalty payment (PPP) until the relevant entity complies with the measure adopted by AMLA.<sup>112</sup> Such a PPP may be imposed with retroactive effect up to the date of application of the measure concerned, and is subject to a maximum duration of six months following the notification of the PPP.<sup>113</sup> If the PPP is used to no avail, AMLA can apply a PPP for an additional period of no more than six months.<sup>114</sup> The amount of the PPP "shall not exceed [...] 3% of the average daily turnover [of the SOE's] preceding business year, or, in the case of natural persons, 2% of the average daily income in the preceding calendar year".<sup>115</sup>

### 4.2.4 Administrative pecuniary sanctions

Beyond administrative measures and PPPs, AMLA is also empowered to impose fines. The Executive Board can decide to impose a pecuniary sanction on an SOE, subject to certain conditions. Its sanctioning power is limited to breaches of directly applicable requirements referred to in Annex II to AMLAR, which sets out a list of provisions of the AMLR and the TFR. The breach identified must have been committed intentionally or negligently by the SOE, and it must be serious, repeated, or systemic in nature. Pecuniary sanctions can also be imposed where an SOE fails to comply with a binding individual decision adopted by AMLA.<sup>116</sup>

Taking into account these conditions, there may be cases where AMLA does not have the power to impose a fine. For instance, AMLA may identify breaches of national law transposing AMLD6, or breaches that are attributable to members of the SOE's management body. While AMLA lacks direct sanctioning power in such cases, it may require the relevant NSA "to open proceedings with a view to taking action in order to ensure that appropriate pecuniary sanctions are imposed".<sup>117</sup>

Regarding the level of sanctions, AMLAR confirms the usual formulation: sanctions must be "effective, proportionate and dissuasive".<sup>118</sup> It lays down a detailed methodology for determining the amount of the sanction. First, AMLA must determine a basic amount, ranging from EUR 100 000 to the higher of EUR 2 000 000 or 1% of the entity's annual turnover, depending on the type of the breach.<sup>119</sup> The basic

<sup>112</sup> AMLAR, Article 23(1).

<sup>113</sup> AMLAR, Article 23(4) and (5).

<sup>114</sup> AMLAR, Article 23(4).

<sup>115</sup> AMLAR, Article 23(3).

<sup>116</sup> AMLAR, Article 22(1).

<sup>117</sup> AMLAR, Article 22(9).

<sup>118</sup> AMLAR, Article 22(10).

<sup>119</sup> AMLAR, Article 22(3).

amount must thereupon be adjusted by taking into account aggravating or mitigating factors in accordance with predefined coefficients.<sup>120</sup> After application of those coefficients to the basic amount, the benefit derived from the breach or the losses caused to third parties must be added to the total amount of the fine, if they can be determined.<sup>121</sup> Lastly, it should be noted that the imposition of a fine and the amount thereof may affect the prudential situation of an SOE. Therefore, when calculating the amount of the fine, AMLA must take due consideration of the SOE's ability to pay the sanction and, where the pecuniary sanction may affect compliance with prudential regulation, it must consult the prudential supervisor of the SOE.<sup>122</sup>

#### 4.2.5 National powers under Union law

In addition to the investigative, supervisory, and sanctioning powers set out directly in AMLAR, AMLA can also exercise the powers that NSAs have under relevant Union law, or instruct them to make use of their powers under national law.<sup>123</sup> In that context an interpretative problem may occur, which is already known in the context of Single Supervisory Mechanism (SSM) enforcement. The 'relevant Union law' refers not only to regulations, but also to national legislation transposing directives (thus in that context, in particular to AMLD6).<sup>124</sup> Therefore, where NSAs would enjoy supervisory powers that are the result of the transposition of AMLD6, AMLA could apply those powers itself directly. However, if the NSAs have certain powers that are purely national, in the sense that they do not consist in a transposition of a directive, AMLA must issue instructions to the NSAs. The distinction between national supervisory powers under Union law and purely national supervisory powers may be difficult to apply in practice, as it may not always be clear whether a certain national provision consists in a transposition.<sup>125</sup> The very same difficulty exists indeed in the context of SSM, where the European Central Bank (ECB) is competent to apply national powers for the purposes of prudential banking supervision.<sup>126</sup> The lack of clear criteria to

<sup>120</sup> AMLAR, Article 22(4) and Annex I.

<sup>121</sup> AMLAR, Article 22(4).

<sup>122</sup> AMLAR, Article 22(10), second subparagraph.

<sup>123</sup> AMLAR, Article 6(1), second and third subparagraphs.

<sup>124</sup> AMLAR, Article 5(6). For a critical assessment of the power of AMLA to apply national legislation, see Allegrezza S, 'The proposed Anti-Money Laundering Authority, FIU cooperation, powers and exchanges of information. A critical assessment' (2022) 17-20.

<sup>125</sup> Andreas Witte, 'When Does National Law Transpose a Directive?' in European Central Bank, ESCB Legal Conference 2016 (ECB 2017) 247, 255-257.

<sup>126</sup> Olivier Voordeckers, 'The Uncertain Competence of the European Central Bank to Exercise National Supervisory Powers: An Analysis of the Powers of the CSSF (2019) 64 Bulletin Droit & Banque 7, 14-16; Raffaele D'Ambrosio, 'Single Supervision Mechanism: Organs and Procedures' in Mario P Chiti and Vittorio Santoro (eds), *The Palgrave Handbook of European Banking Union Law* (Palgrave Macmillan 2019) 157, 169; Florin Coman-Kund and Fabian Amtenbrink, 'On the Scope and Limits of National Law by the European Central Bank within the Single Supervisory Mechanism' (2018) 33 *Banking & Finance Law Review* 133, 154-155; Lena Boucon and Daniela Jaros, '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?' (2018) 10 *European Journal of Legal Studies* 155, 167; Andreas Witte, 'When Does National Law Transpose a Directive?' in European Central Bank, ESCB Legal Conference 2016 (ECB 2017) 247,

distinguish between national powers under Union law and purely national powers has been argued to involve a risk of conflicts of competence between the EU and national supervisors.<sup>127</sup> An inventory of national supervisory powers, along with a consistent approach to determine their nature as Union-based or purely national powers, would be needed to achieve legal certainty.

## 5 Interactions with other enforcement authorities

AMLA will be a new element on an already relatively crowded field of enforcement provided at EU level. Due to its different function it will become the centre of gravity as regards the AML/CFT enforcement. However, no less crucial will be its cooperation with EU bodies that have competence in the field, such as the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF), Europol and Eurojust.<sup>128</sup> While the EPPO is competent for the criminal investigation and prosecution of perpetrators of criminal acts affecting the EU's financial interests, OLAF is responsible for the administrative investigation of fraud, corruption, and other offences affecting the EU's financial interests as well as serious misconduct by EU staff members. They are flanked by Europol and Eurojust which are tasked with supporting and facilitating, respectively, police cooperation and judicial cooperation and coordination in the fight against terrorism and serious cross-border crime.

Given their field of work, it is evident that AML/CFT supervisors, including AMLA, may encounter indications of potential criminal offences falling within the remit of those EU enforcement agencies. As a Union body, AMLA is subject to the duty to share information with the EPPO and OLAF, as foreseen in their respective governing regulations. Under the EPPO Regulation, AMLA must inform EPPO without undue delay when it finds indications of criminal conduct in respect of which the EPPO is permitted to exercise its competence.<sup>129</sup> Where AMLA has information relating to possible illegal activity affecting the financial interests of the Union, in particular cases of fraud or corruption, it must transmit that information immediately to the European Anti-Fraud Office (OLAF).<sup>130</sup>

---

255-257; Lucía Arranz, 'Level Playing Field: Towards a More Uniform Application of Banking Legislation' in European Central Bank, ESCB Legal Conference 2016 (ECB 2017) 260, 264; Jo Swyngedouw and Veerle De Vuyst, 'The application of national law by the European central bank to "ensure high standards of supervision": Mission accomplished or mission impossible? A practical experience from the perspective of the national bank of Belgium with the application of the Belgian banking law of 25.4.2014' in Buyle JP (ed), *La loi bancaire: Questions particulières* (Larcier 2015) 29, 41; Gunnar Schuster, 'The Banking Supervisory Competences and Powers of the ECB' (2014) 3 *EuZW-Beilage* 8.

<sup>127</sup>Olivier Voordeckers, 'The Uncertain Competence of the European Central Bank to Exercise National Supervisory Powers: An Analysis of the Powers of the CSSF (2019) 64 *Bulletin Droit & Banque* 7.

<sup>128</sup>AMLAR, recital 81.

<sup>129</sup>AMLAR, recital 48; Council Regulation (EU) 2017/1939 of 12.10.2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') [2017] OJ L283/1, Article 24(1).

<sup>130</sup>AMLAR, recital 48; Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11.9.2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 [2013] OJ L248/1, Article 8(1).

Information sharing with enforcement authorities will be particularly important in the context of joint analyses that may be carried out by FIUs in case of suspicious activity affecting multiple MSs.<sup>131</sup> As part of its responsibility for the effective and consistent cooperation between FIUs, AMLA must not only support, but may also initiate, joint analyses.<sup>132</sup> In that context, the AMLAR sets out specific information sharing duties. Where the results of a joint analysis indicate that there are reasonable grounds to suspect that criminal conduct is being or has been committed in respect of which the EPPO or OLAF could exercise their competence, AMLA must report those results to the EPPO or OLAF.<sup>133</sup> Likewise, if there is suspicion that a criminal offence has been committed that enters into the remit of competence of Europol or Eurojust, the results must be disseminated to Europol or Eurojust.<sup>134</sup> Reporting to Europol and Eurojust is, however, subject to the explicit consent of all FIUs participating in the joint analysis team.<sup>135</sup>

In addition to information sharing duties, the AMLAR also lays down requirements to ensure cooperation between AMLA, EPPO, OLAF, Europol and Eurojust. AMLA has the duty to maintain a close relationship and conclude separate working arrangement with those bodies.<sup>136</sup> Those arrangements must in particular provide for the possibility of posting liaison officers at each other's premises.<sup>137</sup> The need for integration is furthermore reflected in AMLA's governance arrangements, as the General Board in FIU composition may admit representatives of the EPPO, OLAF, Europol and Eurojust, but only in the capacity of non-voting observers in order to discuss matters, which are within the scope of their respective mandates.<sup>138</sup>

Considering these requirements and arrangements, AMLA has the potential of bolstering information-sharing and coordination within the EU's enforcement apparatus against cross-border financial crime. It is too soon to make an informed judgement on the value of AMLA's contribution to the repressive framework of the EU's AML/CFT strategy. A first performance report by the Commission, addressing *inter alia* the interaction between AMLA and the EPPO, OLAF, Europol and Eurojust, is expected by the end of 2030.<sup>139</sup>

## 6 Concluding remarks

The recent establishment of AMLA is part of an ambitious AML/CFT reform package that seeks to enhance the EU's capacity to tackle cross-border financial crime. Two striking features of the reform package are that substantive AML/CFT rules will

---

<sup>131</sup> AMLD6, Article 32.

<sup>132</sup> AMLD6, Article 32(2) and (3); AMLAR, Articles 40 and 42.

<sup>133</sup> AMLAR, Article 41(1) and (3).

<sup>134</sup> AMLAR, Article 41(4) and (5).

<sup>135</sup> AMLAR, Article 41(4) and (5).

<sup>136</sup> AMLAR, Article 94(2).

<sup>137</sup> AMLAR, Article 94(3).

<sup>138</sup> AMLAR, Article 57(4).

<sup>139</sup> AMLAR, Article 102(1)(i).

for the very first time be governed by a directly applicable EU regulation, and that the competence to enforce those roles has been conferred on an EU body with direct decision-making powers. Obligated entities selected for direct AMLA supervision will become subject to a fully-fledged AML/CFT supervisor enjoying a wide array of powers, including investigative powers and the power to impose administrative measures, PPPs, and fines. Yet, the scope of this second feature should not be over-estimated, in the sense that only credit and financial institutions with widely cross-border activities having a high ML/FT risk profile in multiple MSs will be concerned by AMLA's direct supervisory powers, reflecting subsidiarity and proportionality.

As many obliged entities will remain subject to the competence of their NSAs, the establishment of AMLA will not put an end to the model of decentralised AML/CFT supervision. The NSA's supervisory performance will, however, be overseen by AMLA. Despite the limited scope of the direct supervisory mandate of AMLA, its establishment is expected to have a significant regulatory impact, including on non-SOEs, considering its mandate to draft regulatory acts and adopt quasi-regulatory instruments with a view to developing a harmonised supervisory methodology.

AMLA's establishment has the effect of adding a supranational actor to the EU enforcement landscape alongside the EPPO, OLAF, Europol and Eurojust. Information sharing and cooperation requirements as well as governance arrangements may enhance the effectiveness and coordination of the EU's efforts in detecting, investigating, and prosecuting cross-border financial crime.

**Funding** This article is part of the efforts of the National Centre of Excellence in FinTech of the University of Luxembourg, which was funded in part by the Luxembourg National Research Fund (FNR), grant reference NCER22/IS/16570468/NCER-FT.

## Declarations

**Competing Interests** The authors declare no competing interests.

**Open Access** This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

**Publisher's Note** Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.