

AML challenges in the context of AMLA and the Ukraine war sanctions

1. Comprehensive efforts in the EU are unfolding on the long run to address witnessed AML vulnerabilities and the specifics of such a risk

A policymaker welcomed the panel to the important discussion focused on anti-money laundering (AML) in the context of the Anti-Money Laundering Authority (AMLA) and the Ukraine war sanctions. The deficiencies in the current EU legal framework resulted in a legislative package of four pillars including AML regulation, the AML Directive, the establishment of AMLA and the money transfer regulation (which introduces the Financial Action Task Force (FATF) travel rule). A compromise on the money transfer regulation as well as a partial general approach in the Council on the AMLA regulation has been reached and there will be further deliberations on the AML regulation and AML directive, both in the Council and European Parliament.

A speaker from the industry noted that financial crime is another challenge that is a different category of risk to the traditional financial risk given the huge impact it can have. More maturity is needed to explain and manage this type of risk from the institutional and public sector perspectives and to avoid excessive suspicious activity reports being filed in the event of any slight uncertainty.

1.1 Effective consistency, coordination and information sharing across the EU is key for making EU AML arrangements successful

The discussion will focus on where progress has been made in terms of regulation, how the war has impacted work in the AML area and how the effectiveness of the EU framework can be improved. A speaker from the industry stated that AML being a transnational phenomenon meant that the main challenge is to have international rules and implementation to efficiently fight money laundering and terrorism. The Commission's proposal is a step in the right direction towards harmonised rules across Europe and ensuring that all international banks have strong internal control systems that can be applied in all groups.

AMLA is a positive step to ensure that the rules are implemented consistently and that practices across different national authorities and FIUs are harmonised. AMLA will have supervisory powers over riskier entities from the financial sector and this will improve the efficiency of the rules by ensuring consistent implementation across countries. One difficulty is with sharing information, in particular when the information needed to fight financial crime is protected by data

protection rules. It is important that information can be shared even between one banking group. A speaker from the industry agreed that there is a need to develop information systems to ensure there is the ability to share information between private entities and authorities as well as between public authorities in general. The industry requires feedback on the information that is being provided to authorities to ensure that it is effective.

An industry representative stated that they had had to terminate a cooperation with an international small banking entity because they were not able to fulfil the AML requirements according to the regulator. There is a problem on-boarding multinational customers across the group due to different data rules in each country. The uniformity of rules is necessary to properly serve customers. It is necessary that those entities with the less strict AML requirements are able to upgrade their processes to the level of those that are regulated more strictly to ensure cooperation is possible. This operation is made more difficult if the regulation, infrastructure, software and hardware are not unified.

1.2 Further efforts are still required to be up to technology and knowledge challenges, as well as the difficulties raised by value chain complexity and the involvement of large third-party service providers

A regulator noted that areas that had not been sufficiently addressed included outsourcing, the rules on consumer due diligence, beneficial owners and supervisory capacity. The technological advances in outsourcing are becoming faster and there will always be smaller entities in the market that need to outsource due to their lack of resources. Supervisors will require more knowledge and skills to monitor outsourcing, in particular of centralised service providers. The same approach can be used as with the Digital Operational Resilience Act (DORA) for key ICT third parties. Internal audit can create a disproportionate burden for small entities and supervisors, and it is important to not overburden them with disproportionate requirements.

1.3 Practical and effective implementation requires an appropriate phasing in, as well as proportionality and cooperation between the private and public sectors

A policymaker noted that the challenge was that proportionality should not be related mainly to size but rather to risk. An industry representative observed that the second phase of the regulation will need to include patterns and models, as well as ensuring that these are adjusted to be feasible for organisations to achieve. It is necessary to gain feedback from those who have to implement the regulation and ensure there is sufficient time to implement the changes in processes and have official repositories before the industry is obliged to comply.

2. AMLA: large ambitions but delivering faces coordination, resources and capacity challenges

2.1 Capacity building is the first challenge ahead

A regulator commented that AMLA is a good solution because it will have enforcement powers and will build a single rulebook. It sends a message that Europe is taking action to address money laundering. In practice capacity building and resources will be required to ensure that the single rulebook is being complied with at both national and AMLA levels. Special technology will be needed to ensure AMLA can supervise crypto assets. The main issues are the fragmentation between the 65 European regulators in terms of information and supervision and that the system will require strengthening to avoid gaps that could result in failure.

2.2 AMLA adding value should prevent antagonisms emerging by creating cooperation among EU and national public authorities as well as the private sector

A regulator highlighted the fear that the relationship between AMLA, national supervisors and banks will become antagonistic. Supervisors will need to put pressure on institutions to work against that antagonistic relationship to ensure the battle is won in Europe. There will be an overlap in decisions made by the Single Supervisory Mechanism (SSM) and AMLA. A collaborative approach will be required to ensure that everyone acts in accordance with the legislation to ensure that the fight against money laundering and terrorist financing moves forward and is spearheaded by using technology.

2.3 Implementing AMLA should be the first priority for the EU

A policymaker asked the panel for what they wished the negotiators will achieve over the next 12 months as they conclude the AML package. An industry representative wished for adequate financing for AMLA. A regulator stated that a European centre of excellence on compliance and AMLA would support efforts to build capacity at both a national and European level. A regulator believed that a collaborative approach and use of technology is required to raise Europe's game. A regulator wanted to see AMLA using data effectively in terms of supervision. An industry representative requested effectiveness to ensure the endeavour reached the finish line. A regulator wanted uniform interpretation and implementation locally.

3. Improving data and technology

3.1 A data protection Hippocratic oath is necessary to both achieve data sharing improvements without unduly harming privacy

Improving information could be a game-changer in AML and, in terms of where information is lacking and how the interests of information sharing and data protection

could be reconciled, a regulator advised that public authorities should aim to fulfil the principles of the Hippocratic oath: to refrain from causing harm, to only prescribe beneficial treatment according to ability and judgment, and to live an exemplary personal and professional life.

3.2 Help and advice enabling national supervisors to better leverage digital technology and maintain and make available high-quality data would be AMLA's high added value and a priority for policymakers

A regulator stated that in terms of prescribing only beneficial treatment, AMLA should utilise technology to do things more efficiently to ensure certain standards, rather than just using additional inspections which will provide limited value. Electronic IDs can replace the laborious work on physical documents and make identifying those related to politically exposed persons less difficult and laborious. Registers of beneficial ownership cannot be used as a sole provider of information and there is a joint job on information sharing required to ensure that data can be used for corporates. Establishing utilities for sharing information is a political decision but a proper discussion on the trade-offs needs to happen.

3.3 Leveraging technology is not straightforward and is subject to many success factors to deliver effectiveness

In terms of the tension between data sharing and data protection, an industry speaker stated that the ability to use technology to understand who customers are is critical although access to technology is not uniform. The hope for AMLA and AML reform is to focus on measuring effectiveness and the private sector is only one piece of the puzzle. Information needs to be shared via secure channels at authority level with the purpose of stopping illicit activity. This cannot be resolved only at the political level because it will require discussions with experts on data security to determine the right protections and restrictions. Institutions have an obligation to both prevent money laundering and meet customers' expectations that their data is secure.

An industry representative stated that regulations need to be adjusted to allow the exchange of information and if the private sector is not in the circle of information flows it is impossible for the industry to do its job as expected.

3.4 Improving and leveraging data requires deep system design improvements and investments across the board

A policymaker asked for comments on the best use of technology for data sharing. A regulator stated that it will be important for experts to contribute to the design of AMLA because they have operational experience. There is a need to have clear and uniform parameters for feeding the central database to ensure that the flow of information is uniform and information does not overlap, as well as having protections for accessing the data. Artificial intelligence (AI) provides opportunities for solving the problem of sharing information between institutions. The legislative AML package needs to be comprehensive and help all of those in the system.

3.5 Outsourcing is unavoidable but raises challenges to both financial entities, managers and supervisors which remain accountable

An industry speaker commented that their organisation relies on outsourcing within the group, because it is unnecessarily expensive to build all capabilities and solutions in each of the group's entities. The capacity in compliance continued to increase, not only due to the requirements, but because of the increase in false-positive alerts. This issue could not be solved without investment in AI and compliance would likely be an early adopter of these technologies otherwise it would mean more compliance people in the branches.

A policymaker commented that supervisory authorities could view outsourcing as a way of shifting responsibility, whereas the other side suggested it could improve the quality of AML. A regulator observed that almost everything could be outsourced except responsibility. The European banking landscape could not survive without outsourcing, particularly small institutions that cannot develop the production machine.

An industry speaker agreed that responsibility cannot be outsourced and will sit with the obliged entity, so the procedures and controls need to be outsourced at that level. It is counterproductive to restrict categories of activities that can be outsourced or tie this to the issue of responsibility when it is not necessary. With a unified approach the quality of outsourcing will be better. Provided the responsibility is effectively implemented outsourcing should not be a big concern.

4. The measures imposed in the context of the war in Ukraine challenged supervisors' coordination in the EU and globally, and increased the size and complexity of the operational requirements completed by the financial sector

An industry speaker stated that the war had presented an unprecedented challenge from a compliance perspective, acknowledging the impact on the people of Ukraine which could not be separated from the measures that have been imposed. Their organisation has withdrawn from operations in Russia and Belarus from a values standpoint, while keeping services operational in Ukraine in order to stand with the people of Ukraine. The AML programme had to adapt to the movement of people at scale and changes in behaviour.

There has been impressive collaboration between jurisdictions to impose measures on the right actors but it has been complex to implement with the national competent authorities not always ready to provide guidance on this implementation. AMLA should be vested with the authority to provide guidance for the private sector, because sanctions need to move quickly by their nature. Those in the private sector require

instantaneous guidance on how to treat assets, what types of transactions can flow and what is covered by different authorisations and licenses. AMLA could allow financial institutions and the public sector to understand and implement the policy.

4.1 Operationalising the measures specific to each wave of sanctions would require further guidance from supervisors for financial institutions to efficiently and timely adapt internal systems and arrangements

An industry representative agreed that guidance on the implementation of sanctions will be helpful. An internal management system needs to have the right guidance to ensure that transactions are not able to flow into the system inadvertently. With each new wave of sanctions banks have to update their internal systems and ensure they can fulfil the legal requirements. There are people who want assets moved away from Russia or want to change the denomination of investments from roubles. Checks are required to ensure the transactions are legitimate before they proceed which is not an easy task.

4.2 Ukraine war sanctions widens AMLA's role

A regulator noted that AMLA has to supervise entities with respect to their systems and controls with respect to AML, but it is not clear whether this also addresses sanctions. It will be good to have a convergent approach at national level. The skillset required for sanctions checks is similar to that required for checks in relation to AML and every onsite inspection for AML also checks the implementation of sanctions systems and controls. AMLA should be the European supranational authority for the implementation of sanctions, extending that power to supervisory convergence to ensure there is a discussion at European level.