AML:
KEY SUCCESS FACTORS

MARCUS PLEYER

Deputy Director General - Federal Ministry of Finance, Germany

National lessons learnt: establishing authorities to combat financial crime

With the political agreement reached in December 2023/January 2024 on the entire AML package and in particular the Regulation establishing AMLA, we have reached an important milestone after two and a half years of negotiations.

The foundations have been laid to ensure that the European Union improves even further its committed and well-resourced fight against money laundering and terrorist financing. Even if we can congratulate ourselves on the fact that a large part of the legislative work has been completed, we should not stand still. Instead, we must focus on the tasks and challenges that lie ahead of us. The establishment of AMLA, and the work it will perform, are crucial to the success of the EU legislative package. AMLA is the key player that connects national supervisors with each other as well as with FIUs. It bridges the gap between regulatory requirements and implementation in practice. What is needed to achieve this? We need to make AMLA effective and powerful.

In Germany, we have faced, and continue to face, a similar challenge: following our Mutual Evaluation by the Financial Action Task Force, the German government proposed establishing a new federal authority, the Bundesamt zur Bekämpfung von Finanzkriminalität (BBF), known in English as the Federal Financial Crime Agency. This agency is designed to assume a similar key position within Germany's AML system as AMLA will in the EU context. This is a good moment to take stock of a few points that can be considered critical success factors when carrying out a restructuring of this kind.

Involve all stakeholders well before you require their support

Without effective cooperation with the ESAs, the ECB, national supervisory authorities and FIUs, AMLA will not be able to properly fulfil its mission. These relevant stakeholders should be involved at an early stage, before they have finalised their role in the new AML ecosystem for themselves. Furthermore, for the establishment of AMLA, the AMLA task force which has already been set up at the European Commission should be mirrored by a task force in the future AMLA host country. This task force in the host country would have to include not only representatives of the government and the city, but also the owner of the headquarters building, for example.

Our experience in Germany has shown that the authorities needed for cooperation are much more willing to participate if they themselves have also been involved in weighing up alternatives, calculating costs and formulating common goals.

Prioritise the authority's initial work and gradually expand to the full set of tasks

The development of the BBF was approached in stages from the outset, because one thing was clear: you cannot (successfully) do everything at once. The same applies to AMLA: the implementation and technical standards, for example, are crucial to ensuring that the entire set of rules works. AMLA's key new power, the direct supervision of cross-border and high-risk institutions, will also attract particular attention.

The step-by-step approach and clear prioritisation of tasks is key, because if everything is tackled at once with limited resources, the authority's teething troubles will increase. In practice this means: act agilely, take on tasks in small bites, and adapt to new circumstances at short notice.

> **AMLA needs to be future-proof: a successful authority relies on well-trained and motivated staff.**

Focus on the key success factors: talent, skills and technical support

AMLA needs to be future-proof. How do we achieve this? An authority stands or falls with its people, who must be motivated and well-trained. Of course, the attractiveness of the AMLA location will play a decisive role: if the quality of life is good in the host city, you can also attract high-quality staff. Beyond that, AMLA will need to provide an excellent organisational and human resources infrastructure. This ranges from modern spaces for interactive work to project structures beyond rigid boundaries of responsibility. It includes a work culture based on employee empowerment that relies on autonomous work based on facts and arguments, and a modern leadership culture. This is the only way we will attract the national expertise from all corners of the EU that AMLA needs, including HR and IT specialists and, of course, anti-money laundering professionals. Last, but definitely not least: AMLA's success will also depend on the availability of the latest and smartest digital technology to fight money laundering and terrorist financing.

Setting up AMLA is no longer about drafting a wish list, but about making hard decisions on its focus and priorities. Let's share our knowledge and learn from each other to make AMLA a success.

ANDREAS SCHIRK

Head of Division, Prevention of Money Laundering and Terrorism Financing - Austrian Financial Market Authority

Preparing for joint AML/CFT supervision in the EU

As the work of the EU co-legislators is slowly coming to an end, having reached a deal on the AML package after years of negotiations, the preparatory work of supervisors is quickly picking up. National supervisory authorities (NCAs) and FIUs will play a key role in preparing the ground for AMLA and the future AML supervisory model in the EU to become successfully operational.

Joint preparation is key to set up the future AML supervisory model successfully.

Preparation needs to happen on both national and Union levels. First, NCAs need to look inwards to get (themselves) ready for the application of the EU's AML/CFT single rulebook and the new institutional architecture in AML/CFT supervision. This process is critical and involves all dimensions and levers of an organisation or unit – first and foremost its staff, its governance arrangements, its systems and processes, and importantly its culture. Second, supervisory authorities need to look outwards beyond the borders of their own organisation to coordinate their preparatory efforts and define common priorities for taking on the tremendous job ahead in order to establish a common ground that AMLA can hit running.

When it comes to the preparatory (home)work of NCAs to get ready for AMLA, the Financial Market Authority (FMA) – similar to several other NCAs – has established a project-like structure to manage the transition to the EU's future AML/CFT supervisory model and to enable the necessary supervisory transformation. In a first phase, this includes, inter alia, a gap analysis and impact assessment from the AML package, a review of the FMA's current internal operating model, and an outlook at relevant changes occurring in financial services and supervision from innovation and technology. It will be crucial for NCAs to understand AMLA's role, and vice-versa, in order to avoid both redundancies and supervisory gaps but instead foster supervisory integration. Equally important, NCAs have to engage also with industry and other stakeholders as well as the general public to build and maintain trust and credibility in the new system and their role within it. In this context, a lot can be learned from the transitions to the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM).

> **Joint preparation is key to set up the future AML supervisory model successfully.**

When it comes to the outward looking part of the preparation, the FMA – together with many other NCAs – has initiated the creation of a forum of EU AML/CFT supervisors under the umbrella of the EBA in order to exchange on shared challenges and discuss the practical implications of the shift to the new institutional set-up. In terms of main priorities, supervisors identified the following topics as the most pressing ones: human resources (i.e. having sufficient highly qualified staff in both NCAs and AMLA), data collection and management (i.e. collecting and sharing/reporting relevant data with the necessary quality and in collaborative system), and supervisory methodologies, practices and processes (including notably risk assessments).

To this end, the EBA and NCAs have already been taking stock of the data currently collected from supervised entities across Member States as well as of the methodologies and practices applied for the purpose of AML/CFT risk assessments and related supervisory tasks. The outcome of this work should provide AMLA with a solid foundation for its own risk assessment. And similar exercises on the other main joint priorities will follow suit. This approach of joint preparation early on should foster broad engagement of authorities across the EU and help both NCAs and AMLA to get the new supervisory model up and running.

Joint prioritisation will also be key for AMLA to play its regulatory role successfully. AMLA will have to deliver many regulatory products (such as technical standards or guidelines specifying how the common AML/CFT rules are to be applied on the ground) within quite a short timeframe. Some of these deliverables cover similar ground as the existing guidelines etc. issued by the EBA, others are completely new. Again, AMLA will likely need to build on the preparations by NCAs under the EBA's steer and sequence its regulatory work prioritising those deliverables where no common standards exist and which are at the core of joint supervision.

In conclusion, a staggered approach following a clear prioritisation of tasks is key for AMLA to succeed, in particular in the first phase of limited resources. What is more, the SSM and the SRB have shown how important broad inclusion of the authorities in the Member States is when setting up a new supervisory model. Early buy-in of national supervisors will be key for building up the necessary capacities and setting the scene for effective and sustainable cooperation – we should seek to learn from previous experiences in this regard.

KENNETH FARRUGIA

Chairman, Financial Intelligence Analysis Unit, Chief Executive Officer - Malta Financial Services Authority (MFSA)

AMLA and digital euro – Some reflections from Malta

Today's Europe fits within a global movement towards increasing digitisation across all fields of everyday life and our financial system is at the very pinnacle of this constant metamorphosis. The European Union, its institutions, and national authorities are operating on multiple fronts, with new legislative and regulatory frameworks being designed to ensure a stable future and monetary initiatives aimed to maintain the relevancy of the euro. This article delves into the challenges related to some of the major changes on Europe's horizon, namely the implementation of a new Anti-Money Laundering Authority (AMLA) and the potential issuance of a digital euro, all within the context of a continuously developing technological landscape.

The transition to AMLA

The establishment of AMLA is a landmark move towards the Europeanisation of the Union's financial regulation, specifically with regards to AML/CFT. The Authority is intended to enhance the effectiveness of the EU's AML/CFT framework. Moreover, AMLA will continue on the framework that has been built through the European Banking Authority's (EBA) efforts towards curbing ML/FT from a regulatory perspective.

The EBA is currently the sole European Supervisory Authority vested with a mandate towards, among other things, leading and developing AML/CFT policy, fostering effective cooperation between EU national authorities, and monitoring the implementation of EU AML/CFT policies and standards. This mandate will be handed over to AMLA upon its establishment. Imperative work is currently being undertaken by supervisory authorities in preparation for this transition. Specific working group discussions and exercises are being undertaken at EU level to ensure that AMLA hits the ground running.

The development of new and existent guidelines and the provision of expertise in specific preparatory exercises motivated by this transition assist AMLA's implementation. At this early stage, the Malta Financial Services Authority (MFSA) and the Financial Intelligence Analysis Unit's (FIAU) cooperation with the EBA and other member states' national authorities is vital. This preparatory cooperation, which builds upon past efforts by both the FIAU and the MFSA to strengthen cooperation with counterpart authorities, will need to be sustained and deepened further once AMLA starts its own direct and indirect supervision alongside national supervisory authorities. Hence, both the FIAU, as an AML/CFT supervisor, and the MFSA, as a prudential authority, are now preparing their internal organisations to ensure their ability to effectively cooperate with AMLA, respectively. Notwithstanding, the implementation of another European agency, its independence and autonomy, and its overall effectiveness will bring familiar challenges that characterise both the national and European-level context.

The digital euro

The digital euro is another major initiative indicative of the EU's direction towards its future. The EU has shown its intention to provide its citizens with contemporary payment means. The European Central Bank (ECB) has published its research findings and is now in the preparation phase of its digital euro project, laying down its foundations for potentially issuing the digital euro. However, while the added financial flexibility provided by this Central Bank Digital Currency will benefit financial inclusion and development, it may pose concerns related to how it is controlled. As the digital euro becomes a reality, concerns about data privacy are coming to the forefront.

Striking the right balance between preserving user privacy and enabling effective mitigating measures will be a delicate task making it imperative for Europe to devise strategies that safeguard privacy while also protecting its citizens from the adverse effects of financial crime.

> **The collaborative efforts of supervisory authorities, both at national and EU levels, will shape the future of financial modernisation and regulation...**

Conclusion

The harmonisation of AML/CFT regulation, adaptation to a Digital Euro, safeguarding data privacy, and fostering EU-level cooperation are pivotal tasks that demand careful planning and execution. The implementation of AMLA and the digital euro are two major EU initiatives that highlight the importance of finding the right balance between innovation and security. The collaborative efforts of supervisory authorities, both at national and EU levels, will shape the future of financial modernisation and regulation, determining how effectively the EU protects its citizens from financial ill-doers while embracing digital innovation.

ANTE ŽIGMAN

President of the Board -
Croatian Financial Services
Supervisory Agency (HANFA)

Artificial Intelligence's role in detecting AML risk

There is a growing expectation that the use of AI will revolutionize AML efforts by improving accuracy and efficiency of detecting and preventing suspicious activities. There is no doubt that AI can automate many of the manual tasks that currently take up precious human hours in AML functions, such as transaction monitoring and customer due diligence. This can free up human resources for other critical tasks, and reduce the time required for compliance reviews, allowing financial institutions to respond to potential threats faster.

AI has already found its way into CDD, KYC, efficient transaction monitoring, suspicious activity reporting (SAR), and automated risk assessment. AI uses advanced algorithms and machine learning (ML) techniques to detect suspicious activity faster and more accurately than ever. By using AI, there is vast potential for financial institutions to quickly identify potentially suspicious transactions and take action to mitigate risk.

ML changes the modelling paradigm significantly by switching from classical, simple hypotheses and based mathematical methods to a modelling method that is based on learning algorithms, which allow for accurate predictions based on even highly non-linear and complex data. Simply put, AI can help identify previously unknown risks and improve the overall accuracy of AML programs.

However, the human factor will play an important role in proper AI implementation. While AI can automate many AML processes, human expertise is still required to make decisions based on AI-generated insights. Any AI deployed by the industry or by supervisors will depend heavily on the quality of training data. One more responsibility of the human factor in governance is to make sure that AI models follow the law and work in a way that is consistent with relevant legal provisions. AI systems are designed and programmed by humans to perform specific tasks and make decisions based on the data and algorithms provided to them. While AI systems can learn and improve their performance over time, they still operate within the parameters set by human factors.

AI should be seen as a combination of human and machine intelligence.

In December 2023, after months of intensive trilogue negotiations, the European Parliament and Council reached a political agreement on the Artificial Intelligence Act. The role of the AI Act is to make sure that AI systems used in the EU are safe, transparent, traceable, non-discriminatory, and environmentally friendly. AI systems should be overseen by people, rather than by automation, to prevent harmful outcomes. And privacy and data protection, as well as the prevention of discriminatory outcomes, are and should be top priority for AI usage.

> **AMLA as a central EU AML hub should assume a significant role on implementation of AI in AML.**

According to the new AI Act, member states will need to ensure that national competent authorities are provided with adequate financial and human resources to fulfil their tasks under this Regulation. In particular, national competent authorities will need to have a sufficient number of personnel permanently available whose competencies and expertise include an in-depth understanding of AI technologies, data and data computing, fundamental rights, health and safety risks, and knowledge of existing standards and legal requirements. The new rules will establish obligations for providers and users depending on the level of risk from artificial intelligence.

While many AI systems pose minimal risk, they still need to be assessed. In short to mid-term, even large financial institutions may struggle to find qualified personnel who can effectively (and safely) leverage AI to improve AML efforts or enhance their overall business models. Supervisors will be responsible to assessing the way the industry will apply AI and machine learning to their AML processes. The challenge to find and retain qualified staff will be even greater for supervisors.

AMLA as a central hub for AM/CFT at the EU level and as a direct supervisory body for a certain number of EU obliged entities should assume a significant leading and coordinating role in the proper development, implementation, and supervision of AI in AML. Of course, this can only be done in stages. Once up and running, AMLA should scan the current technological set-up (including the use of AI) in the AML/CFT field by the industry and supervisors and facilitate discussion and exchange of opinions on the best solutions and approaches. There are different practices and applications of AI in member states. There is an even greater difference between the available qualified human capacities with expertise in AI technologies.

AI expertise training and education of supervisory personnel should have a priority flag in the near future and AMLA`s role is crucial in this process. AMLA can play a vital role by assisting and leading our common effort to find and scale up appropriate AI tools that we can all use at the EU level.

JEAN HILGERS

Senior Advisor -
Deloitte Belgium

What are the key success factors for AMLA?

The recently adopted AML package provides for the creation of a new European authority for countering money laundering and financing of terrorism called the AMLA and a new AML/CFT supervisory system. While the EU co-legislators are yet to decide on the location of AMLA, reflections can already be made on what will be needed to make the AMLA successful.

Setting the scene: Reasons behind the creation of the AMLA and its roles and responsibilities

Money laundering and the financing of terrorism do not stop at national borders. This is especially true for a single market such as the European Economic Area. As such combatting ML/FT requires a seamlessly integrated EU AML/CFT supervisory system.

The current AML/CFT supervisory framework unfortunately does not reach this level of integration due to sizeable shortcomings:

- The quality and effectiveness of EU domestic AML/CFT supervision are uneven, displaying significant variations in resources, regulatory powers, supervisory practices and intensity of cooperation across Member States.

- There is a home country bias, which undermines the equal treatment of obliged entities and creates supervisory and regulatory arbitrage;

- The territorial nature of the AML/CFT supervision impairs the effective supervision of multinational groups; and

- Risk mapping and risk-based supervisory practices are fragmented and have a national focus.

These shortcomings are reminiscent of prudential supervision flaws witnessed before the 2008 financial crisis, which led to the creation of the ESAs and the SSM. Considering this, it is not unsurprising that the EU has opted for a similar solution, namely the creation of a new EU-wide mechanism of AML supervision centered around a new EU body– the AMLA.

While it will share many similarities with the EU supervisory mechanisms created before it, AMLA will nonetheless be distinguished by the plurality and diverse nature of its mandate: direct supervisor of high risk and cross-border financial institutions, gatekeeper of effective domestic supervision, standards setter, FIU's coordinator, facilitator, and cooperation enhancer,..

AMLA to overcome multiple challenges to create a single supervisory culture.

What does it take to make the AMLA a success?

While only time will tell whether the AMLA will live up to expectations, some drivers will be key for the authority to perform successfully:

- In its policy work, which will undoubtedly be its earliest task, AMLA will have to strike the right balance between exhaustiveness and clarity of rules, on the one hand, and flexibility and a risk-based approach, on the other, to ensure the future-proof nature of regulation in a constantly evolving field.

- As a cross-border direct supervisor, AMLA will need to anchor its credibility by adopting a well-designed risk-based approach based on the deployment of modern supervisory tools and methods (qualitative and quantitative reporting based on insightful structured and unstructured data, AI-based digital research and analytical tools, efficient off and on-site JST supervisory cycle, joint deep dives and cross-border analyses,..) , in close cooperation with national stakeholders.

- The AMLA will have to instill a genuine common supervisory culture aimed at interpreting and applying the single rulebook the same way – in a proportional manner, given the diversity of obliged entities across member states. Based on the lessons learned from the SSM experience, this will probably be an iterative process of progressive fine-tuning requiring to become knowledgeable with national and sectoral specificities.

- The authority should foster a common intelligence culture, whereby FIUs will exchange and cooperate more intensively through updated tools (e.g.: FIU.net) while adhering to the highest standards of analysis and research.

- To ensure the buy-in and active cooperation of national authorities, AMLA will have to provide support and assistance to national supervisors and FIUs , so as to be regarded as an actual value-added partner in their daily work. AMLA governance should also ensure that national authorities' voices are sufficiently taken on board in the decision-making process.

- AMLA will have to foster intense cooperation and information exchange with prudential authorities, as prudential and AML/CFT supervision are inherently and explicitly linked.

How can obliged entities get to grips with the new AML/CFT supervisory system?

Based on the lessons learned from 10 years SSM, directly supervised obliged entities can expect AMLA to be pro-active ,challenging, risk-oriented and holistic in its supervisory process, assessing how they prevent ,manage and mitigate AML/CFT risks through high standards methodologies and processes , consistent with the latest regulatory requirements and supported by highly skilled staff equipped with the latest digital resources. It will be key for them to revisit their whole AML/CFT governance, risk management framework and allocated resources accordingly, to ensure timely compliance.

AYMERIC PONTVIANNE

Head of Economic Analysis - Commission Nationale Informatique & Libertés (CNIL)

A balance between AML-CFT and data protection: the case of digital euro

The applicable regulatory framework for anti-money laundering and terrorist financing (AML-CFT) includes broad and far-reaching obligations for obliged entities to identify and know their customers, monitor transactions undertaken and report on suspicious ones. Such measures cover all persons using their services. It is, therefore, useful to address the interplay of this framework with the rules of protection of privacy and personal data, as well as their concrete application on the ground, including in the interest of legal certainly for obliged entities.

The European Data Protection Board (EDPB) is the views that, while the AML-CFT framework has to be compatible the rights to privacy and data protection enshrined in Articles 7 and 8 of the Charter of the Fundamental Rights of the EU, a closer articulation between the two set of rules would benefit, as far as relevance and accuracy of data are concerned of example, both the protection of personal data and the efficiency of the AML-CFT framework. Such a review has been started at the occasion of the discussion of the AMF-CFT package and needs to be continued for level 2 and 3 acts, with a close cooperation between the EDPB and the Anti Money Laundering Authority (AMLA).

Against this background, the current legislative discussion on digital euro particularly illustrates the merits of a right balance between AML-CFT policy objectives and the protection of data and privacy in EU law.

The data protection authorities in Europe are the views that privacy and data protection will be a key factor of success for the digital euro. According to the ECB public consultation, finalized in 2021, confidentiality will be the most important feature for forthcoming digital euro users. Moreover, the value added of a digital euro, which shall be designed as close as possible to cash, in a highly competitive payments landscape, resides mainly in its privacy properties.

Against this background, the current draft regulation establishing a digital euro contains a specific AML-CFT regime for offline proximity payments, for which monitoring would only take place for funding and defunding of the wallet and not transaction by transaction, whereas the online payments, based on an account, would be fully transparent to the financial intermediaries to the first euro, namely for AML-CFT monitoring purposes.

For the data protection authorities, the absence of a privacy threshold for low-value online payments, under which no tracing of individual transaction shall occur, is a concern for the confidentiality of the day-to-day transactions of EU citizens, as compared to the privacy preserving features of cash. The AML-CFT risk profile of such transactions is currently undetermined, as it depends of the actual design of the digital euro, still to be further specified. This is clearly stated by FATF recommendations on virtual assets.

> **The absence of a privacy threshold for low-value online payments, under which no tracing of individual transactions shall occur, is a concern.**

The exclusion of such a threshold from the outset reveals therefore an implicit, but real, unbalance between different policy objectives, which shall be corrected by the colegislators.

As a matter of fact, the AML-CFT risk profile of low-value online transactions can be mitigated, during the design phase, by appropriate safeguards, so as to make it "low risk". The specific AML-CTF regime for digital euro offline payments could thus be extended to such transactions.

As for the determination of the cap for offline transactions, the appropriate level of a privacy threshold for online payments would be set by way of delegated act. In this regard it would be of paramount importance that AMLA and EDPB cooperate closely upstream to provide the Commission with one common recommendation, reflecting the right balance between privacy and data protection, on one hand, and AML-CFT objectives, on the other.

The overall objective of the EU institutions should be the elaboration of a digital euro "privacy and data protection by design", with recourse to a mix of privacy-enhancing technologies, decentralized architectures and local processing and storage operations. What a success, if the EU establishes a standard for a central bank digital currency (CBDC) carefully protecting rights and freedoms, including for the cross-border transactions with third countries.