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The EU's anti-money laundering policy in the banking sector

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Money laundering is the means by which criminals seek to distance criminal proceeds from their source, and in doing so legitimise those proceeds. The annual financial flows due to money laundering are estimated at trillions of euros worldwide, and hundreds of billions within the EU. Most of these sums pass at some stage through the banking system. As terrorist organisations are also funded using techniques similar to money laundering, measures to combat money laundering and terrorist financing use similar policy tools.

The EU has had an anti-money laundering (AML) directive in place since 1991. The directive has been updated four times, most recently in 2018. Despite extensive international cooperation and increasingly sophisticated EU legislation, money laundering remains a significant issue. The Commission, the key player at EU level, has the role of developing and enforcing AML rules in close cooperation with the European Banking Authority and the relevant authorities in the EU Member States. It is the responsibility of the Member States to apply and enforce the AML rules by enacting them in national legislation and prosecuting money laundering offences.

In the context of renewed emphasis by the Commission, the Council and the Parliament on the need to review and consolidate the EU's policy and practice on AML and combating the financing of terrorism, the European Court of Auditors has launched an audit of the effectiveness of the EU's efforts to combat money laundering in the banking sector. We will focus on the transposition of EU legislation in Member State law, the management of risks to the internal market, coordination among national and EU supervisory bodies, and the EU's action to remedy breaches of its AML law at national level.

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Money laundering – a significant global threat

Money laundering – bringing criminal gains into the regular economy

Money laundering is the practice of “legitimising” the proceeds of crime by filtering them into the regular economy to disguise their illegal origin.

It is difficult to estimate the scale of money laundering, because by its very nature the activity is not disclosed unless detected. However, it is increasingly global, with criminals often seeking to launder money where controls are weakest, often far from the source of the funds. The UN Office on Drugs and Crime estimates that the equivalent of 2.7 % of the world’s GDP is laundered each year¹. Within Europe, Europol estimates the value of suspicious transactions in the hundreds of billions of euros – the equivalent of 1.3 % of the EU’s GDP in 2014².

Money laundering can be traced through a series of stages. The initial stage is **placement**, where illegal proceeds are introduced to the financial system, often broken up into smaller amounts. The second stage is **layering**, where the funds are moved around or converted to disguise their source. Finally, **integration** describes the stage in which criminals spend or invest the laundered proceeds in the legitimate economy (see [Figure 1](#)).

Money laundering can occur right across the economy, from gambling to commodity trades and property purchases. However, at some stage launderers usually need to use the banking system, particularly when layering illegal proceeds. The most recent Eurostat figures³ showed that over 75 % of suspicious transactions reported in the EU were disclosed by credit institutions in more than half of the Member States.

A threat related to money laundering is terrorist financing, which involves the supply of funds to terrorist organisations, very often across international borders. In some ways, terrorist financing is the reverse of money laundering, as quite often small sums of legitimate proceeds are pooled and put to use for terrorist activity. Since both activities involve illegal financial flows, however, they are generally dealt with under the same legislative and security headings.

Figure 1 – How money laundering takes place



Source: ECA, adapted from Financial Action Task Force (FATF) website.

International efforts to stop making crime pay

National AML programmes (measures and schemes to prevent and punish money laundering) go back to the 1970s. Globally, the key body in this regard is the inter-governmental Financial Action Task Force (FATF), which was established by the G7 in 1989 and is based in Paris. The 39 members of the FATF include the United States, Russia and China, as well as the European Commission and 14 EU Member States.

The FATF sets standards and promotes effective action for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. Its guidance now covers a wide range of preventive measures for financial institutions, as well as the recommended powers of regulators, supervisors and law enforcement bodies. It facilitates the production of 'mutual evaluation reports' (MERs), a system of periodic peer reviews among its members to assess how well its standards and recommendations are being put into practice.

In 1991, building on the FATF standards, the EU adopted an anti-money laundering directive (AMLD) to prevent criminals from taking advantage of the free movement of capital in the internal market, and to harmonise the Member States' efforts to tackle money laundering. The EU has since updated the AMLD four times, and strengthened the framework through other criminal legislation.

Prosecution for money laundering offences in the EU is at the discretion of Member States, which apply varying prosecuting standards and penalties. Of the other FATF countries, the United States generally takes a more punitive approach to enforcing money laundering rules and penalties.

State of play – what will the EU do next?

In the EU, there is a renewed policy focus on fighting money laundering to preserve the integrity of the internal market and the stability of the EU financial system.

In 2017, Europol (the EU's law enforcement agency) highlighted the enormous scale of money laundering in the EU⁴. A number of recent high-profile scandals, particularly in the banking sector, have led to renewed calls for more coordinated EU action.

In December 2019, the [Council issued a set of conclusions](#)⁵ in which, among other things, it called on the Commission:

- to prioritise assessing the current legislative shortcomings in terms of information exchange and cooperation,
- to consider consolidating the legislation into a single regulation (which, unlike the AML Directive, would be directly applicable in Member States),
- to look into conferring specific responsibilities and powers on an independent EU supervisory body with direct powers over institutions used for money laundering.

The new Commission has responded by declaring AML a priority. On 7 May 2020 it published a communication entitled “[Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing](#)”⁶ which builds on six pillars:

- **Ensuring the effective implementation of the existing legal framework.** The Commission will continue to monitor closely the Member States’ implementation of the EU rules.
- **Establishing an EU single rulebook.** Member States tend to apply current EU rules in an uneven fashion, and diverging interpretations of the rules lead to gaps, which can be exploited by criminals. The Commission will propose a more harmonised set of rules in the first quarter of 2021.
- **Setting up EU-level supervision.** Currently it is up to each Member State to supervise the EU rules; as a result, gaps can develop in how the rules are applied. In the first quarter of 2021, the Commission will propose the setting-up of an EU-level supervisor.
- **Establishing a support and cooperation mechanism for financial intelligence units.** The FIUs in Member States play a critical role in identifying transactions and activities that could be linked to criminal activities. In the first quarter of 2021, the Commission will propose the establishment of an EU mechanism to help further coordinate and support the work of FIUs.
- **Enforcing EU-level criminal law provisions and information exchange.** Judicial and police cooperation is essential to ensure the proper exchange of information. The private sector also plays a role in fighting money laundering and terrorist financing. The Commission will issue guidance on the role of public-private partnerships to clarify and enhance data sharing.

- **Strengthening the international dimension.** The EU is involved in the FATF and in defining international standards in the fight against money laundering and terrorist financing. The Commission has updated its methodology for classifying non-EU countries with shortcomings in their arrangements for countering money laundering and terrorist financing that put the Single Market at risk.

Current legal framework

The EU adopted the first AML Directive in 1991. Over the years, the Directive has become steadily wider in scope.

The latest, fifth version of the AMLD is Directive (EU) 2018/843 of the European Parliament and the Council of 30 May 2018. Member States were required to enact it in national law and implement its provisions no later than 10 January 2020. Among other things, it now covers:

- record-keeping by both financial institutions and non-financial parties such as lawyers, notaries, accountants and estate agencies;
- full definitions of a range of criminal activities;
- requirements for the identification, tracking, seizure and confiscation of property and the proceeds of crime;
- measures to combat terrorist financing;
- transparency in the transfer of funds;
- requirements for the sharing of information on money laundering among Member States.

Other EU laws complement the AMLD:

- the Wire Transfer Regulation⁷, which focuses on helping law enforcement authorities to track down terrorists and criminals by making transfers more transparent;
- the Directive on combating money laundering by criminal law⁸, which ensures that there are similar definitions of AML offences across the EU, as well as minimum penalties;

- o technical standards, opinions and guidelines drawn up by one or more of the three European supervisory authorities, being the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA).

Roles and responsibilities

In Member States

In the Member States, designated AML supervisory bodies have the job of ensuring that financial and other institutions covered by the AML rules comply with their obligations, and taking corrective action if they do not. If they suspect, or have reasonable grounds to suspect, that a transaction involves money laundering, financial institutions are required to report to their Member State's financial intelligence unit (FIU), which may share their analysis with law enforcement agencies or other FIUs (inside or outside the EU) and use them to generate and disseminate information on patterns of money laundering.

EU level

The Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) coordinates the EU's AML and CTF policy. It is responsible for highlighting risks to the EU's financial system and making appropriate recommendations. It is also in charge of policy development and of ensuring that the EU legislation is enacted and implemented in Member States.

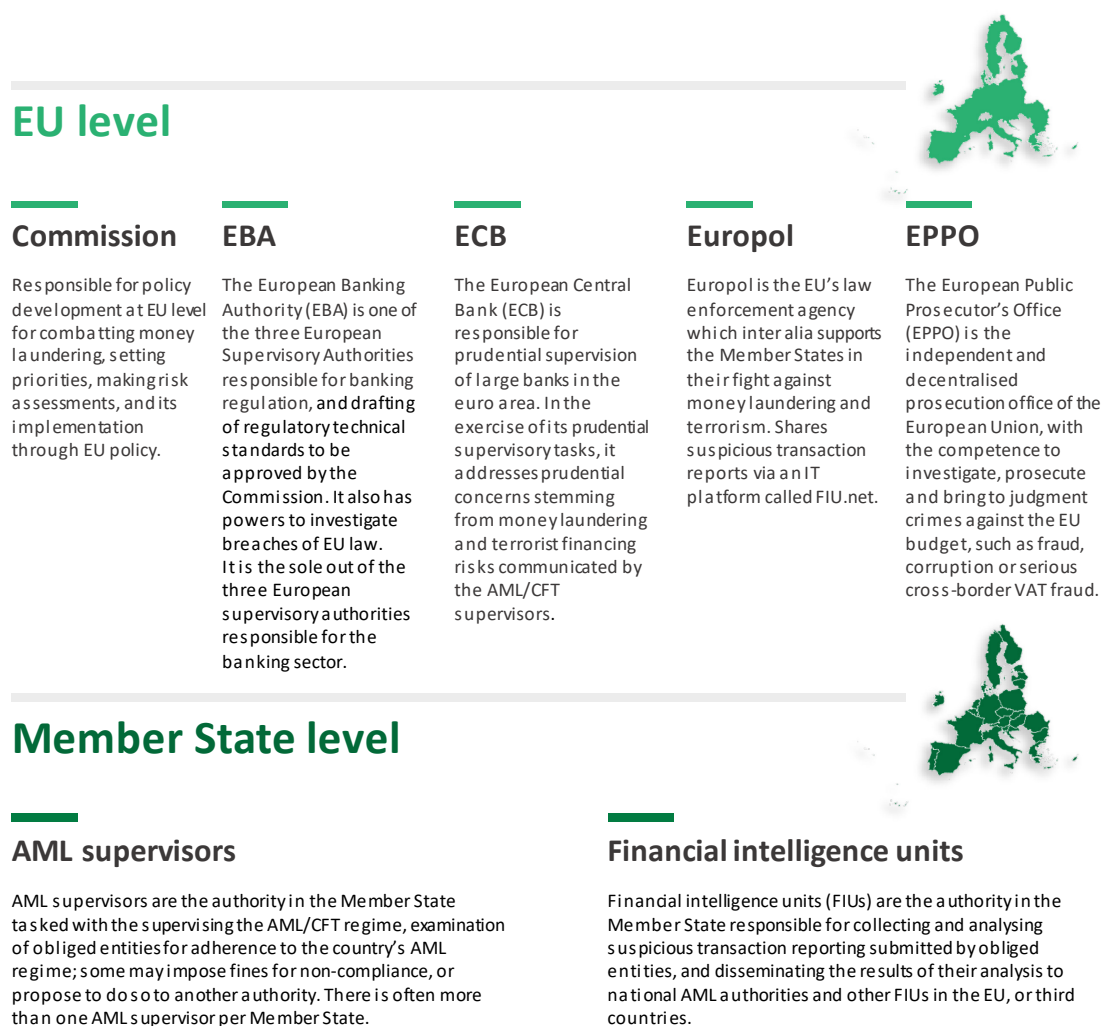
The European Banking Authority (EBA) has responsibility for leading, coordinating and monitoring the EU financial sector's fight against money laundering and terrorist financing. This includes the drafting of regulatory instruments. It also has powers to investigate suspected breaches of EU law reported by supervisors in this regard.

The European Central Bank (ECB) is responsible for prudential supervision of large banks in the euro area. In the exercise of its prudential supervisory tasks, it addresses prudential concerns stemming from money laundering and terrorist financing risks communicated by the AML/CFT supervisors.

Europol supports Member States in their fight against money laundering and terrorist financing. Among other roles, it operates an IT platform, known as FIU.net, on which Member States can share financial intelligence within the EU. FIU.net is in the process of being transferred to the Commission.

Figure 2 identifies the key players in AML and CTF.

Figure 2 – Key AML/CTF players in the EU



Source: ECA

Focus of the audit

Despite the succession of EU AML directives and international cooperation, money laundering and terrorist financing remain a significant threat to democracies. Given the public interest in the subject matter, also reflected in the Council's December 2019 Conclusions setting strategic priorities for countering money laundering and the financing of terrorism, we have included this audit as a high-priority task in our annual work programme for 2020.

The purpose of the audit is to assess whether the EU's action in the fight against money laundering in the banking sector is effective. In particular, we will examine whether:

- the Commission assesses the transposition of EU legislation into Member State law;
- known AML risks are assessed and communicated to banks and national authorities involved in fighting money laundering;
- the available AML information for supervisory activities is shared among the stakeholders at EU and Member State level;
- effective and timely action is taken in response to suspected breaches of EU AML law in Member States.

Since we identified the issues underlying these areas of enquiry before the audit work commenced, they should not be regarded as audit observations, conclusions or recommendations.

The fieldwork for this audit will address the Commission, the ECB and the EBA.

We expect to publish the audit report in the first half of 2021.

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The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

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- ¹ “Estimating illicit financial flows resulting from drug trafficking and other transnational organized crime”, UNODC, October 2011.
 - ² “From suspicion to action – Converting financial intelligence into greater operational impact”, Europol, September 2017, p. 26.
 - ³ “Money laundering in Europe”, Eurostat, 2013 edition.
 - ⁴ Europol, op. cit., September 2017.
 - ⁵ Council of the EU, “Money laundering: Council sets strategic priorities for further reforms”, press release, 5 December 2019.
 - ⁶ European Commission, “Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing”, C(2020) 2800 final, 7 May 2020.
 - ⁷ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, pp. 1-18).
 - ⁸ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, pp. 22-30).

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