

BARÁTKI, LÁSZLÓ ATTILA

International dimensions of AML/CFT supervision in Hungary¹

Supervision against money laundering and terrorist financing development of the background

Over the last thirty years, the European Union has developed a solid regulatory framework for the fight against money laundering and terrorist financing, underpinned by the case law of the Court of Justice of the European Union.² The EU rules have a broad scope and go beyond the international standards adopted by the Financial Action Task Force (FATF). The range of businesses and professions covered by these rules has steadily increased compared to the previous period. The data shows that, unfortunately, during the Covid 19 pandemic, money laundering offences have continued to increase. Further disruptions are caused by the outbreak of the Russian-Ukrainian war, which in many cases also significantly complicates and hinders international cooperation in the fight against ML/TF. A study carried out by the EU Commission shows that criminals take advantage of every opportunity to carry out illegal activities to the detriment of society and the economy.³ To this end, in its *Communication Towards a better implementation of the EU framework for combating money laundering and*

¹ This study is the English version of the presentation delivered at the conference 'The Science and Practice of Law Enforcement' held in Pécs 27.06.2024.

Source: <https://m2.mtmt.hu/frontend/#view/Publication/SmartQuery/1127/>

² The Court of Justice of the European Union has recognised that the objective of combating money laundering is linked to the protection of public order and may justify restrictions on the fundamental freedoms guaranteed by the Treaty, including the free movement of capital. Restrictions must be proportionate (see Panama Papers, Jyske Bank Gibraltar, C 212/11 and Lhu Zeng, C 1 90/17). Source: <https://www.icij.org/investigations/panama-papers/>

³ Source: <https://net.jogtar.hu/jogszabaly?docid=a20k0058.com#lbj2idf28a>

terrorist financing and its accompanying report of July 2019,⁴ the European Commission has identified the measures needed to ensure a comprehensive EU framework for the fight against money laundering and terrorist financing.⁵

These include a more effective implementation of existing rules, a more detailed and harmonised rulebook, the establishment of high quality and consistent supervision by delegating specific supervisory tasks to an EU body, the interconnection of central bank account registers and the development of a stronger mechanism to coordinate and support the work of the Financial Information Units (FIUs). To achieve these goals, the EU has also established a new comprehensive system for the protection of whistleblowers, which was transposed into EU norms in December 2021, complementing the existing rules on whistleblower protection in the 4th Money Laundering Directive. The system will strengthen the ability of national and EU authorities to prevent, detect and deal with breaches of rules on, among other things, the fight against money laundering and terrorist financing. In this context, the Commission intends to implement a comprehensive anti-money laundering and counter-terrorist financing policy that is tailored to the specific threats, risks and vulnerabilities that the EU is currently facing.⁶ The need to establish a supranational supervisor to achieve all these objectives was already confirmed in the July 2019 report package. An analysis of a number of money laundering cases has revealed significant shortcomings in jurisdictions with regard to the risk management of credit institutions, in the activities of AML/CFT supervisors, including FIUs, and of prudential supervisors.

⁴ EU Commission Communication 2020/C 164/06 on an action plan for a comprehensive EU policy to prevent money laundering and terrorist financing. Source: <https://net.jogtar.hu/jogszabaly?docid=a20k0058.com#lbj11id82ec>

⁵ Source: <https://rm.coe.int/moneyval-annual-report-2019/1680a07d48>

⁶ Report from the Commission on the Supranational Risk Assessment on Money Laundering and Terrorist Financing Risks to the Internal Market and Cross-Border Activities COM(2019) 370 final.

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0370>

Recent country assessments have also revealed weaknesses in the authorities supervising the activities of non-financial institutions and service providers. In my opinion, this is partly because the countries' inspectorates lack adequate professional and financial resources, and the political interests and priorities devoted to this task are far below EU expectations. Furthermore, implementation methods differ and, because of these differences, the quality and effectiveness of national supervision in EU countries is uneven and damaging. It is mainly for these reasons that the establishment of a supranational EU authority of high professional quality should be introduced in order to remedy these shortcomings and restore confidence among citizens, economic operators and the international image of the Union. This EU-wide supervisory system can address the fragmentation of supervision to integrate and complement national supervisory systems. It will also ensure harmonised and uniform application and effective enforcement of anti-money laundering and counter-terrorist financing rules across the EU, support on-the-spot monitoring activities and promote a continuous flow of information on ongoing actions and significant gaps in jurisdictions. National supervisors will form an integral part of this system, while remaining responsible for the majority of the day-to-day supervisory tasks.

Establishment of the Anti-Money Laundering/Countering the Financing of Terrorism Authority (AMLA)

In 2019, the European Commission has highlighted how criminals have exploited differences and gaps in Member States' implementation of the European system to combat money laundering and terrorist financing.⁷ On

⁷ The European Commission published a Communication and four reports in 2019 on better implementation of the EU framework for combating money laundering and terrorist financing.

Source: https://finance.ec.europa.eu/publications/communication-towards-better-implementation-eus-anti-money-laundering-and-countering-financing_en

the basis of these findings, the European Commission presented its proposal for the establishment of a supranational authority to combat money laundering and terrorist financing to the Council and Parliament on 20 July 2021. The proposal, presented under COM(2021) 421 final,⁸ identifies around 1% of the EU's annual gross domestic product as being involved in suspicious financial activities.⁹ Following a number of high-profile international cases involving EU credit institutions involved in money laundering, the Commission has also adopted a series of documents analysing the efficiency and effectiveness of the existing EU system for combating money laundering and terrorist financing.¹⁰ As a result of this analysis, the Commission has concluded that reforms are needed, including in the area of supervision and cooperation between financial intelligence units. The establishment of a European authority is the only way to fully achieve the objectives of preventing similar cases and achieving the objectives set.¹¹

⁸ 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

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A421%3AFIN>

⁹ Europol: From suspicion to action: Converting financial intelligence into greater operational impact Europol – Report from suspicion to action, enhancing the operational impact of financial intelligence.

Source: <https://www.europol.europa.eu/publications-events/publications/suspicion-to-action-converting-financial-intelligence-greater-operational-impact>

¹⁰ Communication from the Commission - Towards a better implementation of the EU framework for combating money laundering and terrorist financing (COM(2019) 360 final), Commission Report on the evaluation of recent alleged money laundering cases involving EU credit institutions (COM(2019) 373 final) and other amending reports on money laundering and terrorist financing.

¹¹ Commission proposal for a Regulation establishing the European Money Laundering and Terrorist Financing Authority and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

Source: <https://www.consilium.europa.eu/hu/press/press-releases/2023/12/13/anti-money-laundering-council-and-parliament-agree-to-create-new-authority/>

The AMLA is in fact a new EU agency created to improve supervision within jurisdictions in the fight against money laundering and terrorist financing in the EU and to support fast and efficient cooperation between FIUs.¹² The proposal for the establishment of the AMLA was presented as part of the European Commission's legislative proposal package on the fight against money laundering and terrorist financing 2021/0250(COD) before the end of 2021.¹³ The European Parliament and the Council reached a provisional agreement on the establishment of the AMLA on 13 December 2023. A few days later, 18 December 2023, the Council and Parliament representatives also reached an agreement on the process for selecting the seat of the AMLA. Under the agreement on the selection procedure, the seat will be included in the Regulation following the selection procedure. 28 September 2023, the Commission, at the request of the co-legislators, published a call for tenders for the establishment of a seat for Member States, which resulted in nine Member States submitting their applications for the establishment of a seat.¹⁴ Applicants were heard on their applications after 30 January 2024.

¹² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mechanisms to be put in place by the Member States 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.

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021-PC0423>

¹³ Press release: Fight against money laundering - Council and Parliament agree to set up new authority.

Source: <https://www.consilium.europa.eu/hu/press/press-releases/2023/12/13/anti-money-laundering-council-and-parliament-agree-to-create-new-authority/>

¹⁴ Selection of the seat of the Anti-Money Laundering/Countering the Financing of Terrorism Authority (AMLA) Call for tender 1063/2023 for the selection procedure for the seat of the new Authority. Nine countries applied: Belgium - Brussels; Germany - Frankfurt; Ireland - Dublin; Spain - Madrid; France - Paris; Italy - Rome; Latvia - Riga; Lithuania - Vilnius; Austria - Vienna.

Source: Selection of the seat of the Anti-Money Laundering/Countering the Financing of Terrorism Authority (AMLA) - European Commission (europa.eu)

Following the evaluation of the applications, the German application was considered the most suitable 22 February 2024 and the AMLA office is expected to open in Frankfurt in 2025 with an expected staff of 400.¹⁵ The decision also took into account the fact that Frankfurt is also the seat of the European Central Bank. 18 January 2024, the Council and Parliament also reached a provisional agreement on parts of an anti-money laundering package to protect EU citizens and the EU financial system against money laundering and terrorist financing.¹⁶ As regards the procedural mechanism, the member states' representatives in the Permanent Representatives Committee will submit their proposals to the Parliament and, once approved, they will have to be formally adopted by the Parliament and the Council. The texts are then published in the Official Journal of the European Union and enter into force, thus allowing the supranational authority's procedural powers over the Member States to be exercised.

Functions and powers of the AMLA

Since money laundering is a cross-border financial crime, the AMLA strengthens the EU framework for combating money laundering and terrorist financing by establishing an integrated mechanism with Member States' national supervisors to ensure that the service providers concerned comply with their obligations. Under the compromise regulation establishing the AMLA,¹⁷ which is not yet finalised, it will, among other things:

¹⁵ Source: <https://www.consilium.europa.eu/en/press/press-releases/2024/02/22/frankfurt-to-host-the-eus-new-anti-money-laundering-authority-aml/>

¹⁶ Source: <https://www.consilium.europa.eu/hu/press/press-releases/2024/01/18/anti-money-laundering-council-and-parliament-strike-deal-on-stricter-rules/>

¹⁷ 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. Source: <https://data.consilium.europa.eu/doc/document/ST-6222-2024-INIT/en/pdf>

- directly supervise a number of credit and financial institutions, including cryptoasset providers, which are among the riskiest in the EU;
- have a support role for the non-financial sector;
- coordinate financial information units within Member States;
- impose administrative fines for serious infringements.

Under the draft, the AMLA, acting under its powers, will examine credit institutions and financial institutions that pose a high risk in several Member States, selecting up to 40 groups and service providers. The selected obligated financial service providers will be supervised by joint supervisory teams led by AMLA, which will, among other things, carry out assessments and inspections.

New supervisory arrangements for the non-financial services sector, known as colleges of supervisors, will also be established with the supportive involvement of AMLA. This is needed because if the EU supervisory authority were to supervise only those financial institutions that carry out the largest share of all financial transactions – although the sector is already heavily regulated and supervised and may therefore appear to be a simpler solution – it would not create a comprehensive and effective system to combat money laundering and terrorist financing. Therefore, the EU supervisory authority, together with national supervisory authorities as part of an integrated system, will have direct supervision of the financial sector and indirect supervision of the non-financial sector. Indirect supervision of the non-financial sector allows the Union body to intervene, where necessary, to ensure high quality supervision of the non-financial sector across the Union. The powers of the ESAs in this respect can also be divided into two parts: regulatory and supervisory.

Preparatory processes in Hungary

In Hungary, the Action Plan for a comprehensive EU policy on the prevention of money laundering and terrorist financing and the effective transposition of the Sixth Money Laundering Directive are also ongoing. This includes the effective implementation of the existing EU framework, the monitoring of Member States' capacity to prevent and combat money laundering and terrorist financing, and cooperation with the European Banking Authority.¹⁸

The supervisory structure and organisation of the Authority is designed to ensure the fulfilment of its tasks and is divided into the following main units:

- Supervisory Board,
- Board of Directors,
- President,
- The Board of Supervisors, the President, the Chairman, the President, the Chief Executive, and the Managing Director,
- Board of Appeal.¹⁹

Given that Hungary, together with five other EU Member States, is not part of the European Central Bank (ECB), a multilateral Memorandum of Understanding (MoU) was concluded with the National Competent Authorities (NCAs) in January 2023 to ensure the supervisory activities of the

¹⁸ Source: <https://net.jogtar.hu/jogszabaly?docid=a20k0058.com#lbj14id1fe8>

¹⁹ (EU) No 1093/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Supervisory Authority (European Banking Authority), replacing Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.
Source: <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:32010-R1093&from=EN>

Banking Authority.²⁰ The MoU aims to provide a framework for Member States to regularly exchange information on supervisory issues and concerns, supervisory methodologies, approaches and priorities in relation to cross-border supervised financial institutions. It also encourages the ECB and national authorities to inform each other of planned measures that may be of mutual relevance. This is particularly important in times of stress as it can mitigate the risks arising from the fragmentation of European banking markets. The ECB will also seek to enhance cooperation with the financial authorities of Member States not participating in European banking supervision. This is because their banking sectors are highly interconnected. Some of the banks supervised by the ECB have subsidiaries or significant credit exposures to these Member States and conduct a significant part of their activities there. At the same time, some credit institutions established in Member States not participating in the Mechanism also have a significant presence in the jurisdictions supervised by the European Banking Authority. Without proper supervision, all these activities pose a serious risk to the fight against money laundering and terrorist financing in Europe and the agreement aims to further strengthen supervisory cooperation at European level.

The competent financial authority in Hungary for cooperation with the Banking Authority is the National Bank of Hungary (MNB),²¹ which is re-

²⁰ Memorandum of Understanding with the competent national authorities of the six EU Member States that are not part of the Banking Supervisory Authority. It provides a framework for the Czech Republic, Denmark, Hungary, Poland, Romania, Sweden and Poland to exchange information and coordinate supervisory activities. The agreement aims to further strengthen supervisory cooperation at the European level, building on the strong culture of cooperation that has emerged from the work of the European Banking Authority, which links the ECB and EU NCAs outside the mechanism. Source: https://www.bankingsupervision.europa.eu/legalframework/mous/html/ssm.mou_2022_EU_non-participating_NCAs~6eeff08a42.hu.pdf

²¹ The National Bank of Hungary as the primary financial authority of Hungary.

sponsible for the tasks of the MNB, including cooperation between the authorities and with the Commission, in the implementation of the legislative acts implementing Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions,²² Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions²³ and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes.²⁴ On the basis of the European Central Bank (ECB's) assessment opinion CON/2024/5 of 26 February 2024 on the Treasury Single Account held by the MNB and the powers of the MNB's supervisory authority, the banking supervision activity of our country has implemented a number of amendments, the results of which are significant, in particular as regards the strengthening of independence.²⁵

The report points out, *inter alia*, that, in exercising the powers conferred on them by the Treaties and the Statute of the European System of Central Banks and of the European Central Bank and, in carrying out such tasks and duties, neither the ECB nor any member of its decision-making bodies may seek or take instructions from, *inter alia*, the governments of the Member States or from any other body, including bodies established by law such as the Board of Supervisors.²⁶

Source: https://www.bankingsupervision.europa.eu/legalframework/mous/html/ssm.mou_2022_EU_non-participating_NCAs~6eeff08a42.en.pdf?6a4bed566fc002245c888113cdb08ade

²² Source: <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX:32006L0048>

²³ Source: <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:32006L0049>

²⁴ Source: <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=celex%3A31994L0019>

²⁵ Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024-AB0005>

²⁶ ECB Opinion CON/2024/5 on the Treasury Single Account held by the Magyar Nemzeti Bank and the powers of the Supervisory Board of the Magyar Nemzeti Bank, paragraph 3.3.

Source: <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52024-AB0005>

In the fight against money laundering and the financing of terrorism in Hungary, the MNB has been perceived internationally – and the IMF's FSSA assessment, mentioned above – to have performed exceptionally well in recent years compared to the previous period.²⁷

²⁷ Source: <https://www.bing.com/search?q=IMF+FSSA+report+from+Hungary+2023&q&form=QBRE&sp=-1&lq=0&pq=imf+fssa+report+from+hungary+2023&sc=7-33&sk=&cvid=5E4B87E4D50140A0895B889810F3EFF5&ghsh=0&ghacc=0&ghpl=>