

ECA: EU Poorly Addresses Money Laundering and Terrorist Financing

Thomas Wahl

News

The EU's response to money laundering (ML) and terrorist financing (TF) is fragmented at the institutional level and poorly coordinated if it came to actions to prevent ML/TF and to follow-up identified risks. The EU oversight framework is insufficient to ensure a level playing field. These are the [overall conclusions](#) of the European Court of Auditors (ECA) in its [Special Report 13/2021](#), which was released on 28 June 2021. It assesses whether the EU's actions in the area of AML/CFT are well implemented, in particular as regards the banking sector. The auditors identified a number of weaknesses on the part of the EU institutions involved in the implementation of the EU legal AML/CFT framework, i.e. the Commission, the European Banking Authority (EBA) and the European Central Bank (ECB). The weaknesses include:

- Shortcomings in drawing up the EU list of high-risk third countries whose legislation and practice are prone to ML/TF and therefore endanger the internal market – here, the work of the Commission is hindered by a lack of timely cooperation on the part of the European External Action Service; additionally, the EU has failed to establish an autonomous list that is tailored to the threats posed to the EU;
- The Commission's risk assessments for the internal market do not indicate changes over time, lack geographical focus and do not prioritise risks effectively;
- EU AML/CFT legislation is complex, transposition uneven and assessment of the transpositions by the Commission too slow (due to poor-quality communication by Member States and limited resources at the Commission);
- Although the EBA carried out thorough investigations of potential breaches of EU law, the auditors experienced lobby attempts which might have influenced EBA decision-making;
- There are no internal guidelines for triggering EBA investigations which have carried out to date on an ad hoc basis only, and, in most cases, following media reports;
- The ECB – the direct supervisor of significant euro area banks – has made a good start in sharing relevant information with national supervisors, but the information sharing is not fully efficient (*inter alia* because the ECB has neither the responsibility nor the power to investigate how such information is used at the national level);
- National supervisors use different methodologies, the quality of information provided for by the national supervisors is varying considerably and the ECB has no specific guidance on supervisory assessments.

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ISSN: 1862-6947

<https://eucrim.eu>



In conclusion, the ECA requests that the EU's supervisory role is significantly strengthened and EU law is implemented promptly and coherently. In detail, the ECA recommends that the Commission do as follows:

- Prioritise ML/TF risk more clearly throughout the entire risk assessment exercise;
- Liaise with the European External Action Service for listed third countries which would ensure that intelligence is integrated in assessments;
- Make use of regulations in preference to directives where possible;
- Put in place an internal guidance for making ML/TF breach of Union law requests;
- Propose legislative amendments that clarify which information should be shared with the Commission in the breach of Union law process.

The EBA is called on to put in place rules to prevent other Board of Supervisors members from seeking to influence panel members during their deliberations. In addition, the EBA should issue guidelines that facilitate harmonised information exchanges between national and EU-level supervisors.

The ECB should put in place more efficient internal decision-making procedures and make changes to its supervisory practices once guidance from the EBA is in place.

Background: The ECA's Special Report comes during discussions to overhaul the EU's current AML/CFT framework. In May 2020, the Commission put forward a series of measures to step up the EU's AML/CFT framework (→ [eucrim 2/2020, 87-89](#)). Its EU Action Plan on ML/TF already envisaged, among other things, a single EU rulebook on AML/CFT and the establishment of an EU supervisory office that would ensure a harmonised application of the AML/CFT rules. In May 2020, the Commission also tabled a refined methodology for identifying high-risk third countries. The Council adopted conclusions on the way forward as regards AML/CFT in November 2020 (→ [eucrim 3/2020, 177-178](#)). ECA's conclusions and recommendations will enrich the discussions on the reform.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



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