Università
Ca'Foscari
Venezia

Master's Degree in Finance

Final Thesis

THE ROLE OF THE NEW EUROPEAN ANTI-MONEY LAUNDERING AUTHORITY IN THE EU SUPERVISORY FRAMEWORK

Supervisor
Ch. Prof. Andrea Minto

Graduand
Giada Tubiana
Matriculation Number: 886841

Academic Year
2021/2022

TABLE OF CONTENTS

ABSTRACT

On 20 July 2021, the European Commission presented an ambitious package of legislative proposals aimed at strengthening the anti-money laundering and countering the financing of terrorism ("AML/CFT") regulatory and supervisory framework in the European Union ("EU"). One of the most significant innovations included in the proposal is the creation of the new European Anti-Money Laundering Authority ("AMLA"), which will be responsible for promoting the convergence of supervisory practices across the EU and will improve the coordination of the activity of national competent authorities. Moreover, the implementation of this legislative proposal will radically modify the structure of AML/CFT supervision, by designing a hierarchical supervisory system headed by the AMLA, whose governance model will be similar to the one of the Single Supervisory Mechanism ("SSM"), which establishes a uniform system of prudential supervision over EU credit institutions. This dissertation will illustrate how the AML/CFT supervisory framework will change after the adoption of the Commission's legislative proposal and will highlight the importance of the AMLA for the enhancement of AML/CFT supervision in the EU.

LIST OF ABBREVIATIONS

AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
AMLA	Anti-Money Laundering Authority
AMLAR	Regulation establishing the Anti-Money Laundering Authority
AMLD	Anti-Money Laundering Directive
AMLD I	First Anti-Money Laundering Directive
AMLD II	Second Anti-Money Laundering Directive
AMLD III	Third Anti-Money Laundering Directive
AMLD IV	Fourth Anti-Money Laundering Directive
AMLD V	Fifth Anti-Money Laundering Directive
AMLD VI	Sixth Anti-Money Laundering Directive
AMLSC	Standing Committee on Anti-Money Laundering and Countering Terrorist Financing
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
BU	Banking Union
CDD	Customer Due Diligence
CDPC	European Committee on Crime Problems
CEBS	Committee of European Banking Supervisors
CJEU	Court of Justice of the European Union
EBA	European Banking Authority
ECB	European Central Bank
Ecofin	Economic and Financial Affairs Council
EDD	Enhanced Due Diligence
EDIS	European Deposit Insurance Scheme
EFTA	European Free Trade Association
EIOPA	European Insurance and Occupational Pensions Authority
EMU	Economic and Monetary Union
ESA	European Supervisory Authority
EFSF	European Financial Stability Facility
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union

FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSB	Financial Stability Board
G-7	Group of Seven
G-10	Group of Ten
G-20	Group of 20
IMF	International Monetary Fund
JST	Joint Supervisory Team
LEA	Law Enforcement Agency
PEP	Politically Exposed Person
PC-R-SC	Select Committee of Experts on international cooperation as regards search, seizure and confiscation of the proceeds from crime
SRB	Self-Regulatory Body
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
SDD	Simplified Due Diligence
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
SSMFR	Single Supervisory Mechanism Framework Regulation
SSMR	Single Supervisory Mechanism Regulation
UN	United Nations

INTRODUCTION

The stability and the integrity of financial systems can be guaranteed only through the adoption of effective rules aimed at reducing both the systemic and the idiosyncratic risks affecting financial institutions. For this reason, governments all over the world have implemented effective systems of prudential regulation and supervision. In the European Union ("EU"), the harmonisation of prudential supervisory practices has been achieved thanks to the establishment of the European System of Financial Supervision ("ESFS") and of the Single Supervisory Mechanism ("SSM"). Specifically, the ESFS comprises the European Systemic Risk Board ("ESRB") and three European Supervisory Authorities ("ESAs"), namely the European Banking Authority ("EBA"), the European Insurance and Occupational Pensions Authority ("EIOPA"), and the European Securities and Markets Authority ("ESMA"). While the ESRB is in charge of the macroprudential supervision of the entire financial system, the ESAs are responsible for microprudential supervision. The SSM is instead a centralised system of prudential supervision on credit institutions, headed by the European Central Bank ("ECB").

Another framework developed to protect the stability and the integrity of financial markets consists in the rules aimed at preventing the use of the financial system for the purposes of money laundering and terrorist financing. In order to mitigate such risks, a relatively harmonised system of criminal law against these phenomena has been adopted by governments all over the world, including the Member States of the EU. In particular, EU Authorities have issued a series of Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") legislative provisions, and have established an AML/CFT supervisory framework, in which national competent authorities exercise their supervisory powers in a system of horizontal cooperation. However, the lack of directly applicable AML/CFT rules, the low level of consistency in the application of supervisory practices, and the insufficient cooperation among national competent authorities on a cross-border basis represent important weaknesses of this supervisory system. In order to overcome such limitations, on 20 July 2021, the European Commission presented an ambitious package of legislative proposals, aimed at strengthening AML/CFT regulation and supervision through the introduction of clear and directly applicable rules, along with the establishment of a supranational Anti-Money Laundering Authority ("AMLA"). The adoption of this legislative proposal will radically modify the structure of the AML/CFT supervisory framework, by establishing

a hierarchical supervisory system, headed by the AMLA, as well as a two-tier structure of supervision, where the obliged entities characterised by a higher level of AML/CFT risk will be directly supervised by the AMLA, while the other private-sector entities will be subject to the indirect supervision of the Authority. The adoption of this legislative proposal shall enhance the effectiveness of AML/CFT supervision, by increasing the clarity and the consistency of AML/CFT rules, by ensuring the application of high-quality supervisory practices by national supervisors, and by removing the obstacles to the cooperation among national competent authorities. In this context, the role of the AMLA will be of paramount importance, as this Authority will represent the central institution in charge of AML/CFT supervision.

The aim of this dissertation is to illustrate how the AML/CFT supervisory system will change after the implementation of the new legislative proposal, along with highlighting how the effectiveness of AML/CFT supervision will be enhanced thanks to the adoption of directly applicable rules and to the establishment of the AMLA. The AML/CFT supervisory system will also be compared with the SSM, whose structure resembles the one of the AML/CFT supervisory framework envisaged by the Commission's proposal.

The first chapter will be devoted to the description of prudential supervision, by providing an overview on the international framework as well as a description of the system of prudential supervision in the EU and of the supranational supervisory authorities in charge of the prudential supervision of credit institutions, namely the ECB and the EBA. The second chapter will focus on AML/CFT regulation and supervision, both at the global and at the EU level, with an illustration of the historical evolution of AML/CFT regulation and a description of the current European AML/CFT supervisory system. After that, a comparison between the SSM and the current European AML/CFT supervisory framework will be presented. The fourth chapter will illustrate how the AML/CFT supervisory system will change after the adoption of the legislative proposal presented by the Commission, with a particular focus on the creation of the AMLA. The fifth chapter will contain a comparative analysis between the new AML/CFT supervisory system and the current European framework on prudential supervision, which will highlight the similarities and the differences between the governance models of the new AML/CFT supervisory system and of the SSM; then it will compare the AMLA with the ECB and the EBA, respectively. Finally, the conclusive chapter will summarise the content of the dissertation and will highlight how the current AML/CFT supervisory system will benefit from the creation of the AMLA.

CHAPTER I: PRUDENTIAL REGULATION AND SUPERVISION IN EUROPE

1.1. INTRODUCTION

Prudential regulation and supervision can be described as a set of policies aimed at ensuring the soundness of credit and financial institutions, along with protecting the integrity and the stability of the entire financial system. In particular, prudential regulation establishes rules concerning capital requirements, risk management, qualifying holdings, as well as internal and external control mechanisms; while prudential supervision refers to the policies implemented by supranational and national supervisors to monitor the compliance with such rules by private-sector entities.

Two dimensions of prudential regulation and supervision can be distinguished, namely the microprudential and the macroprudential dimension. In particular, microprudential policies are aimed at reducing the idiosyncratic risks of credit and financial institutions, while macroprudential policies aim at mitigating systemic risks, thus ensuring the stability of the financial system as a whole[1].

The concepts of prudential regulation and supervision have been introduced by the 1988 Basel Accords, which imposed common capital requirements on credit institutions for the first time. These concepts have evolved over time, in line with the continuous developments of financial systems. In particular, the progressive integration of financial markets worldwide has determined the necessity to harmonise prudential policies on a global scale. This objective has been achieved through the creation of several international organisations that are responsible for developing international standards on prudential regulation and supervision, but also for monitoring the correct and consistent implementation of those standards.

The establishment of an adequate prudential regulatory and supervisory system has become a priority for governments starting from the 2007 financial crisis, which revealed the vulnerability of financial systems to possible systemic crises. This led the governments of many countries, including the Member States of the European Union ("EU"), to adopt new legislative provisions aimed at reinforcing their prudential frameworks. In this context, EU Authorities have created the European System of Financial Supervision ("ESFS"), which is in charge of ensuring the consistent and effective macro- and microprudential supervision over the financial system of the

[1] Antoniazzi, S., *Il meccanismo di vigilanza prudenziale. Quadro d'insieme*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, p. 179.

Union. Furthermore, EU Authorities have established the European Banking Union ("BU"), a set of legislative provisions aimed at harmonising banking regulation across Member States.

The aim of this chapter is to provide an overview on how prudential policies are regulated and implemented both at the international and at the European level. First of all, the main international entities involved in the development of rules on prudential supervision will be described. After that, the BU will be presented. The following sections will be devoted to one of the pillars of the BU, namely the Single Supervisory Mechanism ("SSM"), and to the European Central Bank ("ECB"), which is the central Authority in this system. Lastly, the ESFS will be described, with a particular focus on the supranational authority that is responsible for the microprudential supervision of the banking sector, which is the European Banking Authority ("EBA").

1.2. THE INTERNATIONAL FRAMEWORK

In the last decades, financial markets have become increasingly interconnected at an international level, thanks to globalisation and to the developments in technology. In order to protect the integrity and the stability of this increasingly complex financial system, governments need to agree on a common set of standards for the adoption of a relatively uniform system of prudential regulation and supervision on credit and financial institutions. For this reason, several intergovernmental entities have been established to issue international standards on prudential regulation and supervision, but also to monitor their implementation by governments. This section will describe three important international bodies that are involved in the development of common standards on prudential regulation and supervision, namely the Bank for International Settlements ("BIS"), the Basel Committee on Banking Supervision ("BCBS"), and the Financial Stability Board ("FSB").

One of the most important entities involved in financial regulation at an international level is the Bank for International Settlements ("BIS"), which is headquartered in Basel and is owned by 63 central banks. It serves as a forum for dialogue and cooperation for the authorities involved in financial regulation, with the aim of fostering monetary and financial stability at a global level. The BIS comprises six committees:

- The Basel Committee on Banking Supervision, which develops global regulatory standards for banks and aims at reinforcing micro- and macroprudential supervision;

- The Committee on the Global Financial System, which monitors and analyses issues relating to financial markets and systems;
- The Committee on Payments and Market Infrastructures, which establishes global regulatory and supervisory standards for payment, clearing, settlement and other market infrastructures, and monitors developments in these areas;
- The Markets Committee, which monitors developments in financial markets and their implications for central bank operations;
- The Central Bank Governance Forum, which serves as a centre of discussion and dissemination of information for central banks;
- The Irving Fisher Committee on Central Bank Statistics, which carries out statistical analyses relating to economic, monetary and financial stability[2].

A particularly important role is assumed by the Basel Committee on Banking Supervision ("BCBS"), which acts as the main global standard setter for the prudential regulation of credit institutions. This Committee was created in 1974 by the governors of the central banks of the Group of 10 ("G-10") and currently includes 45 institutions from 28 jurisdictions. The main contribution of the BCBS to the international prudential regulatory framework is represented by the Basel Capital Accords, issued in 1988, 2004 and 2011 respectively, which established important guidelines related to banks capital requirements[3].

Another important organisation acting in the field of international financial regulation is the Financial Stability Board ("FSB"), an international body that was established in 1999 and includes the members of the Group of 20 ("G-20"). This Board promotes financial stability by coordinating national authorities and international standard-setters in their development of strong regulatory and supervisory standards, and encourages the coherent implementation of these policies across sectors and jurisdictions[4].

1.3. THE EUROPEAN BANKING UNION

The establishment of an Economic and Monetary Union ("EMU") in the EU is one of the objectives laid down in the Treaty of the European Union ("TEU")[5], adopted by Member States during the summit held in Maastricht in 1992. In order to achieve this

[2] BIS official website: www.bis.org.
[3] *Ibidem*.
[4] FSB official website: www.fsb.org.
[5] Treaty on European Union, OJ C 191, 29.7.1992, pp. 1–112 (consolidated version).

objective, a single European market has been established, where a single currency has been adopted and rules ensuring the free movement of goods, capital, labour and services have been established. An important element of the EMU is represented by the European Banking Union ("BU"), a set of legislative provisions aimed at harmonising banking regulation and supervision across the Union. The present section will provide a definition of European banking law, then it will focus on the BU, by describing the context in which its establishment was tabled and the pillars on which it is based.

European banking law can be defined as the set of provisions of European financial law aimed at two objectives: the first objective is to ensure the two basic freedoms established by the Treaty on the Functioning of the European Union ("TFEU")[6], namely the freedom of EU credit institutions to establish, by setting up branches, and to provide financial services without establishment in other Member States; while the second objective is to ensure the stability of the European banking system. In order to achieve the latter objective, EU banking law establishes rules on the authorisation of credit institutions, the micro- and macroprudential regulation and supervision of credit institutions, the resolution of banking crises, and the guarantee of deposits[7]. This legislative framework mainly applies to EU credit institutions, but also, to some extent, to the establishment and operation of branches of non-EU credit institutions in Member States, as well as to EU financial institutions[8]. EU banking law has been developed gradually over time, following the progressive evolution and integration of financial markets in the Union[9].

After the 2007 financial crisis and the 2010 European sovereign debt crisis, EU leaders realised that a reinforcement of European banking regulation and supervision was necessary in order to protect the stability and the integrity of EU financial markets. Therefore, during the Euro Area Summit of 29 June 2012, the establishment of the BU was tabled, with the purposes of increasing the level of harmonisation in the banking

[6] Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47 – 390 (consolidated version).

[7] Gortsos, C. V., *European Banking Union Within the System of European Banking and Monetary Law*, in Chiti, M. P., and Santoro V., (eds.), *The Palgrave Handbook of European Banking Union Law*, ed. Palgrave Macmillan, Cham, 2019, p. 19.

[8] *Ibidem*, p. 20.

[9] Concerning the premises for the creation and the historical evolution of the European Banking Union, see Micossi, S., *Dalla crisi del debito sovrano all'Unione bancaria*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 29 – 52.

law of Member States as well as coordinating the prudential supervision of credit and financial institutions[10]. The BU is based on three pillars[11]:

- The Single Supervisory Mechanism ("SSM"), which establishes a single system of microprudential supervision on European credit institutions;
- The Single Resolution Mechanism ("SRM"), which introduces a single system of resolution of banking crises;
- The European Deposit Insurance Scheme ("EDIS"), which should establish a single system of deposit insurance in the EU, but has not been implemented yet.

The implementation of the BU occurred gradually, during the course of 2013 and 2014, and was coupled with the adoption of a "Single Rulebook", consisting of a series of Directives and Regulations aimed at harmonising banking law in Member States[12].

1.4. THE SINGLE SUPERVISORY MECHANISM

For the purposes of this dissertation, only one of the three pillars of the BU will be presented, namely the SSM, as it concerns the prudential supervision of EU credit and financial institutions. In particular, the present section will illustrate the legal basis and the structure of the SSM, along with the division of competences between supranational and national authorities within this system[13].

The SSM was established by Regulation (EU) No 1024/2013 ("SSM Regulation", or "SSMR")[14], whose legal basis can be identified with Article 127(6) of the TFEU, which states that the Council may *"confer specific tasks upon the European Central Bank*

[10] Gortsos, C. V., *cit*., p. 21.

[11] Concerning the pillars of the European Banking Union, see Sorace, D., *I "pilastri" dell'Unione Bancaria*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 91 - 114.

[12] For the description of the objectives and the structure of the European Banking Union, see Gortsos, C. V., *cit.*, pp. 19 – 40; Torchia, L.*, La nuova governance economica dell'Unione europea*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 53 – 64; and Ortino, M.*, L'Unione bancaria nel sistema del diritto bancario europeo*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 65 - 90.

[13] For a detailed description of the SSM, see also D'Ambrosio, R., *Single Supervision Mechanism: Organs and Procedures*, in Chiti, M. P., and Santoro V., (eds.), *The Palgrave Handbook of European Banking Union Law*, ed. Palgrave Macmillan, Cham, 2019, pp. 157 – 182; and Ferran, E., and Babis, V., *The European single supervisory mechanism*, in "Journal of Corporate Legal Studies", vol. 13 (2), 2013, pp. 255 – 285.

[14] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ("SSMR").

concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings"[15].

The SSMR mainly applies to "participating Member States", which include both the Member States whose currency is the euro and the Member States with a derogation that have established a close cooperation with the ECB in accordance with Article 7 of the SSMR[16]. Member States that have not adopted the euro and have not established a close cooperation with the ECB are not a part of the SSM, therefore in these States all supervisory tasks are performed by the relevant national competent authorities[17].

The SSM comprises the national competent authorities and the ECB, which is the supranational Authority at the head of the hierarchical structure of the SSM. The supervised entities include credit institutions, financial holding companies or mixed financial holding companies established in participating Member States, or branches, established in participating Member States, of credit institutions established in non-participating Member States. Pursuant to Article 6 of the SSMR, supervised entities are divided into two categories: the institutions that are particularly relevant in terms of size, importance for the economy of the EU or any participating Member State, or significance of cross-border activities are classified as "significant" entities[18], while the other institutions are considered as "less significant" entities. Whereas significant entities are directly supervised by the ECB, less significant entities are supervised by the national competent authorities of the Member State where they are based, according to the "home country control" principle. However, the ECB performs an indirect supervision over less significant entities, by monitoring and coordinating the activity of national supervisors.

Concerning the criteria according to which the significance of supervised entities shall be assessed, the SSMR states that an institution shall not be considered less significant, unless justified by particular circumstances, if one of the following conditions applies: the total value of its assets exceeds € 30 billion; the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of its assets is below € 5 billion; or, following a notification by its national competent authority, the ECB takes a decision confirming the significance of such institution, after

[15] Art. 127(6), TFEU.
[16] Gortsos, C. V., *cit*., p. 24.
[17] Kirschenbaum, J., and Véron, N., *A better European Union architecture to fight money laundering*, Bruegel Policy Contribution, No. 2018/19, ed. Bruegel, Brussels, 2018, p. 8.
[18] Art. 6, co. 4, SSMR.

having undertaken a comprehensive assessment of the entity. Moreover, an institution can be qualified as significant, on initiative of the ECB, if it has established banking subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities. Also, the entities for which public financial assistance has been requested or received directly from the European Financial Stability Facility ("EFSF") or the European Stability Mechanism ("ESM") shall not be considered less significant. Lastly, the ECB exercises direct supervisory tasks towards the three most significant credit institutions in each of the participating Member States, unless justified by particular circumstances[19]. The criteria for the identification of significant entities are further specified by Part IV of Regulation (EU) No 468/2014 ("SSM Framework Regulation", or "SSMFR"), a public Framework Regulation adopted by the ECB[20].

Notwithstanding the distinction between significant and less significant entities, the ECB shall carry out three specific tasks of particular importance towards all supervised entities, namely the authorisation and withdrawal of authorisations of credit institutions, along with the assessment of notifications of the acquisition and disposal of qualifying holdings in credit institutions[21]. In addition, the ECB may decide to directly supervise a less significant entity or a less significant group, where it is necessary in order to ensure the consistent application of high supervisory standards[22].

1.5. THE EUROPEAN CENTRAL BANK

In order to properly understand the functioning of the SSM, a particular attention should be devoted to the Authority at the head of this system, namely the ECB. For this purpose, the following subsections will respectively illustrate the tasks and powers of the ECB, the regulatory instruments that the Authority can adopt, and its internal organisation[23].

[19] Art. 6, co. 4, SSMR.
[20] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.
[21] Art. 4, co. 1, lett. a) and c), SSMR.
[22] D'Ambrosio, R., *cit.*, p. 160.
[23] See Antoniazzi, S., *cit*., pp. 181 – 191, for the description of the tasks and powers of the ECB, the regulatory instruments that it can adopt, and its internal organisation.

1.5.1. The tasks and powers of the ECB

The ECB is established in Frankfurt and represents one of the most important European financial authorities. It fulfils a two-fold purpose in the EU: on the one hand, it is the main institution responsible for the monetary policy of the Union[24]; on the other hand, it represents the main authority in charge of prudential supervision, since it is placed at the top of the hierarchical structure of the SSM[25].

As far as prudential supervision is concerned, the ECB is conferred exclusive competence for three tasks, namely granting authorisations to credit institutions, withdrawing such authorisations, and assessing notifications of the acquisition and disposal of qualifying holdings in credit institutions[26]. This means that the ECB shall perform these tasks with regards to both significant and less significant entities.

The other supervisory tasks of the ECB include supervising credit institutions established in non-participating Member States, which establish branches or provide cross-border services in participating Member States; ensuring compliance with relevant Union law and national legislation transposing EU Directives that impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, reporting and public disclosure of information on those matters; performing supervisory reviews, including stress tests in coordination with the European Banking Authority; carrying out supervision on a consolidated basis; participating in the supplementary supervision of financial conglomerates; and carrying out supervisory tasks in relation to recovery plans and early intervention[27]. Article 4, co. 1, of the SSMR states that the ECB is exclusively competent to carry out these tasks, but there is a delegation of powers to national competent authorities for the exercise of these tasks with respect to less significant institutions. In other words, the ECB is responsible for carrying out these tasks towards significant entities, while national authorities perform them with regards to less significant entities, under the supervision of the ECB[28].

---

[24] Concerning the long-standing role of the ECB in the conduct of monetary policy, see Draghi, M., *Monetary policy and the outlook for the economy*, speech at the Frankfurt European Banking Congress, *Europe into a New Era – How to Seize the Opportunities*, Frankfurt am Main, 17 November 2017.

[25] Concerning the role of the ECB in prudential supervision, see Pizzolla, A., *The role of the European Central Bank in the Single Supervisory Mechanism: A new paradigm for EU governance*, in "European Law Review", vol. 43 (1), 2019, pp. 3 – 23.

[26] Art. 4, co. 1, lett. a) and c), SSMR.

[27] Art. 4, co. 1, lett. b), d) – i), SSMR.

[28] Art. 6, co. 4, SSMR.

Notwithstanding the above-mentioned provisions, when necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national competent authorities or upon request by a national authority, decide to acquire direct supervisory powers towards less significant entities[29].

In the context of direct supervision, the ECB establishes a Joint Supervisory Team ("JST") for the supervision of each significant entity or significant group in participating Member States. Each JST is composed of staff members from the ECB and from national competent authorities, working under the direction of a JST coordinator, selected among the staff members of the ECB, and one or more sub-coordinators, chosen among the staff of national competent authorities[30].

Besides its supervisory tasks, the ECB is entrusted specific macroprudential tasks, related to the capital requirements imposed on credit institutions. First, the ECB must be informed by national authorities about their decision to apply additional capital requirements with respect to the own funds requirements set out in Union law and national laws transposing EU Directives[31]. Additionally, the ECB has the power to apply higher capital buffers than those required by national authorities, and to apply more stringent measures aimed at addressing particular systemic or macroprudential risks[32]. Any national authority may require the ECB to implement such measures[33].

In order to fulfil its supervisory mandate, the ECB is endowed with direct and indirect supervisory powers, investigatory powers, and the power to adopt pecuniary sanctions.

In particular, the ECB has the power to require any supervised entity to take the necessary measures at an early stage to address problems such as the noncompliance by supervised entities with their obligations imposed by regulations and decisions of the ECB; the likelihood to breach such requirements in the following 12 months; or the inadequacy of the internal organisation measures implemented by supervised entities or the own funds or liquidity that they hold[34].

Among its investigatory powers, the ECB can collect information from any supervised entity, from any person belonging to these entities, and from third parties to whom these

[29] Art. 6, co. 5, lett. b), SSMR.
[30] Art. 3, co. 1, SSMFR.
[31] Art. 5, co. 1, SSMR.
[32] Art. 5, co. 2, SSMR.
[33] Art. 5, co. 3, SSMR.
[34] Art. 16, co. 1, SSMR.

entities have outsourced functions or activities[35]. The Authority has also the power to conduct investigations with respect to any of the abovementioned subjects[36] and to conduct on-site inspections at the business premises of supervised entities[37]. If an on-site inspection requires authorisation by a judicial authority according to national rules, the ECB shall apply for such authorisation[38].

The last set of powers entrusted to the ECB allows the Authority to impose pecuniary sanctions. More specifically, the ECB has the power to impose pecuniary administrative penalties on significant supervised entities that breach, either intentionally or negligently, a requirement imposed by directly applicable EU law[39]. Moreover, the ECB shall impose administrative penalties to significant entities that breach relevant ECB regulations or decisions, and on less significant entities that fail to comply with their obligations vis-à-vis the Authority, imposed by ECB regulations or decisions[40]. Lastly, when a significant entity breaches national law transposing EU Directives, the breach is committed by a natural person, or a non-pecuniary penalty has to be imposed, the ECB does not have direct enforcement powers, but may request that the relevant national authority open the sanctioning procedure[41]. Finally, the ECB may impose a periodic penalty payment in the event of a continuing breach of its regulations or supervisory decisions[42].

1.5.2. The regulatory instruments of the ECB

The ECB fulfils its supervisory mandate by adopting a series of regulatory instruments, including regulations, decisions, guidelines, instructions, recommendations, and opinions.

In particular, regulations can be adopted by the ECB only to the extent necessary to organise or specify the arrangements for carrying out its tasks[43]. Such regulations are used to specify how the ECB intends to use the options and discretions available under European banking law, or to impose additional obligations on supervised banks.

---

[35] Art. 10, SSMR.
[36] Art. 11, SSMR.
[37] Art. 12, SSMR.
[38] Art. 13, co. 1, SSMR.
[39] Art. 18, co. 1, SSMR.
[40] Art. 18, co. 7, SSMR, and Art. 122, SSMFR.
[41] Art. 18, co. 5, SSMR, and Art. 134, SSMFR.
[42] Art. 129, co. 1, SSMFR.
[43] Art. 4, co. 3, SSMR.

As far as decisions are concerned, these legal acts can be issued without addressee or towards a specific entity. Decisions without addressee aim at implementing specific provisions of European banking law or at specifying internal ECB procedures, while decisions addressed to an individual bank may impose specific obligations on the entity, or approve a request made by the institution.

Furthermore, guidelines and instructions are addressed to national supervisors and aim at harmonising supervisory approaches adopted at the national level.

Similarly, recommendations are used to harmonise the supervisory practices adopted by national competent authorities supervising less significant institutions, but they can also provide guidance to significant entities in specific areas.

Lastly, the ECB may issue opinions to express its view on proposed European or national legal acts in the area of banking supervision[44].

1.5.3. The internal organisation of the ECB

The internal structure of the ECB ensures the separation between its monetary and supervisory function[45]. For the purpose of granting the independence between these two functions, the ECB is endowed with two separate decision-making bodies, namely the Governing Council and the Supervisory Board. The other collegial bodies of the ECB are the General Council, the Executive Board, and the Administrative Board of Review. Moreover, the Authority has a President and a Vice-President.

The first decision-making body of the ECB is the Governing Council, which is composed of the six members of the Executive Board, plus the governors of the national central banks of the 19 countries of the euro area. The main responsibilities of the Governing Council concern the formulation of the monetary policy for the euro area. As far as banking supervision is concerned, the Governing Council adopts the complete draft decisions proposed by the Supervisory Board, as well as decisions related to the general framework under which supervisory decisions are taken[46].

The decision-making body in charge of prudential supervision is the Supervisory Board, which comprises the Chair of the Board, appointed for a non-renewable term of five years, the Vice-Chair, selected among the members of the Executive Board, four representatives of the ECB, and the representatives of national supervisors. This Board meets every three weeks to discuss, organise and carry out the supervisory tasks of the

[44] ECB official website: www.ecb.europa.eu.
[45] In accordance with the principle stated by Art. 25, SSMR.
[46] ECB official website: www.ecb.europa.eu.

ECB, but it also proposes draft decisions to the Governing Council under the non-objection procedure[47]. Although in principle the decisions of the Supervisory Board need to be endorsed by the Governing Council, in practice the Supervisory Board retains a significant decision-making power, as the Governing Council almost never declines the decisions of the Board[48]. Within the Supervisory Board, a Steering Committee is established, which is in charge of supporting the activity of the Board and of preparing its meetings. The Steering Committee is composed of the Chair and the Vice-Chair of the Supervisory Board, one representative of the ECB and five representatives of national supervisors, appointed by the Supervisory Board for one year on the basis of a rotation system that ensures a fair representation of countries[49].

The ECB is managed by the Executive Board, which comprises the President, the Vice-President and four other members, all of which are appointed by the European Council, acting by a qualified majority. This Board prepares the meetings of the Governing Council, implements the monetary policy for the euro area in accordance with the guidelines and the decisions taken by the Governing Council, manages the day-to-day operations of the Authority, and exercises specific powers delegated to it by the Governing Council, including certain regulatory powers[50].

Furthermore, the ECB has a General Council, consisting of the President and the Vice-President of the Authority as well as the governors of the national central banks of the 27 EU Member States. The other members of the Executive Board, the President of the EU Council, and one member of the European Commission may attend the meetings of the General Council, but do not have the right to vote. The General Council represents a transitional body, which is meant to be dissolved once all EU Member States have introduced the single currency. Indeed, it performs the tasks taken over from the European Monetary Institute that the ECB is required to perform due to the fact that not all Member States have adopted the euro. Moreover, the General Council carries out advisory functions; collects statistical information; contributes to the preparation of the ECB's annual report; promotes the standardisation of the accounting practices adopted by national central banks; contributes to the establishment of the key for the ECB's capital subscription other than those laid down in the Treaty; lays down the conditions

[47] *Ibidem*.
[48] Kirschenbaum, J., and Véron, N., *cit*., p. 7.
[49] ECB official website: www.ecb.europa.eu.
[50] *Ibidem*.

of employment of the ECB's staff; and is involved in the determination of the exchange rates between the currencies of the Member States with a derogation and the euro[51].

Finally, the ECB establishes an Administrative Board of Review, which is responsible for performing the internal administrative review of the decisions taken by the Authority in the exercise of its powers, after the submission of a request for review[52]. It comprises five individuals of high repute from Member States, endowed with a proven record of relevant knowledge and professional experience, excluding current staff of the ECB, competent authorities or other national or EU institutions, bodies, offices and agencies that are involved in the accomplishment of the supervisory tasks of the ECB[53].

1.6. THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION

The micro- and macroprudential supervision of financial institutions in the EU is coordinated by the European System of Financial Supervision ("ESFS")[54]. The present section will present this supervisory system, with an illustration of the context in which it was created and a description of the authorities participating in the framework.

The ESFS was established in response to the to the crisis that disrupted financial markets starting from 2007, with the aim of ensuring the micro- and macroprudential supervision of financial institutions in the EU, and ultimately protecting the stability and the integrity of the entire financial system. The creation of the ESFS was tabled in 2010, but the system has become operational starting from 2011.

The legal basis of the ESFS can be identified with the already mentioned Article 127(6) of the TFEU, together with Article 114(1) of the TFEU, which states that "*The European Parliament and the Council shall [...] adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market"*[55].

The ESFS is composed of the European Systemic Risk Board ("ESRB"), the three European Supervisory Authorities ("ESAs"), the Joint Committee of the ESAs, and the national supervisory authorities.

---

[51] *Ibidem*.
[52] Art. 24, co. 1, SSMR.
[53] Art. 24, co. 2, SSMR.
[54] Concerning the ESFS, see Papadopoulos, T., *European System of Financial Supervision*, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, ed. Oxford University Press, 2014, available at SSRN: https://ssrn.com/abstract=2638620.
[55] Art. 114(1), TFEU.

First of all, the ESRB[56] is in charge of the macroprudential supervision of the financial system in the EU and pursues the objective of minimising the spread of systemic risks. Among its supervisory tasks, the ESRB collects and analyses all information that is relevant for the purpose of identifying systemic risks and preventing it from spreading across the Union[57]. The Board also issues warnings when systemic risks appear to be significant, as well as recommendations requiring remedial action to address such risks, but also monitors the follow-up to warnings and recommendations[58]. Moreover, the Board shall cooperate closely with the other bodies of the ESFS and shall act in coordination with international financial organisations, especially the International Monetary Fund ("IMF") and the FSB, as well as bodies in charge of tasks related to the macroprudential oversight of financial institutions in third countries[59]. As far as the internal organisation is concerned, the ESRB comprises a General Board, which acts as the decision-making body of the Board; a Steering Committee, which assists the General Board in its decision-making process; a Secretariat, which is in charge of the day-to-day business of the Board; and two advisory committees, namely the Advisory Scientific Committee and the Advisory Technical Committee[60]. Finally, the ESRB has a Chair and two Vice-Chairs[61].

While the ESRB is in charge of the macroprudential oversight of the financial system of the Union, the three ESAs are responsible for microprudential supervision. In particular, the ESAs shall coordinate the supervisory activity of national supervisors and shall promote the convergence of high-quality supervisory standards and practices, in their respective areas of competence. There are three ESAs, one for each of the sectors in which the financial system can be subdivided, namely:

- The European Banking Authority ("EBA")[62], for the banking sector;
- The European Insurance and Occupational Pensions Authority ("EIOPA")[63], for the insurance sector;

[56] Established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.
[57] Art. 3, co. 2, lett. a), *ibidem*.
[58] Art. 3, co. 2, lett. c), d) and f), *ibidem*.
[59] Art. 3, co. 2, lett. g) and i), *ibidem*.
[60] Art. 4, *ibidem*.
[61] Art. 5, *ibidem*.
[62] Established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

- The European Securities and Markets Authority ("ESMA")[64], for the securities sector.

Lastly, the Joint Committee is the joint body of the ESAs, which shall ensure supervisory consistency through the cross-sectoral coordination of supervisory activities. As outlined in the ESAs Regulations, the Joint Committee has responsibilities in the areas of financial conglomerates; accounting and auditing; micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities of financial stability; retail investment products and financial services; consumer and investor protection issues; cybersecurity; and information exchange between the ESRB and the ESAs[65]. Moreover, the Joint Committee is responsible for the settlement of disputes between the ESAs on cross-sectoral matters[66]. The Joint Committee comprises the Chairpersons of the three ESAs and of any of its Subcommittee. The Chair of the Committee is selected among the Chairpersons of the three ESAs on a 12-month rotation basis, and is contemporarily designated as one of the Vice-Chairs of the ESRB[67].

1.7. THE EUROPEAN BANKING AUTHORITY

The description of the EBA is particularly relevant for the purpose of providing a comprehensive overview of the EU prudential supervisory system, since this Authority is responsible for the microprudential supervision of credit institutions in the Union. Therefore, the following subsections will illustrate the tasks and powers of the EBA, its role in EU legislation, its internal organisations, as well as other provisions applying to the budget and to the staff of the Authority[68].

---

[63] Established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.

[64] Established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

[65] Art. 54 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010.

[66] Art. 56, *ibidem*.

[67] Art. 55, co. 1 and 2, *ibidem*.

[68] Concerning the role of the EBA in banking supervision, see Gardella A., *L'EBA e i rapporti con la BCE e con le altre autorità di supervisione e di regolamentazione*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 115 – 138.

1.7.1. The tasks and powers of the EBA

The legal basis of the EBA is represented by Regulation (EU) No 1093/2010, which has been subsequently modified by Regulation (EU) 2019/2175[69]. This ESA is headquartered in London and is responsible for the microprudential supervision of the banking sector. Through its supervisory activity, the EBA shall contribute to the protection of the public interest, by ensuring the stability and the correct functioning of financial markets and the correct application of prudential regulation in the banking sector. In particular, the Authority shall act in the field of activities of credit and financial institutions, but also financial conglomerates, investment firms, payment institutions and e-money institutions[70].

As far as prudential supervision is concerned, the main task of the EBA is to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, by issuing opinions to EU authorities and by developing binding technical standards, as well as guidelines and recommendations[71]. Furthermore, the Authority contributes to the consistent application of legally binding Union acts; facilitates the delegation of tasks and responsibilities among competent authorities; cooperates closely with the ESRB; conducts peer review analyses of competent authorities; monitors and assesses market developments in its area of competence; undertakes economic analyses of markets; fosters depositor and investor protection; contributes to the consistent and coherent functioning of colleges of supervisors as well as to the monitoring, assessment and measurement of systemic risk, and to the development and coordination of recovery and resolution plans; publishes on its website and updates information relating to its

[69] Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.

[70] Art. 1, co. 2 e 3, Regulation (EU) No 1093/2010. More specifically, Art. 1, co. 2, states that The Authority shall act within the powers conferred by Regulation (EU) No 1093/2010 and within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, Regulation (EC) No 1781/2006, Directive 94/19/EC and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2005/60/EC, Directive 2002/65/EC, Directive 2007/64/EC and Directive 2009/110/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

[71] Art. 8, co. 1, lett. a), *ibidem*.

field of activities; and may take over all existing tasks from the Committee of European Banking Supervisors ("CEBS")[72].

Besides its supervisory tasks, the EBA has been conferred a leading role in the protection of consumers of financial products or services. Indeed, the Authority shall promote transparency, simplicity and fairness in the market, for instance by collecting, analysing and reporting on consumer trends; by reviewing and coordinating financial literacy and education initiatives by national competent authorities; by developing training standards for the industry; and by contributing to the development of common disclosure rules[73]. Moreover, the Authority may adopt guidelines and recommendations aimed at promoting the safety and soundness of markets and the convergence of regulatory practices[74], but it may also issue warnings where a financial activity poses a serious threat to the stability and effectiveness of the financial system[75]. Where necessary, the Authority has the power to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning, the integrity or the stability of the financial system[76].

In order to fulfil its supervisory role, the EBA has the power to address binding decisions to competent authorities and to private-sector entities, but only in three specific cases, which are specified by Articles 17, 18 and 19 of Regulation (EU) No 1093/2010, respectively.

First, Article 17 refers to breaches of Union law committed by a national competent authority. Upon request from one or more competent authorities, the European Parliament, the Council, the Commission, or the Banking Stakeholder Group, or on its own initiative, and after having informed the competent authority concerned, the EBA may investigate the alleged breach or non-application of relevant Union law. Not later than two months from the beginning of the investigation, the Authority shall address a recommendation to the national authority concerned, setting out the action necessary to comply with Union law. The national authority will have ten working days to inform the EBA about the steps it has taken, or it intends to take, and will have one month to restore compliance with Union law. If the national authority does not implement adequate measures, the Commission may, either on its own initiative or after having

[72] Art. 8, co. 1, lett b) – l), *ibidem*.
[73] Art. 9, co. 1, *ibidem*.
[74] Art. 9, co. 2, *ibidem*.
[75] Art. 9, co. 3, *ibidem*.
[76] Art. 9, co. 5, *ibidem*.

been informed by the EBA, issue a formal opinion requiring the competent authority to comply with Union law. The national authority will again have ten working days to inform the Commission and the EBA about the measures it has taken or intends to take in order to comply with its obligations. Where the national authority does not comply with the formal opinion issued by the Commission within the period of time specified therein, and where a timely intervention is necessary for the protection of competition, or to ensure the orderly functioning and integrity of the financial system, the EBA will acquire the power to address an individual decision to a financial institution, requiring the necessary action that it needs to take in order to ensure compliance with its obligations under Union law, provided that those obligations are directly applicable to the institution concerned[77].

Second, Article 18 confers on the EBA a power of direct intervention in emergency situations. First of all, in the case of adverse developments that may damage the orderly functioning and integrity of financial markets or the stability of the EU financial system, the EBA shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by national competent authorities. Moreover, provided that the Council, in consultation with the Commission and the ESRB and, where appropriate, the ESAs, has determined the existence of an emergency situation, and in exceptional circumstances where coordinated action by national authorities is necessary to respond to adverse developments, the EBA may issue an individual decision requiring a national competent authority to address such developments, by ensuring that the supervised entities comply with their legal obligations. If the national authority does not comply with that decision, the EBA may adopt an individual decision addressed to a financial institution, provided that the relevant requirements are directly applicable to the institution concerned[78].

Third, Article 19 describes the conferral on the EBA of a mediatory role in the case of settlement of disagreements between competent authorities in cross-border situations. More specifically, the EBA may assist national authorities in reaching an agreement, either upon request from one or more of the authorities concerned or on its own initiative, by setting a time limit for the conciliation and by acting as a mediator. If the national authorities concerned fail to reach an agreement within the time limit specified for the conciliation phase, the EBA may adopt a decision requiring the national authorities to take specific actions or to refrain from action. If one or more of the

[77] Art. 17, *ibidem*.
[78] Art. 18, *ibidem*.

authorities fail to comply with that decision, the EBA may address an individual decision to a financial institution, requiring it to comply with its obligations under Union law, provided that those requirements are directly applicable to the financial institution concerned[79].

1.7.2. The role of the EBA in EU legislation

The EBA does not have the power to adopt EU Regulations and Directives, but it provides a contribution to EU legislation by filling the gaps of technical legislation through the development of binding technical standards, and the adoption of guidelines and recommendations addressed to national supervisors and supervised entities[80].

Binding technical standards include regulatory technical standards and implementing technical standards. In particular, the EBA develops draft regulatory technical standards where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the TFEU. Those standards shall be technical, shall not imply strategic decisions or policy choices, and their content shall be delimited by the legislative acts on which they are based[81]. Moreover, the EBA develops implementing technical standards, by means of implementing acts pursuant to Article 291 of the TFEU, in its areas of competence. Similarly to regulatory technical standards, implementing technical standards shall be technical, shall not imply strategic decisions or policy choice, and their content shall be to determine the conditions of application of those acts[82].

The Regulation describes an identical procedure for the endorsement of draft regulatory and implementing technical standards, which can be summarised as follows. As a first step, the EBA shall conduct open public consultation on a standard, then it shall deliver it to the Commission for endorsement. After that, the Commission will immediately forward the standard to the European Parliament and the Council. Within three months of receipt of a standard, the Commission shall decide whether to endorse it entirely,

---

[79] Art. 19, *ibidem*.

[80] EU legislation can be divided into two categories: primary legislation, which refers to the treaties, and secondary legislation, which includes both the binding and the non-binding legal acts adopted by EU institutions. Binding acts include Regulations, which are binding legislative acts of general application; Directives, which need to be transposed into national law provisions in order to become legally binding in Member States; and Decisions, which only apply to the subjects whom they are addressed to. Non-binding acts include Recommendations and Opinions.

[81] Art. 10, co. 1, Regulation (EU) No 1093/2010.

[82] Art. 15, co. 1, *ibidem*.

partially, or with amendments. Where the Commission intends not to endorse a standard, or to endorse it in part or with amendments, it will send the standard back to the EBA, explaining the reasons for its decision. Within a period of six weeks, the Authority may amend the standard based on the Commission's suggestions, and resubmit it in the form of a formal opinion to the Commission, sending a copy of the opinion also to the European Parliament and to the Council. If the EBA does not follow this procedure, the Commission may adopt the standard with the amendments it considers relevant, or reject it[83].

Besides draft regulatory and implementing technical standards, the EBA issues guidelines and recommendations addressed to competent authorities or financial institutions, which shall make every effort to comply with them[84]. The procedure described by the Regulation for the endorsement of those acts requires that, within two months of the issuance of a guideline or recommendation, each competent authority confirm whether it complies or intends to comply with that guideline or recommendation. Otherwise, the national authority shall inform the EBA about its noncompliance, stating the reasons for such noncompliance. In this case, the EBA shall publish the fact that a competent authority does not comply or does not intend to comply with a guideline or recommendation, and may also publish the reasons, provided that the national authority has been informed[85].

1.7.3. The internal organisation of the EBA

The EBA comprises a Board of Supervisors, a Management Board, a Chairperson, an Executive Director, and a Board of Appeal[86].

The main decision-making body of the Authority is the Board of Supervisors, which comprises the Chairperson of the EBA, one representative of the Commission, one representative of the ECB, one representative of the ESRB, and the head of the national public authority competent for the supervision of credit institutions in each Member State, where the latter are the members endowed with voting power[87]. This Board is responsible for taking decisions concerning banking supervision, including the adoption of binding technical standards, guidelines, opinions, and recommendations[88]. It also

[83] Art. 10, co. 1, and art. 15, co. 1, *ibidem*.
[84] Art. 16, co. 1 and 3, *ibidem*.
[85] Art. 16, co. 3, *ibidem*.
[86] Art. 6, *ibidem*.
[87] Art. 40, co. 1, *ibidem*.
[88] Art. 43, co. 1 and 2, *ibidem*.

adopts, on the basis of a proposal by the Management Board, the work program of the Authority for the coming year, the annual report on the activities of the Authority, the multi-annual work program of the Authority, and the budget[89].

The EBA is managed by the Management Board, which comprises the Chairperson and six other members of the Board of Supervisors, elected by and among the voting members of the Board of Supervisors[90]. This Board is responsible for ensuring that the Authority performs the tasks and fulfils the mission entrusted to it by its Regulation, but it also proposes the annual and multi-annual work programs as well as the annual report on the activities of the Authority, and exercises budgetary powers[91].

The EBA is represented by the Chairperson, who is a full-time independent professional appointed by the Board of Supervisors on the basis of merit, skills, knowledge and experience, following an open selection procedure. The Chairperson shall prepare the work of the Board of Supervisors and chair the meetings of the Board of Supervisors and the Management Board[92].

In addition to that, the EBA has an Executive Director, who is a full-time independent professional appointed by the Board of Supervisors, after confirmation by the European Parliament, and is designated on the basis of merit, skills, knowledge and experience, after an open selection procedure[93]. The Executive Director is in charge of the management of the Authority; prepares the work of the Management Board; implements the annual work program of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board; prepares the annual and multi-annual work program, as well as a preliminary draft budget and a draft report on the activities of the Authority; and implements its budget[94].

Lastly, in order to protect the rights of parties affected by decisions adopted by the EBA and the other ESAs, a Board of Appeal has been established. It is a joint body of the ESAs and it is composed of six members and six alternates, who shall be individuals of high repute with a proven record of relevant knowledge and professional experience, excluding current staff of the competent authorities or other national or EU institutions

[89] Art. 43, co. 4 – 7, *ibidem*.
[90] Art. 45, co. 1, *ibidem*.
[91] Art. 48, co. 1, 2, 3 and 6, *ibidem*.
[92] Art. 48, co. 1 and 2, *ibidem*.
[93] Art. 51, co. 1 and 2, *ibidem*.
[94] Art. 53, co. 1 – 7, *ibidem*.

involved in the activities of the ESAs[95]. It shall decide upon any appeal presented by any natural or legal person against a decision of the ESAs, according to Article 60 of their Regulations.

1.7.4. Financial provisions

The EBA shall establish an annual budget, comprising revenues and expenses, which need to be in balance[96]. In particular, the revenues of the Authority consist of a combination of obligatory contributions from national competent authorities, a subsidy from the EU, and any fees paid to the Authority in the cases specified by relevant Union law; while the expenses of the Authority include staff remuneration, administrative, infrastructure, professional training, and operational expenses[97].

The Regulation describes the following procedure for the establishment of the budget. Each year, the Executive Director prepares a provisional draft single programming document for the three following financial years, setting out the estimated revenue and expenditure, as well as information on staff, from its annual and multi-annual programming, and forwards it to the Management Board and the Board of Supervisors, together with the establishment plan. After this document has been approved by the Management Board, the Board of Supervisors will adopt the draft single programming document for the three following financial years and will transmit it to the Commission, the European Parliament, the Council, and the European Court of Auditors by 31 January. Based on this document, the Commission will enter in the draft budget of the EU both the estimates and the amount of the balancing contribution to be charged to the general budget of the Union. After that, the European Parliament and the Council will adopt the establishment plan for the Authority and will authorise the appropriations for the balancing contribution. The last step of the process will be the adoption of the budget by the Supervisory Board. However, if the Management Board intends to implement any project that may have a significant impact on the budget, it will need to notify the European Parliament and the Council and receive their authorisation[98]. Moreover, the Executive Director acts as authorising officer and implements the annual budget[99], while the Court of Auditors shall audit the financial documents of the EBA.

---

[95] Art. 58, co. 1 and 2, *ibidem*.
[96] Art. 62, co. 3, Regulation (EU) No 1093/2010.
[97] Art. 62, co. 1 and 2, *ibidem*.
[98] Art. 63, Regulation (EU) No 1093/2010, as modified by Regulation (EU) 2019/2175.
[99] Art. 64, co. 1, *ibidem*.

Another requirement set out by the Regulation is that the financial rules applicable to the EBA shall be adopted by the Management Board after consulting the Commission, and shall not depart from Commission Delegated Regulation (EU) 2019/715[100] unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission[101].

Lastly, the Authority is required to adopt the measures for combating fraud, corruption and any other illegal activity established by Regulation (EU, Euratom) No 883/2013[102].

1.7.5. Staff provisions

The Staff Regulations and the Conditions of Employment of Other Servants[103], along with Protocol (No 7) on the privileges and immunities, annexed to the TEU and the TFEU[104], apply to the staff of the EBA.

Moreover, in the case of non-contractual liability, the Authority is liable for any damage caused by it or by its staff in the performance of their duties, while the Court of Justice of the European Union ("CJEU") is in charge of the jurisdiction in any dispute over the remedying of such damage[105].

In addition, members of the Board of Supervisors, all members of the staff of the Authority, including officials seconded by Member States on a temporary basis, and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy, even after their duties have ceased[106]. However, such obligations shall not prevent the exchange of information between the EBA and other competent authorities[107].

---

[100] Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.

[101] Art. 65, Regulation (EU) No 1093/2010, as modified by Regulation (EU) 2019/2175.

[102] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999. Art. 66, co. 1, Regulation (EU) No 1093/2010, as modified by Regulation (EU) 2019/2175.

[103] Art. 68, co. 1, Regulation (EU) No 1093/2010.

[104] Art. 67, *ibidem*.

[105] Art. 69, *ibidem*.

[106] Art. 70, co. 1 and 2, Regulation (EU) No 1093/2010, as modified by Regulation (EU) 2019/2175.

[107] Art. 70, co. 2, *ibidem*.

CHAPTER II: AML/CFT REGULATION AND SUPERVISION IN EUROPE

2.1. INTRODUCTION

Money laundering and terrorist financing represent two severe threats to the integrity of financial systems and to the security of citizens all over the world. Moreover, the growing interconnectedness of financial markets worldwide, along with the technological innovations that allow criminals to develop increasingly sophisticated money laundering techniques, pose new threats to the soundness of financial markets, which need to be addressed through the action of international organisations and governments. In order to respond to the risks of money laundering and terrorist financing, the governments of many countries worldwide have reached agreements aimed at developing common standards for the implementation of a relatively uniform system of criminal law against these phenomena, and new international bodies have been established for the purpose of coordinating the efforts of governments in the combat of money laundering and terrorist financing. Furthermore, EU Authorities have adopted a series of Directives aimed at harmonising the legal provisions adopted by Member States to counter these phenomena.

The aim of this chapter is to provide an overview on the international and European system of Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") regulation and supervision. The chapter will start by providing a definition of the concepts of money laundering and terrorist financing. Then, it will describe the main international agreements and standards on which AML/CFT regulation is based as well as the major international bodies engaged in the fight against money laundering and terrorist financing. After that, the historical evolution of AML/CFT regulation in the EU will be presented, followed by a description of the current European AML/CFT supervisory framework and of the role that has recently been conferred on the EBA in this field. Lastly, the weaknesses of this supervisory system will be highlighted.

2.2. DEFINITION OF MONEY LAUNDERING AND TERRORIST FINANCING

Before describing the AML/CFT regulatory and supervisory framework, it is useful to clarify what is meant by money laundering and terrorist financing. This section will provide a definition of these phenomena and will explain why they are related.

Money laundering is the process by which the proceeds obtained illegally from criminal activities are disguised and introduced in the legal economy, often through a complex series of banking transfers or commercial transactions.

According to scholars, this process follows three basic steps: placement, layering, and integration[108].

- In the placement stage, the proceeds originated from illegal activities, such as drug trafficking, prostitution, sale of illegal weapons, or human trafficking, are deposited in a financial institution or in a business firm, or used to purchase expensive assets.
- In the layering stage, launderers seek to conceal the criminal origins of their funds until they become untraceable. In order to do so, they separate illegally obtained assets from their sources, by creating layers of transactions, by moving illicit funds between accounts or businesses, and by buying and selling assets internationally.
- In the integration stage, launderers introduce illegally obtained funds into the financial system, for example by using them to pay for services.

For the purposes of this dissertation, a relevant definition of money laundering can be retrieved from the fourth Anti-Money Laundering Directive[109], which represents the main source of AML/CFT rules in the EU. According to Article 1, co. 3, of the Directive: "*The following conduct, when committed intentionally, shall be regarded as money laundering:*

a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;

---

[108] Buscemi, A., and Yallwe, H. A., *Money laundry and financial development*, in "Antiriclaggio & 231", vol. 0, 2001, pp. 231 – 232; Savona, E. U., and De Feo, M. A., *International Money Laundering Trends and Prevention/Control Policies*, in Savona, E. U. (ed.), *Responding to Money Laundering, International Perspectives*, ed. Routledge, London, 2004, pp. 22-30; Booth, R., Farrel, S., Bastable, Qc. G., and Yeo, N., *Money Laundering Law and Regulations. A practical guide*, Oxford, OUP, 2011, pp. 3 – 4; Gilmore, W. C., *Dirty Money. The evolution of international measures to counter money laundering and the financing of terrorism*, ed. Council of Europe Publishing, Paris, 2011, p. 32.

[109] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;

c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;

d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).”[110]

The words of the Directive reiterate the definition of money laundering provided by Article 3 of the Vienna Convention[111], an important agreement concluded by the United Nations (“UN”) in 1988, which laid the foundations for the adoption by governments of a relatively harmonised regulatory system against crimes related to money laundering.

Besides money laundering, terrorist financing represents another serious threat to the integrity of financial markets and the security of citizens. This phenomenon can be defined as *“the financial support, in any form, of terrorism or those who encourage, plan, or engage in terrorism”*[112].

Similarly to money laundering, also the process of terrorist financing follows three basic steps: collection, dissimulation, and use[113].

- In the collection stage, criminals collect the funds that will be employed to finance terrorist activities. Since the origins of these funds can be either legal or illegal, the financing of terrorism can represent a method to launder money.
- In the dissimulation stage, criminal organisations seek to hide the fact that their transactions are aimed at financing terrorist activities. In order to achieve this objective, criminals often employ underground or parallel banking system, rather than relying on the conventional banking network.
- In the use stage, the funds are actually employed to perform terrorist activities.

---

[110] Art. 3, co. 1, Directive (EU) 2015/849.

[111] Artt. 3(1)b(i), 3(1)b(ii), 3(l)c(i), and 3(l)c(iv), respectively, of the UN *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (“Vienna Convention”).

[112] Schott, P. A., *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, World Bank Publications, 2006, p. I-1.

[113] Ramunno P. and Razzante R., *Riciclaggio e finanziamento al terrorismo di matrice islamica*, in “Filodiritto”, 2007, available at: https://www.filodiritto.com/riciclaggio-e-finanziamento-al-terrorismo-di-matrice-islamica.

Money laundering and terrorist financing are clearly characterised by opposite dynamics[114]: while money launderers seek to enjoy the profits of previous crimes by concealing the illegal sources of their funds; terrorists finance their criminal acts by employing money that may either have legal or illegal origins. Therefore, a key difference between the two phenomena is that money launderers aim at disguising the origins of illegally obtained assets, whereas terrorists are concerned about concealing the destination of their funds[115].

Notwithstanding the difference between these phenomena, money laundering and terrorist financing are related because both crimes presuppose the deployment of financial institutions for illicit purposes[116]. Moreover, the techniques employed to launder money are often similar to those used to conceal both the sources and the destinations of the funds of terrorist financing. As a matter of fact, the funds employed to finance terrorism may be generated by either criminal or legal activities, but, in any case, they need to be disguised, in order to allow the financing activity to remain undetected and to ensure that the funds will remain available for financing other terrorist activities in the future[117].

2.3. THE INTERNATIONAL AML/CFT FRAMEWORK

In order to address the risks of money laundering and terrorist financing, several governments have agreed on a series of common standards which serve as a basis for the adoption of a relatively uniform system of criminal law to combat such crimes. This section aims at illustrating how the international AML/CFT regulatory and supervisory systems have been developed over time. In particular, the main international agreements that led to the adoption of a harmonised AML/CFT framework will be described, namely the UN Vienna Convention of 1988; the Council of Europe Recommendation No R(80)10 on "Measures Against the Transfer and Safekeeping of Funds of Criminal Origin" of 1980; and the Council of Europe Convention on "Laundering, Search, Seizure and Confiscation of the Proceeds from Crime" of 1990. After that, the main globally recognised AML/CFT set of standards will be mentioned, namely the Basel

[114] Borlini, L., and Montanaro, F., *The evolution of the EU law against criminal finance: the "hardening" of FTAF standards within the EU*, in "Georgetown Journal of International Law", vol. 48 (4), 2017, p. 1017.
[115] Borlini, L., *Regulating Criminal Finance in the EU in the Light of the International Instruments*, in "Yearbook of European Law", vol. 36 (1), 2017, p. 557.
[116] Borlini, L., and Montanaro, F., *cit*., p. 1018.
[117] Schott, P. A., *cit*., p. I-5.

Committee's "Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering", of 1988; and the "Forty Recommendations" of the Financial Action Task Force ("FATF"). Furthermore, among the international bodies involved in AML/CFT supervision, the FATF and the Egmont Group will be presented.

The origins of international Anti-Money Laundering ("AML") regulation date back to the beginning of the 1980s, when the increase in illicit drug trafficking and drug abuse started to raise the concerns of many governments all over the world[118]. Over the years, however, regulatory authorities have realised that money laundering affects a broader range of crimes, which has led to the widening of the scope of AML legislation. Alongside the development of AML regulation, the need to establish an effective system of supervision on money laundering countermeasures has been recognised. Indeed, proper supervisory scrutiny is necessary to guarantee the actual application of AML obligations by private-sector entities[119]. Since their inception, both AML regulation and supervision have been constantly updated, in order to respond to the evolving threats that have emerged in the economic system, such as transnational organised crime[120], as well as the technological developments that enable criminals to develop increasingly complex ways to disguise the proceeds of their illicit activities and to introduce them into the legal economy. Nowadays, AML regimes also need to tackle security threats such as the financing of terrorism, the proliferation of weapons of mass destruction, human trafficking, sanctions circumvention and kleptocracy[121].

The initial concerns of governments about illicit drug trafficking were reflected in many Resolutions agreed by the UN during the 1980s[122], among which the 1988 "Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", also known as

---

[118] Mitsilegas, V., *Money laundering counter-measures in the European Union: a new paradigm of security governance versus fundamental legal principles*, Ph.D. in Law, The University of Edinburgh, 2000, p. 66.

[119] Vogel, B., and Maillart J. – B., *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, ed. Intersentia, Cambridge, 2020, p. 1025.

[120]Concerning the threats posed by transnational organised crime, see Bristow, K., *Transnational organized crime as a national security threat*, speech at George Washington University, 29 January 2015.

[121] Kirschenbaum, J., and Véron, N., *cit.*, p. 3.

[122] See, for example, General Assembly Resolution 35/195 of 15 December 1980; Resolution 36/168 of 16 December 1981; Resolution 37/168 of 17 December 1982; Resolution 37/198 of 18 December 1982; Resolution 38/93 and Resolution 38/122 of 16 December 1983; Resolution 39/141, Resolution 39/142 and Resolution 39/143 of 14 December 1984; Resolution 40/121 and Resolution 40/122 of 13 December 1985.

the "Vienna Convention"[123]. This document laid the foundations for the establishment of a strong international system of soft-law provisions against illicit drug trafficking and related criminal activities[124]. An important element of the Convention was the recognition of a series of criminal offences related to drug trafficking[125], among which a definition of money laundering[126] could be found. However, the Vienna Convention limited predicate offences to criminal activities related to drug trafficking, while currently money laundering offences extend to a wider range of crimes. The approach adopted by the Vienna Convention was of key importance for the future of international cooperation against money laundering: by requiring the criminalisation of money laundering, the Convention paved the way for international cooperation concerning investigations, prosecutions, judicial proceedings, confiscation, and extradition[127].

Besides the UN, also the Council of Europe made its first efforts to combat money laundering in the 1980s[128]. In particular, Recommendation No R(80)10 on "Measures Against the Transfer and Safekeeping of Funds of Criminal Origin", agreed by the Council of Europe in 1980, called on Member States to establish proper measures aimed at improving the monitoring of transfers of funds connected with criminal activities[129]; to establish a close system of national and international cooperation involving banks and competent authorities[130]; and to set up machinery to track banknotes transaction[131]. Nevertheless, the recommended measures were not implemented then[132].

After that, during the 15th Conference of the European Ministers of Justice held in Oslo from 17 to 19 June 1986, the discussion on the penal aspect of drug abuse led to the adoption of Resolution No l, in which the European Committee on Crime Problems ("CDPC") was called on to formulate an international legal framework to guarantee international cooperation in the detection, freezing and forfeiture of the proceeds of

[123] For a detailed description of the Resolutions adopted by the UN and of the Vienna Convention, see Mitsilegas, V., *cit.*, pp. 66 – 71.
[124] Gilmore, W. C., *cit*., p. 55.
[125] Art. 3, co. 1, Vienna Convention.
[126] Art. 3, co. 1, lett. b), *ibidem*.
[127] Borlini L., *cit*. p. 561.
[128] For a detailed description of the contribution made by the Council of Europe to the development of a European AML/CFT framework, see Mitsilegas, V., *cit*., pp. 71 – 76.
[129] Point a., Council Recommendation No R(80)10.
[130] Point b., *ibidem*.
[131] Point c., *ibidem*.
[132] Mitsilegas, V., *cit*., p. 72.

drug trafficking[133]. This initiative, along with the work carried out by the Pompidou Group[134], led to the proposal by the CDPC, in June 1987, of a Select Committee of Experts on international cooperation as regards search, seizure and confiscation of the proceeds from crime ("PC-R-SC")[135], which was given responsibility to prepare a European legal instrument in the field of money laundering, if deemed necessary.

This led to the adoption of the 1990 Council of Europe Convention on "Laundering, Search, Seizure and Confiscation of the Proceeds from Crime", which entered into force in 1993 and aimed at providing a complete set of rules applicable to all stages of the criminal persecution of money laundering crimes[136]. When drafting this Convention, the negotiators adopted the 1988 Vienna Convention as the main point of reference[137]. Interestingly, the 1990 Council of Europe Convention was a multilateral instrument opened also to States that were not part of the Council itself, hence it could promote the harmonisation of AML measures at a broader level[138]. This Convention required the implementation of proper measures aimed at the identification and confiscation of the proceeds from illegal activities[139]; provided a list of money laundering offences[140]; and established a set of principles for international cooperation in the AML field[141].

Besides the UN and the Council of Europe, the Basel Committee on Banking Supervision ("BCBS") formulated a set of comprehensive policies for the prevention of money laundering at an international level, by issuing, in December 1988, the "Statement on the Prevention of Criminal Use of the Banking System for the Purpose of

---

[133] Council of Europe, *Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, 8 November 1990, p. 1.
[134] The Pompidou Group is an intergovernmental cooperation platform of the Council of Europe that is concerned with drug and addiction policies.
[135] Council of Europe, *Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, 8 November 1990, p. 1.
[136] Csonka, P., *Organised Crime: An Overview of the Relevant Council of Europe Activities*, in Cullen, P. J., and Gilmore, J. W. (eds.), *Crime Sans Frontieres: International and European Legal Approaches*, ed. Edinburgh University Press, Edinburgh, 1998, p. 96.
[137] Borlini, L., *cit*., p. 562.
[138] Bassiouni, M. C., and Gualtieri, D. S., *International and National Responses to the Globalization of Money Laundering*, in Savona, E. U. (ed.), *Responding to Money Laundering. International Perspective*, ed. Routledge, London, 2004, p. 132.
[139] Artt. 2 – 5, Council of Europe, *Convention on Laundering Search, Seizure and Confiscation of the Proceeds from Crime*.
[140] Art. 6, *ibidem*.
[141] Artt. 7 – 35, *ibidem*.

Money Laundering"[142]. This Statement is not legally binding, but the governments of member countries should encourage banks to adopt the principles set forth in the document. The main points of the Statement are the following.

- Customer identification: banks should make reasonable efforts to determine the true identity of their customers, with a particular focus on the identification of ownership of all accounts and those using safe-custody facilities. Transactions with customers who fail to provide evidence of their identity should be prohibited[143].
- Compliance with laws: banks' management should ensure that business is conducted in conformity with high ethical standards and financial law provisions. Notwithstanding the difficulties in identifying the possible links of customers transactions with illegal activities and in ensuring that cross-border transactions are conducted in compliance with the regulation of other countries, banks should refrain from transactions which may be linked to money laundering activities[144].
- Cooperation with law enforcement authorities: banks should cooperate fully with national law enforcement authorities, without prejudice to their obligations concerning customers confidentiality[145].
- Adherence to the Statement: all banks should formally adopt policies consistent with the principles set out in the Statement and ensure that their personnel is adequately informed about the bank's policy in this regard[146].

A few years later, in response to the increasing concern for the phenomenon of money laundering, during the summit of the Group of Seven ("G-7") held in Paris in 1989, the Financial Action Task Force ("FATF") was established. The FATF originally comprised the G-7 member States, the European Commission and eight other countries, while now it includes 37 member jurisdictions and two regional organisations. It also relies on a strong global network of FATF-Style Regional Bodies, which includes over 200 jurisdictions worldwide. The FATF was originally created to develop measures to combat money laundering, but its scope of action has been later extended to the prevention of the financing of terrorism, in 2001, and to the countering of financing of

[142] For a detailed analysis of the Basel Committee's *Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*, see Mitsilegas, V., *cit*., pp. 76 – 77.
[143] Basel Committee on Banking Supervision, *Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*, point II.
[144] *Ibidem*, point III.
[145] *Ibidem*, point IV.
[146] *Ibidem*, point V.

weapons of mass destruction, in 2012[147]. The main contribution of the FATF to the fight against money laundering is represented by the "Forty Recommendations"[148], which consist in a set of standards aimed at combating money laundering, the financing of terrorism, and the proliferation of weapons of mass destruction[149]. This document was initially published in 1990, but it has been constantly updated, in response to the evolution of the financial system and to the new threats posed by criminal activities[150]. These Recommendations are not legally binding, but they have been endorsed by more than 180 countries worldwide; moreover, the World Bank, the IMF, and the UN Security Council have recognised their validity as international standards. Currently, they represent the universal standards shaping AML/CFT legislation at a global level[151].
Another important international organisation involved in AML/CFT supervision is the Egmont Group, the global united body of Financial Intelligent Units ("FIUs"), established in 1995 to facilitate the collaboration and exchange of information among member FIUs, which are currently 167. FIUs serve as national centres for the receipt and analysis of suspicious transaction reports and all relevant information for the prevention of money laundering and the financing of terrorism[152].
There are four FIU models: Judicial, Law Enforcement, Administrative, and Hybrid.

- In the Judicial Model, the FIU is established within the judicial branch of the government.
- In the Law Enforcement Model, the FIU implements AML measures alongside existing law enforcement systems, supporting the efforts of law enforcement or judicial authorities with concurrent, or competing, jurisdictional authority to investigate money laundering.
- In the Administrative Model, the FIU is a centralised, independent, administrative authority, which receives and processes information from the financial sector and transmits disclosures to judicial or law enforcement authorities for prosecution.

[147] FATF official website, www.fatf-gafi.org.
[148] Concerning the FATF "Forty Recommendations", see Mitsilegas, V., *cit.*, pp. 78 – 81; and Alldridge P., *Money laundering and globalization*, in "Journal of Law and Society" vol. 35 (4), 2008, pp. 443 – 445
[149] FATF Recommendations, *International standards on combating money laundering and the financing of terrorism and proliferation of weapons of mass destruction*.
[150] The most recent version was published in 2012.
[151] Borlini, L., *cit*., p. 566.
[152] Egmont Group official website: www.egmontgroup.org.

- In the Hybrid Model, the FIU acts as a disclosure intermediary and serves as a link to both judicial and law enforcement authorities, combining elements of at least two FIU models[153].

2.4. HISTORICAL EVOLUTION OF AML/CFT REGULATION IN THE EU

Following the international developments in AML/CFT legislation, the EU adopted a series of Directives aimed at combating money laundering and terrorist financing, which still constitute the basis of the AML/CFT regulatory and supervisory framework in the Union. Over the years, European AML/CFT legislation has been constantly revised, in order to effectively respond to the evolving risks related to money laundering and terrorist financing, following the updates of the FATF Forty Recommendations[154]. This section will focus on the historical evolution of AML/CFT regulation in the EU, by describing the five AML/CFT Directives that have been adopted by the European legislator up to now.

The first AML Directive ("AMLD I")[155] was adopted on 10 June 1991 and needed to be transposed into national laws by 1 April 1994. The Directive adopted a two-pronged approach of criminalisation and prevention of money laundering, combining the approaches of the 1988 Vienna Convention and of the 1990 Council of Europe Convention on one hand, and of the FATF on the other[156]. In particular, AMLD I introduced the criminalisation of money laundering, by providing a definition of this concept, based on the definition contained in the Vienna Convention[157], and by requiring Member States to prohibit it, at least when it involved drug trafficking[158]. Secondly, the Directive required Member States to impose a series of obligations on credit and financial institutions for the prevention of money laundering.

Although AMLD I represented an important step in the fight against money laundering, the subsequent changes in money laundering operations, such as the development of

[153] *Ibidem*.
[154] Gilmore, B., and Mitsilegas, V., *The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards*, in "The International and Comparative Law Quarterly", vol. 56 (1), Cambridge University press, 2007, p. 120; and Ioannides, E., *Fundamental Principles of EU Law against Money Laundering*, ed. Ashgate Publishing, Farnham, 2014, p. 54.
[155] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.
[156] Gilmore, B., and Mitsilegas, V., *cit.*, p. 120.
[157] Art. 1, Council Directive 91/308/EEC.
[158] Art. 2, *ibidem*.

new technologies and the extension of money laundering threats beyond the banking sector, made evident that AML legislation needed to be revised. Taking these factors into account, the FATF revised its Forty Recommendations in 1996, with an extension of the list of predicate offences, an expansion of preventive duties beyond the banking sector, and a technological innovation of the customer identification system that took into account the developments in technologies[159]. This led to the adoption of the second AML Directive ("AMLD II")[160], which was issued on 4 December 2001 and required transposition by 15 June 2003. In line with the revision of the FATF Recommendations, AMLD II was characterised by the extension of predicate offences related to money laundering, the broadening of the *ratione personae* scope, and the strengthening of identification duties[161]. Concerning the list of predicate offences giving rise to money laundering crimes, AMLD II expanded the definition provided by the Vienna Convention, which referred only to the traffic of drugs and psychotropic substances. Indeed, Article 1 of the Directive defined criminal activity as *"any kind of criminal involvement in the commission of a serious crime"*[162], by specifying that a serious crime could consist in any of the predicate offences referred to in the Vienna Convention, the activities of criminal organisations, fraud, corruption, or any offence that may generate substantial proceeds and may be punished by a severe sentence of imprisonment pursuant to national criminal law[163]. As far as the field of application of AML/CFT regulation is concerned, AMLD II extended the list of obliged entities beyond the financial sector, by including the non-financial institutions and the professionals deemed to be more exposed to money laundering risks. These included auditors, external accountants and tax advisors; real estate agents; notaries and other independent legal professionals; dealers in high-value goods; and casinos[164]. Lastly, identification duties were completed with the requirement to identify customers in the *"non-face-to-face operations"*, namely the business relationships and transactions carried out by

[159] Mitsilegas, V., and Gilmore, B., *cit*., p. 123.
[160] Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.
[161] Mitsilegas, V., and Gilmore, B., *cit.*, p. 124.
[162] Art. 1(E), introduced by Directive 2001/97/EC.
[163] Art 1(E), *ibidem*.
[164] Art. 2a, *ibidem*.

employing technological instruments allowing the interaction with customers that are not physically present[165].

Four years after the adoption of AMLD II, after the FATF Recommendations had been revised again in 2003, the EU issued its third AML Directive ("AMLD III")[166] on 26 October 2005, requiring transposition by 15 December 2007. The historical reason behind the revision of both the FATF Recommendations and EU AML legislation was the need to respond to the "War on Terror" that followed the September 11 terrorist attack, which led international AML authorities to include the fight against terrorism within their scope of action[167]. Indeed, the major changes introduced by AMLD III began with the title of the new Directive, which referred to *"money laundering and terrorist financing"*[168]. In accordance with the new purpose of countering the financing of terrorism, AMLD III prohibited both money laundering and terrorist financing[169]. Moreover, the field of application of AML/CFT regulation was further extended by the Directive, which updated the list of obliged entities by including any natural or legal persons trading in goods, when payments are made in cash and amount to € 15,000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked[170]. In addition, AMLD III provided a better specification of the so called "Customer Due Diligence" ("CDD") duties[171], which are the duties requiring obliged entities to perform an accurate identification of their customers. However, the main innovation introduced by this Directive was the adoption of the "risk-based" approach to AML/CFT policies, according to which the main components of the AML/CFT framework, namely regulation, compliance and control, should be designed according to the risks that needed to be mitigated. Instead, before this legislative instrument was adopted, the main focus of AML/CFT policies was on the enhancement of the sanctioning powers of regulators, according to a "rule-based" approach[172].

---

[165] Art. 3, co. 11, as modified by Directive 2001/97/EC.
[166] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
[167] Mitsilegas, V., and Gilmore, B., *cit*., p. 125.
[168] *Ibidem.*, p. 126.
[169] *Ibidem*, p. 126.
[170] Art. 2, co. 3, lett. e), Directive 2005/60/EC.
[171] Mitsilegas, V., and Gilmore, B., *cit*., p. 126.
[172] Borlini, L., *cit*., p. 582.

The adoption of AMLD III was followed by a decade of silence in this field, since European authorities were concerned about the mitigation of the negative effects of the 2008 financial crisis and the subsequent European sovereign debt crisis. In 2015, the European legislator updated the AML/CFT regulatory framework by adopting Directive (EU) 2015/849 on preventing the use of the financial system for money laundering or terrorist financing (fourth Anti-Money Laundering Directive, or "AMLD IV")[173], requiring transposition by 26 June 2017; as well as Regulation (EU) 2015/847 on information on the payer accompanying transfers of funds[174], which aimed at increasing the transparency of fund transfers. The main drivers behind the adoption of these legal instruments were, on the one hand, the necessity to adapt the EU regulatory framework to the 2012 amendments to the FATF Recommendations, and, on the other hand, the need to enhance the clarity of European AML/CFT rules and to increase their consistency and uniformity[175]. In particular, AMLD IV further extended the scope of AML/CFT regulation, by including among obliged entities all the providers of gambling services and the real estate agents involved in the letting of property, as well as by lowering the threshold of cash transactions to € 10,000. Moreover, the Directive further enhanced CDD obligations and required Member State to create central registers for the registration of the beneficial owners of corporations[176].

Finally, AMLD IV has been recently amended by the fifth Anti Money Laundering Directive ("AMLD V")[177], which needed to be transposed by 10 January 2020. The adoption of the new Directive was, *inter alia*, a reaction to the Panama Papers' scandal

[173] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[174] 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.

[175] Formisani, R., *Beneficial Ownership and Effective Transparency*, in Siclari, D., (ed.), *The New Anti-Money Laundering Law: First Perspectives on the 4th European Union Directive*, ed. Palgrave Macmillan, Cham, 2016, p. 26.

[176] Godinho Silva, P., *Recent developments in EU legislation on anti-money laundering and terrorist financing*, in *New Journal of European Criminal Law*, vol. 10 (1), 2019, ed. SAGE, p. 61.

[177] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

of 2016[178]. The amendments introduced by AMLD V are aimed at addressing the new technological instruments that allow criminals to launder money or finance terrorist activities, such as virtual currencies and prepaid cards, along with strengthening transparency requirements in order to increase the traceability of crime proceeds[179]. In particular, the new Directive extends the scope of AML/CFT regulation to virtual currency platforms, wallet providers, tax-related services and traders of works of art. It also requires Member States to create a list of national public offices and functions that qualify a Political Exposed Person ("PEP"). Furthermore, it prohibits the anonymity of safe deposit boxes as well as bank and savings accounts; it establishes a centrally accessible database of information about holders of bank account and safe deposit boxes; and it makes information on real estate holders centrally available to public authorities. Moreover, it increases the transparency of beneficial ownership information, by creating centrally accessible beneficial owners' registers[180].

2.5 THE CURRENT EUROPEAN AML/CFT SUPERVISORY FRAMEWORK

After having understood how AML/CFT regulation has been developed over time in the EU, the European AML/CFT system of supervision shall be analysed. Indeed, this section will illustrate the current European AML/CFT supervisory framework, which is based on the provision contained in AMLD IV, as modified by AMLD V. More specifically, this section will describe the role of supervisory authorities; the nature of supervised entities; the requirements imposed on obliged entities; the sanctions imposed on obliged entities that breach AML/CFT requirements; and the repressive policy for crimes related to money laundering and terrorist financing. Lastly, it will mention the role that has been recently conferred on the EBA in the field of AML/CFT supervision, which will be analysed in depth in the following section.

European AML/CFT supervision is grounded on a system of horizontal cooperation between national competent authorities[181]. Specifically, national supervisors are responsible for monitoring the compliance by obliged entities with their AML/CFT

[178] Koster, H., *Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework*, in "Journal of Money Laundering Control", vol 23 (2), 2020, p. 382.
[179] Godinho Silva, P., *cit.*, p. 61.
[180] Koster, H., *cit*., p. 382.
[181] Lo Schiavo, G., *The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities*, in "Journal of Banking Regulation", vol. 23 (1), 2021, p. 92.

obligations under EU and national law, as well as to verify that the measures and procedures implemented by obliged entities are commensurate with their risks. National supervisors must also cooperate with EU Authorities and with their counterparties established in other Member States, for the supervision of cross-border entities. While the majority of Member States have established a single public authority in charge of AML/CFT supervision, others have entrusted both the tasks of prudential and AML/CFT supervision to the same supervisory authority, although the two functions always remain separate and independent. Moreover, each Member State has established a national FIU, which is an independent and autonomous body that is responsible for receiving and analysing suspicious transaction reports and other relevant information from obliged entities, as well as for communicating the results of their analyses to competent authorities. While FIUs usually have supervisory powers over the financial sectors, certain Member States have established a Self-Regulatory Body ("SRB") for the supervision of certain non-financial sectors[182].

Member States are endowed with a considerable freedom regarding the institutional setting and procedures governing their AML/CFT supervisors[183]. Depending on their legal culture and on the structure of their financial markets, Member States may implement different national supervisory models[184]. Specifically, four different institutional models for AML/CFT supervision can be distinguished:

- The FIU model, in which FIUs have final responsibility in AML/CFT supervision;
- The external model, in which AML/CFT supervision is exercised by a government agency that has no professional relation with the obliged entities under its scrutiny;
- The internal model, in which professional associations are responsible for sectoral AML/CFT supervision;
- Hybrid models, where different features of the above-mentioned models are combined[185].

[182] Commission Staff Working Document, *Impact Assessment accompanying the Anti-Money Laundering Legislative Package* (SWD/2021/190 final), pp. 5 – 6.
[183] Schlarb, D. D., *Rethinking anti-money laundering supervision: The Single Supervisory Mechanism - a model for a European anti-money laundering supervisor?,* in "New Journal of European Criminal Law", vol. 13 (1), 2022, p. 74.
[184] *Ibidem*, p. 74.
[185] Van den Broek, M., *Preventing money laundering: A legal study on the effectiveness of supervision in the European Union*, ed. Eleven International Publishing, Den Haag, 2015, pp. 456 – 458.

The entities subject to AML/CFT supervision belong to both the financial and the non-financial sectors, including credit and financial institutions; but also professionals such as auditors, external accountants, tax advisors, notaries, and estate agents; other persons trading in goods when transactions amount to €10,000 or more; providers of gambling services; providers engaged in exchange services between virtual currencies and fiat currencies; custodian wallet providers; and persons involved in the trade of works of art where the value of the transaction or a series of linked transactions amounts to €10,000 or more[186].

Since credit and financial institutions are subject to both prudential and AML/CFT supervision, AML/CFT Colleges have been established in 2019 by the ESAs Joint Committee[187], with the purpose of managing the risks of money laundering faced by financial institutions and of informing the prudential supervisors concerned[188].

The obligations imposed on all obliged entities include the duty to perform CDD measures, as well as to report suspicious transactions to competent authorities and to refrain from such transactions. The scope and nature of these obligations is commensurate with the inherent risk of each obliged entity, according to the "risk-based" approach adopted by the Directive[189]. This approach ensures that the measures implemented by obliged entities are proportionate to the risk detected, which shall guarantee an efficient allocation of resources[190]. The adequate implementation of the risk-based approach requires the conduct of regular risk assessments considering the risks posed by clients, products or services offered, countries or geographic areas served, transactions, and delivery channels[191].

The obligation to perform CDD measures represents a key AML/CFT requirement. Such duty is related to the "Know Your Customer" principle, which requires obliged entities to acknowledge the identity of their customers and the transactions that are executed during their business relationship. In order to achieve this objective, credit and financial institutions need to carry out a process of identification of their customers and to keep records of the transactions that are executed during the business relationship.

[186] Art. 2, co. 1, Directive (EU) 2015/849, as modified by Directive (EU) 2018/843.
[187] ESAs Joint Commitee, *Joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions*.
[188] Schlarb, D. D., *cit*., p. 83.
[189] Koster, H., *cit.*, p. 380.
[190] Godinho Silva, P., *cit*., p. 60.
[191] Koster, H., *cit.*, p. 380.

CDD measures must be performed when an obliged entity establishes a business relation with a customer, but also in the event of an occasional transaction of high amount, anytime there is a suspicion of money laundering or terrorist financing, and whenever there are doubts about the truthfulness or adequacy of previously obtained customer identification data[192]. Specifically, CDD measures include the identification of customers and the verification of their identity on the basis of documents, data or information obtained from a reliable and independent source; along with the identification of the beneficial owner, which can be defined as the natural person who ultimately has effective control over a legal person; the assessment of the purpose and intended nature of the business relationship; and the ongoing monitoring of the business relationship[193]. According to the "risk-based approach", two levels of CDD have been distinguished[194]:

- Simplified Due Diligence ("SDD")[195], which includes measures that need to be applied to customers or transactions that are characterised by a low level of risk;
- Enhanced Due Diligence ("EDD")[196], which refers to measures that need to be applied to cases characterised by a higher level of risk, such as business relationships or transactions with natural persons or legal entities established in the third countries regarded by the Commission as high-risk third countries, or when dealing with politically exposed persons ("PEPs").

As far as the duty to report suspicious transactions is concerned, Article 33 of AMLD IV imposes a two-fold obligation on obliged entities:

- The active duty to inform national competent authorities, on the own initiative of the obliged entities themselves, about any suspects of transactions that might be related to the proceeds of criminal activities or to the financing of terrorism;
- The passive duty to provide national competent authorities, at their request, with all the information that is necessary to carry out their supervisory activity, in accordance with the procedures established by the applicable law[197].

More specifically, obliged entities need to send a report to the FIU of their Member State when they know, suspect, or have reasonable grounds to suspect that funds may be

[192] Art. 11, Directive (EU) 2015/849.
[193] Art. 13, co. 1, *ibidem*.
[194] Bank of Italy, *Disposizioni in materia di adeguata verifica della clientela per il contrasto del riciclaggio e del finanziamento del terrorismo*, 30 July 2019.
[195] Artt. 15 – 17, Directive (EU) 2015/849.
[196] Artt. 18 – 24, *ibidem*.
[197] Mitsilegas, V., *cit*., p. 116.

originated from illegal activities or may be related to terrorist financing. After that, the FIUs will analyse the reports received by private-sector entities. When there are grounds to suspect money laundering, associated predicate offences, or terrorist financing, FIUs shall disseminate the results of their analyses to competent authorities for further investigation, and may temporarily freeze suspicious transactions[198]. In particular, FIUs shall report their analyses to law enforcement authorities, supervisors, or other authorities, such as tax or customs authorities[199]. Moreover, FIUs of different Member States shall exchange information through secure communication channels, such as FIU.net[200]. Where an SRB is in charge of the supervision of certain non-financial sectors, professionals shall report suspicious transactions to that body[201].

Besides reporting suspicious transactions, obliged entities shall refrain from carrying out transactions which they know or suspect to be related to proceeds of criminal activity or to terrorist financing, until they have properly informed national competent authorities[202]. In order to enable obliged entities to report suspicious transactions without being accused of breaches of rules on customer confidentiality, the Directive ensures that disclosure of information in good faith by obliged entities, by their directors or by their employees, shall not constitute a breach of any restriction on disclosure of information[203], and that individuals who report suspicious transactions are protected from being exposed to threats, retaliatory or hostile action[204].

The last provision concerning suspicious transactions reporting is the prohibition to "tip off": obliged entities, their directors and their employees are prevented from informing the customer concerned about the fact that information about a suspicious transaction is being, will be, or has been transmitted to a national competent authority, or that a money laundering or terrorist financing analysis is being, or may be, carried out[205].

In order to facilitate the detection and investigation of possible money laundering or terrorist financing crimes, the Directive also requires the retention of a copy of the documents and information that are necessary to comply with CDD requirements, along with the supporting evidence and transactions records, for a period of five years after

[198] Art. 32, co. 3 and 7, Directive (EU) 2015/849.
[199] SWD/2021/190 final, p. 5.
[200] *Ibidem*, p. 6.
[201] Art. 34, co. 1, Directive (EU) 2015/849.
[202] Art. 35, co. 1, *ibidem*.
[203] Art. 37, *ibidem*.
[204] Art. 38, *ibidem*.
[205] Art. 39, co. 1, *ibidem*.

the end of the business relationship with a customer or after the date of an occasional transaction. Upon expiry of the retention period, obliged entities shall delete personal data, unless otherwise required by national law. Indeed, Member States might allow for, or require, a further retention period, not exceeding five additional years[206].

The duties imposed on obliged entities are complemented with a set of organisational requirements related to the establishment of internal control and awareness mechanisms[207].

Breaches committed by obliged entities concerning their AML/CFT obligations are punished through administrative sanctions, which shall be specified by national laws and imposed by national competent authorities. The Directive provides a general list of the measures available to national competent authorities and sets an upper and a lower bound for the pecuniary sanctions that can be imposed, but leaves a significant margin of leeway to Member States for the determination of the specific amounts of the sanctions. In particular, the applicable nonpecuniary sanctions include a public statement identifying the nature of the breach and the natural or legal person that has committed it; an order requiring the natural or legal person to cease the conduct and to desist from repeating that conduct; the withdrawal or suspension of the authorisation to conduct business; and a temporary ban from exercising managerial functions, addressed to the natural person held responsible for the breach[208]. Concerning pecuniary sanctions, obliged entities can be sanctioned with a maximum fine of at least twice the amount of the benefit derived from the breach, where that benefit can be determined, or at least €1,000,000[209]. If the obliged entity concerned is a credit or financial institution, the maximum administrative pecuniary sanctions will amount to at least €5,000,000, or 10% of the total annual turnover, in the case of a legal person[210].

As far as the AML/CFT repressive policy is concerned, crimes related to money laundering and terrorist financing are punished through the application of criminal law, along with measures such as seizure, definitive freezing of transactions and confiscation of assets. The authorities involved in the application of such repressive policies are FIUs, Law Enforcement Agencies (LEAs) and judicial authorities[211].

---

[206] Art. 40, co. 1, *ibidem*.
[207] Artt. 45 and 46, *ibidem*.
[208] Art. 59, co. 2, lett. a) – d), *ibidem*.
[209] Art. 59, co. 2, lett. e), *ibidem*.
[210] Art. 59, co. 3, lett. a) and b), *ibidem*.
[211] SWD/2021/190 final, pp. 6 – 7.

The regulation of the criminal aspect of money laundering is completed by Directive (EU) 2018/1673 on combating money laundering by criminal law[212]. This Directive provides a list of the types of conduct that constitute money laundering offences, along with the general guidelines concerning the penalties to be imposed on the natural persons and the sanctions for the legal persons committing money laundering crimes. A large margin of discretion is left to national jurisdictions concerning the determination of the amount of the criminal penalties for legal persons, as the Directive simply states that they shall be *"effective, proportionate and dissuasive"*[213].

The last important aspect concerning AML/CFT supervision in the EU is the conferral on the EBA of a role of support and coordination of the activity of FIUs and national competent authorities. In particular, the EBA shall draft binding technical standards in the area of AML/CFT legislation and shall issue guidelines and recommendations aimed at promoting the convergence of AML/CFT supervisory practices. Moreover, the Authority shall identify breaches of Union law and may act as a mediator in the case of settlement of disagreements between competent authorities in cross-border situations. The new role of the Authority will be illustrated in depth in the following section.

2.6. THE NEW ROLE OF THE EBA

The present section will complete the presentation of the European AML/CFT supervisory framework by describing the role that has been recently conferred on the EBA in this field. More specifically, the motivations that justify the conferral of an AML/CFT mandate on the EBA will be illustrated, followed by the presentation of the new tasks and powers that have been entrusted to the Authority in this field, along with the description of the modification in the internal structure of the EBA that should enable the Authority to carry out its new role.

Since the current AML/CFT supervisory system is based on the activity of national competent authorities and relies on national laws transposing EU Directives, rather than being grounded on directly applicable rules, its efficiency is impaired due to a lack of harmonisation and coordination. The weaknesses of this system have been brought to the attention of European authorities due to a series of scandals involving EU credit

[212] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.
[213] Art. 5, co. 1, *ibidem*.

institutions[214]. Such shortcomings have been analysed and summarised in a report of the Commission, concerning alleged money laundering cases occurred in EU credit institutions in the period between 2012 and 2018[215], which has revealed a fragmented and inconsistent implementation of AML/CFT rules. European authorities have tried to solve this problem by conferring on the EBA a leading, coordinating and monitoring role in the area of AML/CFT supervision, by means of Regulation (EU) 2019/2175[216]. In this sense, the EBA shall oversee the AML/CFT supervision exercised by national competent authorities in the same way as it oversees prudential supervision[217].

First, this Regulation widens the scope of action of the EBA, by extending it from the prudential supervision of credit institutions to the prevention of the use of the financial system for the purposes of money laundering and terrorist financing[218]. By doing so, the Regulation centralises on the EBA all the AML/CFT tasks, competences and resources that were previously scattered across the three ESAs, which therefore refer to the whole set of obliged entities that are subject to AML/CFT under the AMLD[219]. This might still raise some concerns, considering that it might be challenging for the EBA to fulfil the new AML/CFT mandate, which goes beyond the banking sector[220].

In order to enable the Authority to effectively accomplish its new tasks, the Regulation confers on the EBA the powers to collect the information gathered by AML/CFT supervisors; to cooperate closely with competent authorities, including the ECB, as well as with FIUs; to develop common standards for preventing and countering money laundering and terrorist financing and to promote their consistent implementation

---

[214] Kirschenbaum, J., and Véron, N., *cit*., p. 2.

[215] Concerning the recent banking scandals, see the *Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institution* (COM/2019/373 final).

[216] Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.

[217] Kirschenbaum, J., and Véron, N., *cit*., p. 9.

[218] Art. 1, co. 5, lett. g), introduced by Regulation (EU) 2019/2175.

[219] Lo Schiavo, G., *cit*., p. 96.

[220] European Commission, *Communication from the Commission on an action plan for a comprehensive Union policy on preventing money laundering and terrorist financing* (C/2020/2800 final), p. 10.

through the adoption of binding technical standards; to provide assistance to competent authorities; to monitor market developments; and to assess vulnerabilities and risks in relation to money laundering and terrorist financing in the financial sector[221].

Moreover, the Regulation provides the EBA with specific intervention powers aimed at preventing the use of the financial system for the purposes of money laundering and terrorist financing. Indeed, the Regulation extends the powers of intervention conferred on the EBA pursuant to Articles 17 and 19 of Regulation (EU) No 1093/2010 to cases related to AML/CFT legislation, specifying that those articles find application also where the obligations imposed on the financial institutions concerned are not directly applicable, but stem from national laws transposing EU legislation[222].

As far as the organisational structure of the Authority is concerned, the EBA shall establish the Standing Committee on Anti-Money Laundering and Countering Terrorist Financing ("AMLSC")[223], a permanent internal committee in charge of coordinating the AML/CFT measures adopted across the Union, and of preparing all the draft decisions of the EBA in this area. This Committee comprises a Chairperson and high-level representatives from all AML/CFT national competent authorities, among which one representative from each Member State is endowed with voting rights, while the others have no voting power. The Committee also includes high level representatives from the EIOPA, the ESMA, and the national public authorities competent for ensuring compliance with the requirements of the AMLD and the Wire transfer Regulation by financial sector operators in each European Free Trade Association ("EFTA") state, and the EFTA Surveillance Authority, which shall be non-voting members. Finally, high level representatives from the Commission, the ESRB, and the Supervisory Board of the ECB shall participate as observers[224]. The most relevant tasks of the Committee include, *inter alia*, the preparation of draft risk assessments on competent authorities to evaluate their ability to manage risks related to money laundering and terrorist financing; the preparation of the decisions of the EBA concerning the request for investigation to competent authorities as well as the decisions addressed to market operators adopted by the Authority in cases of breaches of Union law and settlements of disagreements

[221] Art. 9a, co. 1, lett. a) – e), *ibidem*.
[222] Lo Schiavo, G., *cit*., pp. 96 – 97.
[223] As required by Art. 9a, co. 7, *ibidem*.
[224] European Banking Authority, *Mandate of the Standing Committee on anti-money laundering and countering terrorist financing (AMLSC),* (EBA/DC/2020/309), p. 3.

between competent authorities in the AML/CFT field; and the development of binding technical standards, guidelines and recommendations on AML/CFT matters[225].

2.7. THE WEAKNESSES OF THE AML/CFT SUPERVISORY FRAMEWORK

The conferral on the EBA of a role of support and coordination has not been sufficient to overcome the limitations of the AML/CFT supervisory framework, as the empirical evidence collected by the Commission has shown. This suggests that a more radical reform of the system is necessary to improve the effectiveness of AML/CFT supervision. The aim of this section is to highlight the weaknesses of the current AML/CFT supervisory system, based on the empirical evidence collected by the Commission and on the conclusions drawn by the same Authority. First, the three main problems affecting AML/CFT supervision will be highlighted; then, the three major problem drivers will be identified.

The weaknesses of the current AML/CFT supervisory framework have been analysed and summarised by the Commission in the Impact Assessment[226] accompanying the AML/CFT legislative package that was proposed on 20 July 2021 and will be implemented in the upcoming years, with the aim of strengthening the AML/CFT framework in the EU. The Impact Assessment is based on the conclusions of the report published by the Commission on 24 July 2019, concerning alleged money laundering cases involving EU credit institutions between 2012 and 2018[227], but it also considered the progress made by European authorities in AML/CFT legislation after the publication of the report, namely the implementation of the fourth and the fifth AML Directives as well as the conferral of an AML/CFT mandate on the EBA.

Empirical evidence has shown three main problems in AML/CFT supervision, namely the insufficient and ineffective application of AML/CFT measures by obliged entities; the inadequate oversight by national competent authorities on the application of AML/CFT rules; and the inadequate detection of suspicious transactions by FIUs, especially in cross-border cases[228].

---

[225] *Ibidem* pp. 1 – 2.

[226] Commission Staff Working Document, *Impact Assessment accompanying the Anti-Money Laundering Legislative Package* (SWD/2021/190 final).

[227] European Commission, *Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institution* (COM/2019/373 final).

[228] SWD/2021/190 final, pp. 7 – 14.

As far as the first problem is concerned, many credit institutions fail to comply with their AML/CFT legal requirements, including their CDD obligations and their duty to identify and report suspicious transactions to FIUs[229]. Empirical evidence shows that, in a small number of cases, employees are directly involved in committing money laundering crimes, while in other instances customers may be able to launder money as a consequence of the negligence of the credit institutions staff[230]. Other failures by banks concern weaknesses in their governance system, the misalignment between risk appetite and risk management, and the inadequacy of group policies[231]. While some of these shortcomings are caused by the negligence or excessive risk appetite of private-sector entities, others are directly related to the lack of clarity in EU legislation, which leads to an inconsistent and divergent application of AML/CFT rules across Member States[232].

Secondly, considering the aspect of the insufficient oversight on the application of AML/CFT rules, empirical evidence shows that, in many cases, national supervisors are understaffed, or lack sufficient knowledge and experience[233]. This problem is related to the fact that many governments and national supervisors have traditionally prioritised prudential supervision over AML/CFT supervision, especially in the aftermath of the financial crisis[234]. Another shortcoming is related to the weak powers conferred on AML/CFT authorities by national laws transposing the AMLD[235]. Moreover, even when national supervisors are conferred effective powers, some of them appear to be hesitant to enforce them. For instance, national supervisors often rely on remote supervisory tools even when identified risks are high, rather than carrying out more thorough on-site inspections[236]. The effectiveness of supervisory practices also depends on the enforcement culture, which in some Member State is built on a climate of trust between competent authorities and supervised entities[237]. However, such climate of trust may be abused by some malicious actors[238]. The insufficient intensity of AML/CFT supervision

[229] COM/2019/373 final, p. 4.
[230] *Ibidem*, p. 4.
[231] *Ibidem*, pp. 5 – 7.
[232] SWD/2021/190 final, p. 8.
[233] COM/2019/373 final, p. 8.
[234] Schlarb, D. D., *cit*., p. 70.
[235] COM/2019/373 final, p. 8.
[236] *Ibidem*, p. 8.
[237] *Ibidem*, p. 8.
[238] Schlarb, D. D., *cit*., p. 75.

is even more severe in the non-financial sectors[239], where some Member States have established a single AML/CFT supervisor, while in other Member States several professional associations share supervisory responsibilities[240]. Lastly, significant difficulties arise in the supervision of cross-border entities, mainly because the group dimension is not prominent in AML/CFT supervision[241].

The weak implementation of AML/CFT supervision in cross-border cases can be properly understood by examining the Danske Bank money laundering scandal. After the Denmark-based Danske Bank had acquired the Finnish-based Sampo Bank, over €200 billion of suspicious transactions originating from Russia, other former Soviet States, and other countries flowed through the Estonian branch of Danske Bank. The non-resident portfolio held by the Estonian branch was closed in 2016, after the parent had become aware of the suspicious flows of money. After that, Danske Bank publicly acknowledged that the use of the Estonian branch for money laundering purposes was made possible by its deficiencies in governance and control. As far as the supervision by AML/CFT competent authorities is concerned, this event has shown that national competent authorities may be unable to understand the actual AML/CFT risks faced by branches located in other Member States, and no national supervisor properly exercises AML/CFT supervision on a group level[242].

Concerning the third problem of AML/CFT supervision, FIUs have displayed a limited ability to detect suspicious transactions and to report them to competent authorities in a timely manner. For instance, less than half of the suspicious transactions reported to FIUs in 2019 were actively followed up[243]. Furthermore, although the number of suspicious transactions reported by obliged entities has grown steadily since 2014, the capacity of FIUs to cope with this volume of data has not been increasing accordingly, and only a small number of FIUs have reported a significant growth in their budget and staffing[244]. Moreover, empirical evidence shows that only a minority of FIUs provide obliged entities with adequate information on trend and typologies of money laundering activities, which would be useful for private-sector entities in order to appropriately identify the activities and transactions that should be brought to the attention of FIUs

[239] SWD/2021/190 final, p. 10.
[240] Van den Broek, M., *cit.*, p. 458.
[241] COM/2019/373 final, p. 9.
[242] Concerning the Danske Bank scandal, see Bruun & Hjejle Advokatpartnerselskab, *Report on the Non-Resident Portfolio at Danske Bank's Estonian branch* (Ref. 2301169, 09/2018).
[243] SWD/2021/190 final, p. 11.
[244] *Ibidem*, p. 12.

and to improve the quality of information reported[245]. Also the feedback to other authorities seems to be insufficient, as data collected by the Commission shows. For instance, every year customs administrations receive around 100,000 cash declarations and detect around 12,000 cases of noncompliance with the obligation to declare the transferral of cash outside the EU above the threshold of €10,000. However, when customs administrations report such information to FIUs, they rarely receive feedback. This is probably due to the fact that no legal provision requires FIUs to provide feedback to customs authorities, even though such feedback would be particularly useful for detecting and sanctioning violations of the obligations to declare such sums[246].

After having described the problems affecting AML/CFT supervision, it is possible to investigate the causes behind such shortcomings. It can be concluded that the main problem drivers consist in the lack of clear and consistent rules in EU legislation; the inconsistent supervision across the internal market; and the insufficient coordination and exchange of information among FIUs[247].

As far as the first problem driver is concerned, the current AML/CFT regulatory and supervisory framework is based on national laws transposing the AMLD, which leads to divergent interpretations of Union provisions across Member States and results in an inadequate application of AML/CFT rules by obliged entities[248]. This problem is particularly acute due to the lack of clarity and the limited nature of some of the provisions adopted at the EU level. A first example of the divergent transposition of the AMLD by national laws concerns the entities subject to AML/CFT requirements: some Member States have gone beyond the list of obliged entities contained in the Directive, by including for instance crowdfunding platforms (Lithuania), the administrator of the emission trading registry (Czech Republic) or the administrator of the companies register (France)[249]. Another example is provided by the different degree of transparency required by Member States regarding the beneficial owners of companies and trusts: while most national legislations identify the beneficial owner with the subject holding at least 25% of shares, two countries (Spain and Latvia) have

[245] *Ibidem*, p. 12.
[246] *Ibidem*, p. 14.
[247] *Ibidem*, pp. 15 – 21.
[248] *Ibidem*, p. 15.
[249] *Ibidem*, p. 15.

established a lower threshold of 10%[250]. Moreover, the powers conferred on both national AML/CFT supervisors and FIUs differ significantly across Member States, due to the different interpretation of the general guidelines contained in the AMLD[251]. Furthermore, ceilings for large cash payments have been determined only in certain Member States, although payments in cash are highly exposed to money laundering risks[252]. Another flaw of European AML/CFT rules is that the current provisions do not ensure a wide interconnection of the centralised bank account registries, which allow the identification of the holders of payments accounts, bank accounts and safe deposit boxes. This limits the access to bank account information and prevents national competent authorities from effectively cooperating on a cross-border basis[253].

Concerning the second problem driver, the quality and effectiveness of AML/CFT supervision vary across Member States[254], since this supervisory system relies on the activity of national supervisors and is poorly coordinated at the EU level. Due to this fact, supervisory authorities perform an ineffective oversight on the application of AML/CFT rules by obliged entities. In some cases, the divergences concern the human and financial resources devoted to AML/CFT supervision in different Member States, as the following example shows: whereas in Finland only 10 staff members are responsible for AML/CFT supervision of the financial sector, 27 staff members are in charge of this task in Austria, despite the similarities between the financial sectors of these Member States[255]. Other differences concern the methods used to identify risks and to apply the risk-based approach to supervision[256], although the adoption of a common methodology for the identification and assessment of risks would be necessary to enable an effective prevention of cross-border threats. Finally, the quality of AML/CFT supervision is hindered by the fact that sometimes national supervisors appear to be unwilling to apply the full set of powers available[257].

The last problem driver is represented by the insufficient coordination and exchange of information among FIUs, which results in an inadequate detection of suspicious

[250] *Ibidem*, pp. 15 – 16.
[251] *Ibidem*, p. 17.
[252] *Ibidem*, p. 18.
[253] *Ibidem*, p. 18.
[254] *Ibidem*, p. 19.
[255] *Ibidem*, p. 19.
[256] *Ibidem*, p. 20.
[257] *Ibidem*, p. 20.

transactions, especially in cross-border cases[258]. Indeed, the exchange of information among FIUs is difficult because of several reasons. First, not all FIUs have adopted a common template to report suspicious transactions, since such template has been developed by the FIU Platform, but is not binding[259]. This reduces the comparability of the information collected by FIUs and hinders the possibility to perform joint analyses of cross-border suspicious transactions. The second problem consists in the absence of a common approach for sharing data. For instance, most FIUs employ the secure communication channel FIU.net, while some of them have adopted more advanced tools[260]. Moreover, there are significant differences in the type of data shared, with some FIUs submitting the reports received by obliged entities and other FIUs sharing the analyses developed by the FIUs themselves; in the timing of data sharing, as report are submitted automatically by some FIUs and only when deemed relevant by others; and in the amount of data disseminated[261].

In summary, the present section has shown that the main weaknesses of AML/CFT supervision consist in the lack of clear and consistent rules in EU legislation, which leads to an insufficient and ineffective application of AML/CFT measures by obliged entities; in the inconsistent supervision across the Union, which results in an inadequate supervisory activity by national AML/CFT supervisors; and in the insufficient coordination and exchange of information among FIUs, which hampers their ability to detect suspicious transactions, especially on a cross-border basis. Such weaknesses can be overcome through an enhancement in the clarity of EU rules, an improvement in the effectiveness and consistency of AML/CFT supervision, and an increase in the level of cooperation and exchange of information among FIUs. Indeed, an efficient system of supervision would require a clear and enforceable legislative framework, along with effective mechanisms allowing cooperation among national competent authorities both at the national and at the international level[262]. Moreover, national supervisors shall be provided with sufficient resources and knowledge; they shall be conferred effective, proportionate and deterrent sanctioning powers; and their independence, accountability and transparency shall be guaranteed[263].

---

[258] *Ibidem*, p. 20.
[259] *Ibidem*, p. 20.
[260] *Ibidem*, p. 21.
[261] *Ibidem*, p. 21.
[262] Van den Broek, M., *cit*., p. 456.
[263] *Ibidem*., p. 456.

CHAPTER III: COMPARISON BETWEEN THE SSM AND THE CURRENT AML/CFT SUPERVISORY FRAMEWORK

3.1. INTRODUCTION

Prudential and AML/CFT supervision are interconnected because both of them pursue the same objective of providing a safe and sound environment for capital flows within the internal market[264]. Indeed, prudential policies consist of rules and procedures aimed at directly safeguarding the stability and the resilience of financial institutions, while AML/CFT policies aims at preventing the introduction of illicit proceeds in the legal system, as well as the employment of financial resources for the financing of terrorism, thus contributing to the protection of the integrity and the stability of financial markets.

However, the systems of prudential and AML/CFT supervision are distinct from each other and present significant differences concerning their governance models and their systems of multilevel cooperation. Moreover, the two frameworks are facing different types of challenges in the current economic context, but are also in front of different opportunities that may allow for an improvement in their effectiveness.

Notwithstanding the importance of both prudential and AML/CFT supervision for the safeguarding of financial markets, EU authorities have traditionally devoted more attention to prudential supervision than to AML/CFT supervision, especially in the aftermath of the 2008 financial crisis[265], which has resulted in the establishment of a fragmented AML/CFT supervisory system. Nevertheless, as the next chapter of the dissertation will show, more attention has been devoted to AML/CFT supervision in recent years; indeed, this system will be enhanced in the future thanks to the adoption of a reform that will radically transform its model of governance.

This chapter consists in a comparative analysis between the SSM and the AML/CFT supervisory framework, considering their governance models, the powers of supranational supervisory authorities, the division of competences between national and supranational authorities, and the territorial dimension of supervision. After that, the challenges and the opportunities in front of the two supervisory systems will be presented.

[264] Schlarb, D. D., *cit*., p. 73.
[265] *Ibidem.*, p. 70.

3.2. THE GOVERNANCE MODEL OF THE SSM AND OF THE AML/CFT SUPERVISORY FRAMEWORK

The first aspect considered in the comparative analysis between the SSM and the AML/CFT supervisory framework concerns the governance models adopted by these systems. In this section, a general framework for the classification of the models of administrative governance in the EU will be presented; then, both the SSM and the AML/CFT system of supervision will be classified into one of these categories.

According to some literature, models of administrative governance in the EU can be classified into three categories: parallel enforcement models, supportive models, and hierarchical models[266]. This classification is based on two features, namely the nature of powers, direct or indirect, conferred on supranational authorities; and the division of competences between national and supranational authorities. The three models of administrative governance and their characteristics can be described as follows:

- In the parallel enforcement model, national and supranational authorities are endowed with similar responsibilities and enforcement powers and cooperate in the application of EU normative provisions;
- In the supportive model, national authorities are conferred the main tasks and responsibilities and exercise direct powers, while supranational authorities fulfil a supportive role;
- In the hierarchical model, the division of tasks and responsibilities is the opposite with respect to the supportive model[267].

The governance models adopted by the SSM and by the AML/CFT supervisory framework can be classified according to the above-mentioned categories.

In the SSM, the central authority is the ECB, which can exercise direct powers towards significant entities and indirect powers with regards to less significant market operators. However, in the context of indirect supervision, the ECB is endowed with direct supervisory powers towards the national competent authorities that are responsible for the supervision of less significant entities. The administrative model of the SSM can

[266] Scholten, M., Luchtman, M., and Schmidt, E., *The proliferation of EU enforcement authorities: a new development in law enforcement in the EU*, in M. Scholten and M. Luchtman (eds.), *Law Enforcement by EU Authorities. Implications for Political and Judicial Accountability*, ed. Edward Elgar Publishing, Northampton, 2017, pp. 1 – 27.
[267] Lo Schiavo, G., *cit.*, p. 92.

therefore be described as a hybrid pragmatic model, characterised by a hierarchical structure and a semi-parallel exercise of responsibilities[268].

In the AML/CFT supervisory system, instead, national competent authorities exercise direct supervisory powers in a system of horizontal cooperation, while the EBA has been recently conferred a role of support and coordination, but is not endowed with direct supervisory powers. Therefore, AML/CFT supervision is based on a supportive model of governance[269].

3.3. THE POWERS OF SUPRANATIONAL SUPERVISORY AUTHORITIES

One of the features that distinguish the different models of administrative governance in the EU is the nature of powers conferred on supranational authorities. The present section will better clarify the difference between the governance model of the SSM and of the AML/CFT supervisory framework, by illustrating the different nature of powers entrusted to the supranational authorities involved in these supervisory systems.

The ECB and the EBA are the supranational authorities involved in prudential supervision and in AML/CFT supervision, respectively. Both the powers conferred on the ECB and on the EBA stem from EU Regulations, namely Regulation (EU) No 1024/2013 ("SSMR") and Regulation 1093/2010, as modified by Regulation (EU) 2019/2175, but the powers of these Authorities are different in nature.

Concerning the SSM, the legal basis of this system allows the Council to confer direct supervisory powers on the ECB, since Article 127(6) of the TFEU states that the Council may *"confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings"*[270]. As a matter of fact, the ECB is in charge of tasks related to the micro- and macroprudential supervision of credit institutions, and is endowed with direct and indirect supervisory powers.

On the contrary, the powers conferred on the EBA are subject to the limitations imposed by the Meroni Doctrine[271], which states that the scope of the delegation through which the Commission confers decisional powers on the ESAs must be limited to clearly defined executive powers, which can be entirely monitored by the delegating authority

[268] Pizzolla, A., *cit.*, p. 19.
[269] Lo Schiavo, G., *cit*., p. 92.
[270] Art. 127(6), TFEU.
[271] Meroni & Co. Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community (1957/1958) ECLI:EU:C:1958:7 and ECLI:EU:C:1958:8.

on the basis of specific and objective criteria. Moreover, the delegation cannot be referred to discretional powers implying a margin of political judgement. Indeed, the EBA acquires direct powers of intervention towards supervised entities only in the specific cases mentioned by Regulation (EU) No 1093/2010 in the field of prudential supervision[272], and by Regulation (EU) 2019/2175 in the area of AML/CFT[273].

Another important difference concerns the sanctioning powers of the two institutions.

On the one hand, the SSMR confers on the ECB direct sanctioning powers towards significant entities, when the breach concerns directly applicable EU legislative acts and the sanction has a pecuniary nature[274], but also towards less significant institutions, in the case of breaches of Regulations and decisions of the ECB that determine directly applicable obligations towards the Authority itself[275]. In all other cases, sanctions are imposed by national competent authorities, which can intervene at their own initiative when infringements are committed by less significant entities, but can intervene only upon request of the ECB in the case of breaches committed by significant institutions, to impose sanctions on natural persons, to sanction breaches of national laws transposing EU Directives, and to apply nonpecuniary sanctions[276].

On the other hand, the EBA has neither sanctioning power in the field of prudential supervision nor in AML/CFT matters. Instead, national competent authorities retain full sanctioning power in the AML/CFT field, which is excluded from the scope of action of the ECB[277]. Moreover, there exist only limited EU rules aimed at harmonising the criminal dimension of AML/CFT regulation[278]. Indeed, Directive (EU) 2018/1673[279] sets out only minimum rules that define criminal offences and sanctions, but does not confer any direct tasks and powers upon any supranational institutions in this field[280].

[272] See Articles 17, 18, and 19 of Regulation (EU) No 1093/2010.
[273] See the amendments to Articles 17 and 19 of Regulation (EU) No 1093/2010, introduced by Regulation (EU) 2019/2175.
[274] Art. 18, co. 1, SSMR.
[275] Art. 18, co. 7, SSMR, and Art. 122, SSMFR.
[276] Art. 18, co. 5, SSMR, and Art. 134, SSMFR.
[277] Bank of Italy, *Disposizioni di vigilanza in materia di sanzioni e procedura sanzionatoria amministrativa*, 29 August 2020, p. 2.
[278] Lo Schiavo, G., *cit*., p. 100.
[279] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.
[280] Lo Schiavo, G., *cit*., p. 100.

3.4. THE DIVISION OF COMPETENCES BETWEEN NATIONAL AND SUPRANATIONAL AUTHORITIES

The illustration of the differences between the governance model of the SSM and of the AML/CFT supervisory system will be completed in this section, through the illustration of the division of competences between national and supranational authorities in the two supervisory frameworks, and of the resulting systems of multilevel cooperation.

As far as the SSM is concerned, two levels of supervision have been established, with the ECB being responsible for the direct supervision of significant entities and for the indirect supervision of the other institutions. According to the analysis of case law, however, the distinction between the two levels of supervision is exercised at a practical level and shall not be considered as a division of competences[281]. In other words, the ECB retains the exclusive competence for the prudential supervision of credit institutions in the EU, but there is a delegation of powers to national competent authorities for the supervision of less significant entities[282]. Two important cases submitted to the CJEU clarify the role of the ECB in prudential supervision. First, in the "Berlusconi and Fininvest" preliminary ruling decision, the Court highlighted the exclusive competence of the ECB in the supervision of credit institutions, starting from 2014, with the creation of the SSM[283]. Analogously, in the "L-Bank" case, the Court stated that, even though the SSM comprises both the ECB and the national competent authorities, the ECB retains a general responsibility over the entire banking system and the exclusive competence with respect to the tasks conferred upon it pursuant to Article 4, co. 1, of the SSMR, for both significant and less significant credit institutions[284].

The current system of multilevel cooperation of the AML/CFT supervisory framework is instead based on a concurrent competence model where the EU exercises its law-making powers only to the extent that Member States are not capable of achieving the same results and in line with the principle of subsidiarity[285]. National competent authorities retain full powers in the exercise of their AML/CFT tasks, while the EBA has limited powers of intervention and merely fulfils a role of support and coordination.

---

[281] *Ibidem*, p. 99.
[282] *Ibidem*, p. 99.
[283] Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS). (2018). ECLI:EU:C:2018:1023, para 54.
[284] Landeskreditbank Baden-Württemberg v ECB. (2019). ECLI:EU:C:2019:372, para 38 – 40.
[285] Lo Schiavo, G., *cit*., p. 99.

3.5. THE TERRITORIAL DIMENSION OF THE SSM AND OF THE AML/CFT SUPERVISORY FRAMEWORK

After having analysed the governance model adopted by the SSM and by the AML/CFT supervisory framework, another difference between the two systems of supervision shall be considered, concerning the territorial dimension of supervision under the SSM and under the AML/CFT framework, respectively. The present section will indeed highlight the different territorial scope of these two supervisory systems, as well as the different division of competences among national competent authorities at the territorial level.

The first difference lies in the fact that the SSM only covers the euro area and the Member States with a derogation that have established a close cooperation with the ECB in accordance with Article 7 of the SSMR, whereas AML/CFT supervision is carried out by national supervisors throughout the entire Union[286].

The second difference concerns the division of competences among the national competent authorities of different Member States. On the one hand, prudential supervision is based on the "home country control" principle. This means that, provided that the ECB is responsible for the direct supervision of significant entities, the national competent authority in charge of the prudential supervision of any less significant entity is the competent authority of the Member State where the institution has its registered office. This responsibility extends to the branches of the institution, irrespective whether they are established in the same Member States or outside. The prudential authorities in the host Member States where branches are established have only residual competences concerning conduct supervision and the performance of statistical analyses[287]. On the other hand, the AML/CFT supervision of cross-border branches fall within the remit of the national competent authority of the host Member State[288].

As far as banking groups are concerned, the parent and its subsidiaries are subject to specific prudential requirements and to prudential supervision on a consolidated basis. The consolidating supervisor is usually the authority in the home Member State supervising the credit institution with the largest assets, and where group policies are usually centralised. On the contrary, the group dimension in AML/CFT supervision assigns only limited tasks to the home Member State authority[289].

---

[286] Schlarb, D. D., *cit*., p. 73.
[287] COM/2019/373 final, p. 11.
[288] *Ibidem*, p. 12.
[289] *Ibidem*, p. 12.

The experience of past banking scandals involving money laundering or terrorist financing has revealed that prudential authorities in host Member States often fail to understand the severity of the problems related to money laundering and terrorist financing in the branches of credit institutions established in their territory. This may be due to a lack of direct contact between the home prudential authority and the host AML/CFT supervisor, or even to a misunderstanding of such problems by the home AML/CFT authority with whom home prudential authorities are in regular contact[290].

In conclusion, it is important to notice that the different levels at which prudential and AML/CFT supervision are exercised may cause significant cooperation difficulties, due both to the different division of competences between national and supranational authorities and to the different distribution of tasks between supervisors in home and host Member States.

3.6. THE CHALLENGES FACED BY THE SSM AND BY THE AML/CFT SUPERVISORY FRAMEWORK

The systems of prudential and AML/CFT supervision are currently facing different challenges but also several opportunities for improvement, which will be discussed in the present and in the following section, respectively. In particular, this section will analyse the challenges faced by the two supervisory systems, by grouping them into three categories: governance, substantial application of the rules, and operational dimension[291].

As far as governance is concerned, the SSM has a hierarchical structure headed by the ECB, where the internal body in charge of prudential supervision is the Supervisory Board, in which national supervisors exercise their voting power. A first challenge may arise because the national supervisors that participate in the meetings of the Board may adopt divergent interpretations concerning the application of supervisory approaches to individual situations[292].

The governance model of AML/CFT supervision is instead characterised by a horizontal structure, where supervisory powers are conferred on national competent authorities, which may implement different supervisory practices, according to the

[290] *Ibidem*, p. 12.
[291] This classification of the challenges faced by the SSM and by the AML/CFT supervisory framework is retrieved from the paragraph *Challenges in the multilevel cooperation*, from Lo Schiavo, G., *cit*., pp. 100 – 101.
[292] *Ibidem*, p. 100.

provisions established by national laws[293]. Even though the conferral of an AML/CFT mandate on the EBA has increased the level of cooperation and exchange of information among national competent authorities, the convergence of supervisory practices has not been achieved yet.

The second challenging point refers to the substantial application of the rules.

Concerning the SSM, banking regulation and supervision are characterised by a different level of harmonisation, since EU law has only regulated specific areas of prudential supervision through directly applicable legal instruments, while the ECB is at the centre of the system with an exclusive competence on banking supervision[294]. This problem can be better understood by considering the fact that, according to Article 4, co. 3, of the SSMR: *"The ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the ECB shall apply also the national legislation exercising those options"*[295]. Since the divergent interpretation of Union law by Member States inevitably leads to the development of a fragmented regulatory framework[296], it can become complex for the ECB to exercise supervisory hard law powers consistently throughout the Union[297]. The application of divergent national provisions by the ECB also undermines the goal of the Authority to apply equal requirements to all significant entities within the SSM[298].

In the AML/CFT supervisory framework, the problem of the substantial application of the law is even more severe, due to the national dimension of AML/CFT supervision[299]. This problem arises because directly applicable rules have not been adopted in this field, a single European AML/CFT supervisory authority has not been established yet[300], and the conferral of a coordinating role on the EBA has not been sufficient to reinforce the weak harmonisation of AML/CFT legislation. Even after the establishment of a single European AML/CFT supervisor, the European legislator should be aware of the fact that

---

[293] *Ibidem*, p. 100.
[294] *Ibidem*, p. 100.
[295] Art. 4, co. 3, SSMR.
[296] European Central Bank, *SSM Supervisory Manual – European banking supervision: functioning of the SSM and supervisory approach* (QB-04-19-099-EN-N (03/2018)), p. 20.
[297] Lo Schiavo, G., *cit*., p. 100.
[298] Lackhoff K., *Single Supervisory Mechanism*, ed. C.H. Beck, München, 2017, pp. 31 – 34.
[299] Lo Schiavo, G., *cit*., p. 100.
[300] *Ibidem*, p. 100.

applying national laws transposing EU Directives can be problematic for a supranational authority, as shown by the experience of the ECB. For this reason, the adoption of a single rulebook, ensuring a full harmonisation of AML/CFT rules, is also necessary[301]. Directives should still be adopted to accommodate different national approaches and to allow for flexible responses to local phenomena, but the use of this legislative instruments should be avoided where national divergences would be so important that they might hinder the effective countering of money laundering and terrorist financing, thus undermining the integrity and the stability of the internal market[302].

The last challenging point concerns the operational dimension of prudential and AML/CFT supervision. Even though effective prudential supervisory practices have already been consolidated in the SSM over the years, some challenges might still emerge at the operational level[303]. The first challenge is linked to the distribution of supervisory responsibilities between the ECB and national competent authorities: although the ECB shall exercise its direct supervision on significant entities, national competent authorities might still represent the national interests in the Supervisory Board, and members of their staff are still part of the JSTs in charge of the supervision of directly supervised entities; while the ECB is only indirectly involved in the supervision of less significant institutions[304]. The second critical point refers to the fact that national supervisory approaches might prevail over the supranational ones, for instance in the conduct of inspections, in the decision-making processes, and in the use of supervisory tools[305].

Considering AML/CFT supervision, some operational challenges may concern interactions among national supervisors, cooperation obligations, sharing of information on AML/CFT issues, staffing problems, on-site and off-site activities, interactions with supervised entities, and supervision of cross-border entities[306].

In summary, the comparison of the challenges faced by the SSM and the AML/CFT supervisory framework has highlighted different difficulties related to governance, the substantial application of the rules, and the operational dimension of supervision.

[301] Schlarb, D. D., *cit*., p. 87.
[302] European Banking Authority, *EBA report on the future AML/CFT framework in the EU* (EBA/REP/2020/25), para. 2 and 14-15.
[303] Lo Schiavo, G., *cit*., p. 100.
[304] *Ibidem*, p. 100.
[305] *Ibidem*, p. 100.
[306] *Ibidem*, p. 100.

Notwithstanding the differences between the challenges faced by these two supervisory systems, in both cases the vulnerabilities may be overcome through an improvement in the cooperation among competent authorities and a promotion of the converge of supervisory practices throughout the Union. In particular, the SSM may benefit from an enhanced coordination between the ECB and national supervisors, as well as from an increased harmonisation in the supervisory practices adopted at the national level; while AML/CFT supervision would be enhanced through the adoption of directly applicable rules and the establishment of a single European AML/CFT authority.

3.7. THE OPPORTUNITIES IN FRONT OF THE TWO SYSTEMS

After the previous section has provided a comparative analysis between the challenges faced by the prudential and the AML/CFT supervisory models, the present section will highlight the opportunities that may allow for an improvement in the effectiveness of both supervisory systems. First, the three main opportunities arising in the context of prudential supervision will be presented; then, a future opportunity for the enhancement of AML/CFT supervision will be identified.

Concerning the SSM, three main opportunities have appeared thanks to the existence of a supranational system of prudential supervision. First, thanks to its role as the central authority of the SSM, the ECB can promote common standards and methodologies for an effective exercise of supervisory powers, thus decreasing the risk that national authorities adopt differential supervisory approaches. Second, the ECB has the possibility to promote a common supervisory culture on the importance of supervisory measures. Third, by monitoring supervised entities as a third party, the ECB can grant independence and impartiality in the entire system[307].

While the SSM has already been consolidated over time, the AML/CFT framework is currently evolving and will be subject to important modifications in the upcoming years, with the aim of enhancing the cooperation among national authorities as well as the coordination between AML/CFT supervisors and prudential authorities, including the ECB. The reform of the AML/CFT framework will take shape through the implementation of the legislative package proposed by the European Commission on 20 July 2021. The main opportunities in front of this supervisory system are related to that proposal, which includes the establishment of a single European AML/CFT supervisory authority and the adoption of directly applicable rules in this field.

[307] See the paragraph *Opportunities*, from Lo Schiavo, G., *cit*., pp. 101 – 103.

CHAPTER IV: THE NEW EUROPEAN AML/CFT AUTHORITY

4.1. INTRODUCTION

As the previous chapters have explained, the current AML/CFT framework is based on national laws transposing EU Directive and relies on a system of horizontal cooperation among national competent authorities. The main weaknesses of this system have been identified with the lack of clear and consistent EU rules, the inconsistent oversight by national supervisors across the Union, and the insufficient coordination and exchange of information among FIUs. It has also been highlighted that such limitations can be overcome through an enhancement in the clarity of EU rules, an improvement in the effectiveness and consistency of AML/CFT supervision, and an increase in the level of cooperation and exchange of information among FIUs. After having recognised the limitations of the existing AML/CFT framework, on 20 July 2021, the European Commission proposed an innovative legislative package, aimed at reinforcing the AML/CFT regulatory and supervisory systems through the adoption of directly applicable AML/CFT rules and the establishment of a single European supervisory authority[308].

This chapter will start by describing the premises that led the Commission to propose the new AML/CFT legislative package, along with the main legal acts included in the proposal; then it will focus on the Regulation establishing the AMLA. The illustration of the main points of this legal instrument will enable the reader to understand how the AML/CFT supervisory system will change after the implementation of the legislative package, and what will be the role of the new AML/CFT Authority in this framework.

[308] The need to reinforce the AML/CFT framework has not only been recognised by the European Commission, but it has also been suggested by several authors. In particular, Gianni Lo Schiavo, in the paper *The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities*, highlights the importance of the establishment of a single European supervisor and of the adoption of directly applicable rules in the AML/CFT field. Analogously, Joshua Kirschenbaum and Nicolas Véron, in the research report *A better European Union architecture to fight money laundering,* state that *"the creation of a new European AML Authority emerges as the best response to the challenges of AML in the EU"* and also highlight the need to adopt a Regulation to improve the harmonisation of AML/CFT provisions. Lastly, Dominik D. Schlarb, in the article *Rethinking anti-money laundering supervision: The Single Supervisory Mechanism - a model for a European anti-money laundering supervisor?*, suggests that the SSM may represent a valid model for AML/CFT supervision.

4.2. THE NEW AML/CFT LEGISLATIVE PACKAGE

After having identified the main weaknesses of AML/CFT regulation and supervision in the EU, along with the causes behind such limitations, the Commission proposed a new legislative package aimed at the strengthening the AML/CFT framework, which will be the object of the present section. Specifically, this section will start by describing the premises that led the Commission to present the new legislative package; then, it will explain which are the aims of the reform and how these objectives will be achieved; finally, it will illustrate the legal instruments included in the proposal.

Due to the increase in the severity of the risk of money laundering and terrorist financing, and after a series of money laundering scandals occurred to EU credit institutions, the Commission issued in 2019 a set of documents[309] analysing the effectiveness and the efficiency of the European AML/CFT framework, then reached the conclusion that a reform was necessary. This view was supported by the European Parliament[310] as well as by the Economic and Financial Affairs Council ("Ecofin")[311].

Analogously, the UE Security Union Strategy for the period 2020 – 2025[312] highlighted the importance of reinforcing the AML/CFT regulatory framework.

In this context, on 7 May 2020, the Commission presented an Action Plan[313], which described the measures that the Commission would undertake to enhance the implementation and coordination of AML/CFT rules.

---

[309] In particular, the European Commission issued the *Communication from the Commission to the European Parliament and the Council towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework* (COM/2019/360 final). This Communication was accompanied by four reports: *Report assessing recent alleged money-laundering cases involving European Union credit institutions* (COM/2019/373 final); *Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities* (SWD/2019/650 final); *Report from the Commission to the European Parliament and the Council* assessing *the framework for cooperation between Financial Intelligence Units* (COM/2019/371 final); *Report from the Commission to the European Parliament and the Council on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the Member States on bank accounts* (COM/2019/372 final). For a brief description of the content of these reports, see Koster, H., *cit*., pp. 382 – 385.

[310] In particular, in the *Resolution on the state of implementation of the Union's antimoney laundering legislation* (2019/2820/RSP), the European Parliament suggests to give more impetus to initiative aimed at the reinforcement of the current AML/CFT framework.

[311] In particular, in the *Council conclusions on strategic priorities on anti-money laundering and countering the financing of terrorism* (14823/19), the Ecofin invites the Commission to explore actions aimed at enhancing the current AML/CFT framework.

[312] European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy* (COM/2020/605 final).

The Action Plan gave priority to six pillars:

1. Ensuring the effective implementation of the existing EU AML/CFT framework;
2. Establishing an EU single rulebook on AML/CFT;
3. Bringing about EU-level AML/CFT supervision;
4. Establishing a support and cooperation mechanism for FIUs;
5. Enforcing EU-level criminal law provisions and information exchange;
6. Strengthening the international dimension of the EU AML/CFT framework[314].

Based on these premises, on 20 July 2021, the Commission presented an ambitious package of legislative proposals, aimed at reinforcing the current AML/CFT framework[315]. Specifically, the reform proposed by the Commission addresses the three main weaknesses of the current AML/CFT system, namely the lack of clear and consistent rules, the inadequate monitoring of obliged entities by national supervisors, and the insufficient coordination and information exchange among FIUs. In order to overcome such weaknesses, the proposal aims at enhancing the strength and clarity of AML/CFT rules, along with their consistency with international standards; at increasing the effectiveness and consistency of AML/CFT supervision in Member States; and at facilitating the cooperation and exchange of information among FIUs.

In particular, the Commission decided to adopt the following measures, after having analysed the costs and benefits of the available policies[316].

First, in order to strengthen AML/CFT rules and to enhance their clarity and consistency with international standards, the Commission has opted for a structural reform of the current AML/CFT regulatory framework, through the adoption of a Regulation establishing clear and directly applicable rules, concerning the main

---

[313] European Commission, *Communication from the Commission on an action plan for a comprehensive Union policy on preventing money laundering and terrorist financing* (C/2020/2800 final).

[314] *Ibidem*, p. 4.

[315] The need to reinforce the AML/CFT supervisory system has not only been recognised by the European Commission, the European Parliament, and the Council, but it has also been suggested by several authors. In particular, Gianni Lo Schiavo, in the paper *The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities*, highlights the importance of the establishment of a single European supervisor and of the adoption of directly applicable rules in the AML/CFT field. Analogously, Joshua Kirschenbaum and Nicolas Véron, in the research report *A better European Union architecture to fight money laundering*, state that *"the creation of a new European AML Authority emerges as the best response to the challenges of AML in the EU"* (Kirschenbaum, J., and Véron, N., *cit*., p. 19) and also highlight the need to adopt a Regulation to improve the harmonisation of AML/CFT rules.

[316] For the analysis of the costs and benefits of the available policy options, see SWD/2021/190 final, pp. 28 – 55, summarised at pp. 70 – 72.

obligations imposed on obliged entities, the interconnection of central registers for bank accounts, the limitation to large cash transactions, the report of suspicious transactions, the tasks and powers of FIUs and national supervisors, and the cooperation among national competent authorities. Such reform will not introduce major new rules, but will enhance the clarity of the existing provisions, thus allowing for an increase in the consistency and coherence of the rules adopted at the national level[317].

Second, national AML/CFT supervision will be improved through the establishment of a single European AML/CFT supervisory authority, which will be in charge of the direct supervision of selected obliged entities characterised by a high level of AML/CFT risk, whereas it will be responsible for the indirect oversight of the other private-sector entities[318].

Third, the obstacles to the cooperation and information exchange among FIUs will be removed by integrating the FIU's Platform within the new AML/CFT Authority, as well as by entrusting to the Platform the powers to issue guidelines and technical standards, to coordinate joint analyses and to perform trends and risk analyses[319].

The legislative package proposed by the Commission includes the following legal acts:

- A Regulation containing clear and directly applicable AML/CFT rules[320];
- A sixth AML/CFT Directive ("AMLD VI")[321], replacing the existing AMLD;
- A revision of the 2015 Regulation on Transfers of Funds[322];
- A Regulation establishing a single European AML/CFT supervisory authority (AMLA Regulation, or "AMLAR")[323].

[317] SWD/2021/190 final, pp. 68 – 69.
[318] *Ibidem*, p. 69.
[319] *Ibidem*, p. 69.
[320] Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (COM/2021/420 final).
[321] 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 (COM/2021/423 final).
[322] Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (recast) (COM/2021/422 final).
[323] 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 (COM/2021/421 final), ("AMLAR").

4.3. THE CONTENT OF THE REGULATION ESTABLISHING THE AMLA

One of the most significant innovations proposed by the Commission is represented by the establishment of a single European AML/CFT supervisory authority, which will be in charge of the direct supervision of certain selected obliged entities and for the indirect supervision of the other private-sector entities. The creation of a single supranational supervisor and the establishment of a two-tier system of supervision will radically modify the structure of the European AML/CFT supervisory framework. Such innovations will lead to an enhancement in the efficiency of AML/CFT supervision, by allowing for an increase in the harmonisation of AML/CFT rules, the convergence of the supervisory practices adopted at the national level, and an improvement in the coordination among FIUs. The structure of the new AML/CFT supervisory system and the role of the new supranational Authority can be properly understood through the analysis of the main elements of the Regulation establishing the AMLA, which will be illustrated in the following subsections.

4.3.1. Tasks and powers of the AMLA

The AMLA will be established as of 1 January 2023[324] and will pursue the objective *"to protect the public interest, the stability of the Union's financial system and the good functioning of the internal market"*[325] from the risks of money laundering and terrorist financing. More specifically, the Authority will be responsible for preventing the use of the financial system for the purposes of money laundering and terrorist financing; identifying the risks connected to such activities; ensuring the high-quality supervision on the whole internal market; promoting the harmonisation of AML/CFT supervisory tasks; and facilitating the exchange of information among FIUs and between FIUs and others competent authorities[326].

The Authority will be conferred specific tasks and powers that will enable it to fulfil its mandate, which can be classified according to the category of subjects towards which they will be exercised, namely: selected obliged entities, financial supervisors, non-financial supervisors, and FIUs.

The first set of tasks and powers will be exercised towards selected obliged entities, which are the credit institutions, financial institutions, or groups of credit or financial

[324] Art. 1, co. 1, AMLAR.
[325] Art. 1, co. 3, *ibidem*.
[326] Art. 1, co. 3, lett. a) – f), *ibidem*.

institutions, which will be subject to the direct supervision of the AMLA according to Article 13 of the AMLAR[327]. With respect to those subjects, the Authority will ensure group-wide compliance with directly applicable AML/CFT obligations; will carry out supervisory reviews and assessments at individual and group-wide level; will participate in group-wide supervision; and will develop and update a system to assess the risks and vulnerabilities of selected obliged entities[328]. With regards to these entities, the Authority will be endowed with specific supervisory and investigatory powers, along with the power to impose administrative pecuniary sanctions and periodic penalty payments[329].

Secondly, the AMLA will be conferred specific tasks concerning financial supervisors. In particular, the Authority will maintain an up-to-date list of financial supervisors within the Union; carry out periodic reviews to ensure that they have adequate resources and powers; assess their strategies, capacities and resources, and make the results of such assessments available to all financial supervisors; facilitate the functioning of the colleges of financial supervisors; contribute to the convergence of supervisory practices and to the promotion of high supervisory AML/CFT standards; coordinate staff and information exchanges among financial supervisors; and provide assistance to them, following their specific requests[330].

Besides financial supervisors, the AMLA will be responsible for monitoring and coordinating the activity of non-financial supervisors. Some of the tasks conferred on the Authority with regards to those subjects will be analogous to the ones referred to financial supervisors, such as the tasks to maintain an up-to-date list of non-financial supervisors within the Union; to carry out periodic reviews in order to ensure that all non-financial supervisors have adequate resources and powers; to contribute to the convergence of supervisory practices and to the promotion of high supervisory standards; and to provide assistance to non-financial supervisors at their request[331]. In addition to that, the AMLA will coordinate peer reviews of supervisory standards and practices in the AML/CFT area; and may request non-financial supervisors to

[327] Art. 2, co. 1, point (1), *ibidem*
[328] Art. 5, co. 2, lett. a) – d), *ibidem*.
[329] Art. 6, co. 1, *ibidem*.
[330] Art. 5, co. 3, lett. a) – g), *ibidem*.
[331] Art. 5, co. 4, lett. a), d) – f), *ibidem*.

investigate possible breaches of requirements applicable to obliged entities and to consider imposing sanctions or remedial actions to punish such breaches[332].

The powers of the Authority towards the national financial and non-financial supervisors will include the power to require the submission of any relevant information; to issue guidelines and recommendations; and to issue requests to act as well as instructions on measures that should be taken towards non-selected obliged entities[333].

Furthermore, the AMLA will assume a role of support and coordination of FIUs. Specifically, it will support FIUs by improving their coordination; by contributing to the conduct of joint analyses; by providing FIUs with IT and artificial intelligence services for information sharing; by sharing expert knowledge on detection and reporting of suspicious transactions; and by providing specialised training and assistance[334]. The Authority will also provide specialised training to obliged entities in order to support their interaction with FIUs. Lastly, it will prepare and coordinate threat assessments, strategic analyses of money laundering and terrorist financing threats, risks and methods identified by FIUs[335]. The powers conferred on the AMLA with respect to FIUs will include the power to request the submission of data and analyses; to collect information and statistics related to the activity of FIUs; to obtain and process data and information necessary for the coordination of joint analyses; and to issue guidelines and recommendations[336].

Finally, the AMLA will be endowed with the power to adopt specific regulatory instruments for the fulfilment of its supervisory role. These acts will include draft regulatory and implementing technical standards; guidelines and recommendations addressed to obliged entities, national supervisors and FIUs; and opinions addressed to the European Parliament, the Council, or the Commission[337]. The adoption of binding technical standards as well as guidelines and recommendations will follow a procedure that is analogous to the procedures described by the Regulation of the other ESAs for the adoption of the same types of acts.

---

[332] Art. 5, co. 4, lett. b) and c), *ibidem*.
[333] Art. 6, co. 2, lett. a) – c), *ibidem*.
[334] Art. 5, co. 5, lett. a) – i), *ibidem*.
[335] Art. 5, co. 5, lett. h) and i), *ibidem*.
[336] Art. 6, co. 3, lett. a) – d), *ibidem*.
[337] Art. 6, co. 4, lett. a) – d), *ibidem*.

4.3.2. Direct supervision of selected obliged entities

In the new AML/CFT supervisory system, two levels of supervision will be established, resulting in an architecture similar to the one of the SSM. In particular, the AMLA will be responsible for the direct supervision of selected obliged entities, which include a set of credit and financial institutions that operate on a cross-border basis and are exposed to a high level of risk. With respect to the other entities, the Authority will exercise an indirect supervision, by monitoring the activity of the national competent authorities in charge of the supervision of those entities.

In order to determine which institutions will be subject to the direct supervision of the AMLA, a periodic assessment of credit institutions that are established in at least seven Member States and of other financial institutions that operate in at least ten Member States will be carried out every three years[338]. Such assessment will evaluate the inherent risk profile of the obliged entities concerned, based on the benchmarks and following the methodology specified by the Authority through specific regulatory technical standards[339], which will be revised at least every three years[340]. The benchmarks in the assessment methodology shall be based on risk factor categories related to customers, products and services offered, transactions, delivery channels and geographical areas[341].

In the context of direct supervision, each selected obliged entity will be supervised by a JST. Each team will comprise staff members from the AMLA and from the national supervisor of the Member State where the entity is located, and will work under the coordination of the staff member of the AMLA selected as JST coordinator[342].

Concerning the direct supervision of select obliged entities, the AMLA will be conferred the following informative, investigatory, supervisory, and sanctioning powers.

First of all, the Authority will have the power to require any relevant information from selected obliged entities, any natural or legal person belonging to them, third parties to whom selected obliged entities have outsourced operational functions or activities, and any natural or legal person affiliated to them[343].

---

[338] Art. 12, co. 1, lett. a) and b), *ibidem*.
[339] Art. 12, co. 2, *ibidem*.
[340] Art. 12, co. 6, *ibidem*.
[341] Art. 12, co. 4, *ibidem*.
[342] Art. 15, co. 1, *ibidem*.
[343] Art. 16, co. 1, *ibidem*.

Moreover, the Authority will have the power to conduct on-site inspections at the business premises of all the above-mentioned legal persons, subject to prior notification to the financial supervisor concerned, but, where the proper conduct and efficiency of the inspection so requires, without prior announcement to the legal persons concerned[344]. If, according to national law, an on-site inspection must be authorised by a judicial authority, the AMLA shall apply for such authorisation[345].

In addition, the Authority will have the power to conduct all necessary investigations of any selected obliged entity, or any natural or legal person employed by or belonging to a selected obliged entity and established or located in a Member State[346].

In the context of direct supervision, the AMLA will have the power to address binding decisions to selected obliged entities that do not comply with their AML/CFT obligations. The Authority may issue such a decision in case it discovers that a selected obliged entity does not meet the requirements of Union AML/CFT legislation or national laws transposing EU Directives; has evidence that a selected obliged entity is likely to breach the requirements of those acts within the following 12 months; or considers that the arrangements implemented by a selected obliged entity do not ensure a sound management and coverage of its risks[347]. In order to restore compliance with applicable law, the AMLA may require the reinforcement of the AML/CFT measures implemented by the entity; the adoption of a plan to restore compliance with supervisory requirements; the application of a specific policy or treatment of clients, transactions, or delivery channels; a restriction of the business, operations or network of institutions comprising the selected obliged entity; the divestment of activities that pose excessive money laundering and terrorist financing risks; the implementation of measures to reduce such risks; changes in the governance structure; the submission of information or documents; or the application of stricter reporting requirements[348]. Additionally, the Authority may impose specific requirements relating to individual clients, transactions or activities that pose high risks, or may propose the withdrawal of license of a selected obliged entity to the authority that has granted such license[349].

[344] Art. 18, co. 1, *ibidem*.
[345] Art. 19, co. 1, *ibidem*.
[346] Art. 17, co. 1, *ibidem*.
[347] Art. 20, co. 1, *ibidem*.
[348] Art. 20, co. 2, lett. a) – g), *ibidem*.
[349] Art. 20, co. 2, lett. h) and i), *ibidem*.

Furthermore, the AMLA will have the power to impose administrative pecuniary sanctions to the selected obliged entities that breach, either intentionally or negligently, a directly applicable requirement contained in the new AML/CFT Regulation, or does not comply with a binding decision of the Authority itself[350]. The AMLAR sets the limits for the basic amounts of the administrative pecuniary sanctions that can be imposed by the Authority, specifying that those limits can be adjusted according to the severity of the infringement, taking into account specific aggravating or mitigating factors. In particular, for material breaches of requirements concerning CDD, group policies and procedures and/or reporting obligations that have been identified in two or more Member States where a selected obliged entity operates, the sanction shall amount to at least €1,000,000 and shall not exceed €2,000,000 or 1% of the annual turnover, whichever is higher. These lower and upper bounds are lowered to €500,000 and €1,000,000 or 0,5% of the annual turnover, if such infringements have been identified in only one Member State. For material breaches of all other requirements, the sanction shall amount to at least €1,000,000 and shall not exceed €2,000,000, if the breaches have been identified in two or more Member States; while it shall range from €500,000 to €1,000,000 if such breaches have been identified in one Member State. For material breaches of a binding decision of the Authority, the sanction shall range between €100,000 and €1,000,000[351]. Finally, in order to punish violations of national laws implementing Union AML/CFT Directives, the AMLA may require financial supervisors to open proceedings to ensure that appropriate administrative pecuniary sanctions are imposed. Those sanctions shall be effective, proportionate and dissuasive[352].

Besides adopting administrative pecuniary sanctions, the AMLA will have the power to impose periodic penalty payments in order to compel a selected obliged entity to put an end to a breach; a natural or legal person to supply information when the Authority has so required; or a natural or legal person subject to an investigation to produce any material required by the Authority[353]. The periodic penalty payment shall be imposed on a daily basis until the selected obliged entity or person concerned complies with the relevant decision of the AMLA, and can be imposed for a period of no more than six

[350] Art. 21, co. 1, *ibidem*.
[351] Art. 21, co. 3, lett. a) – e), *ibidem*.
[352] Art. 21, co. 9, *ibidem*.
[353] Art. 22, co. 1, lett. a) – c), *ibidem*.

months following the notification of Authority's decision[354]. Provided that the amount of the penalty shall be proportionate and dissuasive, it shall amount to 3% of the average daily turnover in the preceding business year; or, in case of natural persons, 2% of the average daily income in the preceding calendar year[355].

4.3.3. Indirect supervision of non-selected obliged entities

The AMLA will carry out an indirect supervision of non-selected obliged entities by coordinating and overseeing national AML/CFT supervisors, including the SRBs established in a number of Member States for certain non-financial sectors[356].

First, the Authority will promote high-level supervisory practices by performing periodic assessments of the activities of financial supervisors. The results of such assessments will be published in a report that will also indicate any follow-up measures to be imposed to the financial supervisors concerned, in the form of guidelines and recommendations[357].

The Authority may also receive requests to act in exceptional circumstances. More specifically, financial supervisors shall notify the AMLA if they detect a deterioration in the situation of any non-selected obliged entity, in terms of compliance with applicable requirements or exposure to money laundering and terrorist financing risks[358]. Moreover, where the AMLA has indications that a non-selected obliged entity has committed material breaches of Union law or national law transposing EU legislation, it may request the supervisor concerned to investigate the breaches and to consider the imposition of sanctions[359].

In exceptional circumstances and subject to prior authorisation from the Commission, the AMLA may also acquire direct supervisory powers towards a non-selected obliged entity. Indeed, where necessary, the Authority may request a financial supervisor to issue an individual decision to a non-selected obliged entity, requiring it to undertake all necessary actions to comply with its obligations under directly applicable Union law or national law transposing EU legislation. The supervisor shall comply with such decision

---

[354] Art. 22, co. 2 and 4, *ibidem*.
[355] Art. 22, co. 2 and 3, *ibidem*.
[356] Explanatory memorandum to the 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 (COM/2021/421 final), p. 12.
[357] Art. 28, co. 1 and 3, AMLAR.
[358] Art. 30, co. 1, *ibidem*.
[359] Art. 30, co. 2, lett. a) and b), *ibidem*.

and will have ten working days to inform the Authority of the steps it has taken or intends to take to comply with that request. Otherwise, the AMLA may request the Commission to grant permission for a temporary transfer of the supervisory powers on the non-selected obliged entity from the financial supervisor to the AMLA itself[360]. This procedure resembles the one described by Article 17 of Regulation (EU) No 1093/2010, which allows the EBA to acquire direct powers of intervention in cases of breaches of Union law.

4.3.4. Oversight of the non-financial sector

Besides supervising the financial sector, the AMLA will be responsible for ensuring the correct application of AML/CFT measures in the non-financial sector.

First, the AMLA will conduct peer reviews of the activities of non-financial supervisors, in order to guarantee the consistent and effective implementation of high-quality supervisory practices[361]. After performing a review, the Authority will publish on its website a report containing the outcome of the assessment, along with the follow-up measures that will be imposed to the non-financial supervisors concerned in the form of guidelines and recommendations[362]. If the results of the peer review or any other relevant information lead the Authority to consider that further harmonisation of Union rules may be necessary, the Authority shall submit its opinion to the Commission[363]. Two years after the publication of the peer review report, the AMLA will issue a follow-up report assessing the adequacy and effectiveness of the actions undertaken by the non-financial supervisors in response to the follow-up measures indicated in the peer review report[364].

Furthermore, in cases of breaches of Union law or national law implementing EU legislation, committed by non-financial supervisors, the AMLA may activate a procedure that is similar to the one described by Article 17 of Regulation (EU) No 1093/2010. More specifically, upon request from one or more supervisory authorities in the non-financial sector, the European Parliament, the Council, the Commission, or on its own initiative, and after having informed the non-financial supervisor concerned, the AMLA may investigate the violation or non-application of Union law, by collecting information from the supervisor concerned, or, when appropriate and subject to prior

[360] Art. 30, co. 2 – 4, *ibidem*.
[361] Art. 31, co. 1, *ibidem*.
[362] Art. 31, co. 4, *ibidem*.
[363] Art. 31, co. 5, *ibidem*.
[364] Art. 31, co. 6, *ibidem*.

notification to the authority concerned, from other supervisory authorities. Not later than six months from initiating its investigation, the AMLA may issue a recommendation that illustrates to the non-financial supervisor concerned the action required to comply with Union law. After that, the supervisor will have ten working days to inform the AMLA of the steps it has taken or intends to take to comply with the recommendation. If the supervisor has not complied with Union law within one month from the receipt of the Authority's recommendation, the Commission may, either after having been informed by the AMLA or on its own initiative, address a formal opinion to the non-financial supervisor, requiring compliance with Union law. The supervisor will again have ten working days to inform the Commission and the AMLA of the steps it has taken or intends to take to comply with that formal opinion. Where such formal opinion is addressed to a supervisory authority which is a public authority overseeing an SRB, and where the authority does not comply with the formal opinion within the period specified therein, the AMLA will have the power to adopt an individual decision addressed to an SRB, requiring it to undertake all necessary actions to comply with its obligations under Union law, in order to remedy such non-compliance in a timely manner[365].

4.3.5. FIUs support and coordination mechanism

An important mandate conferred on the AMLA will be the role of support and coordination of national FIUs.

The first way in which the AMLA will coordinate the work of FIUs will be by contributing to the conduct of joint analyses of certain cross-border suspicious transactions and activities. In particular, the Authority will provide all the necessary tools and operational support required for the conduct of joint analyses, for instance by setting up a dedicated, secured communication channel, and will provide the appropriate technical coordination, including IT support, budgetary and logistical support[366]. Moreover, the AMLA will review the conduct, methods, and procedures for carrying out such joint analyses, in order to constantly improve their effectiveness[367].

An important tool aimed at facilitating the communication among FIUs will be FIU.net, a secure communication network hosted and managed by the AMLA[368].

[365] Art. 32, *ibidem*.
[366] Art. 33, co. 4, *ibidem*.
[367] Art. 34, co. 1, *ibidem*.
[368] Art. 37, *ibidem*.

Furthermore, the AMLA will provide mutual assistance to FIUs, in particular by organising and facilitating training programs, which may concern technological innovation, personnel exchanges, secondment schemes, and exchanges of practices between FIUs[369]. Any FIU may submit to the Authority a request of assistance[370].

Finally, the Authority will develop implementing technical standards aimed at adopting binding templates and models for the report of suspicious transactions and activities from obliged entities to FIUs[371].

4.3.6. Internal organisation of the AMLA

The AMLA will comprise two collegial governing bodies, namely an Executive Board and a General Board, will have a Chair, a Vice-Chair, and an Executive Director, and will establish an Administrative Board of Review[372].

The General Board will be the decision-making body of the Authority and will have two alternative compositions: a supervisory composition, with heads of public authorities responsible for AML/CFT supervision, and a FIU composition, with heads of national FIUs. Both compositions of the General Board will be chaired by the Chair of the AMLA and will include one representative of the Commission, who will not have the right to vote[373]. This Board, in appropriate composition depending on the subject, will adopt all regulatory instruments, including draft regulatory and implementing technical standards, guidelines and recommendations[374].

The Executive Board will be the governing body of the AMLA. It will be composed of the Chair of the Authority, five full-time independent members, and a representative of the Commission, which will intervene only in specific administrative decisions[375]. The Board will take all decisions addressed to individual obliged entities or to individual supervisory authorities, and will take decisions relating to the administration, operations and functioning of the Authority, among which the adoption of the draft annual budget[376].

---

[369] Art. 36, co. 1, *ibidem*.
[370] Art. 36, co. 2, *ibidem*.
[371] Explanatory memorandum to 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 (COM/2021/421 final), p. 12.
[372] Art. 45, AMLAR.
[373] Art. 46, co. 1 – 3, *ibidem*.
[374] Art. 49, co. 4, *ibidem*.
[375] Art. 52, co. 1, *ibidem*.
[376] Art. 53, co. 2 – 4, *ibidem*.

The Chairperson of the AMLA will represent the Authority and will be responsible for preparing the work of the General Board and the Executive Board[377]. The Chair will be selected based on merit, skills, knowledge, recognised standing and experience in the AML/CFT area, following an open selection procedure, in which the Commission will select two candidates, then the Council, after approval by the European Parliament, will appoint the Chair[378]. Should the Chair resign or be unable to attend to his or her duties, then the functions of the Chair will be performed by the Vice-Chair[379].

The AMLA will also have an Executive Director, who will be in charge of the day-to-day management of the Authority and will be responsible for implementing the decisions of the Executive Board, preparing reports, and developing strategies concerning budget implementation, resources, staff and procurement[380]. The Executive Director will be engaged as a temporary agent of the Authority[381] and will be selected on the basis of merit and documented high-level administrative, budgetary and management skills, following an open selection procedure. The Executive Director will be appointed by the Executive Board, after the Commission will have drawn up a shortlist of two qualified candidates[382].

Lastly, the AMLA will establish an Administrative Board of Review that will perform an internal administrative review of the decisions taken by the Authority[383]. The members of this Board will be five individuals of high repute, having a proven record of relevant knowledge and professional experience in the AML/CFT field, excluding current staff of the Authority, AML/CFT supervisors, FIUs, or other national or Union institutions, bodies, offices and agencies who are involved in the performance of the tasks conferred on the AMLA[384].

4.3.7. Financial provisions

The Authority will prepare an annual budget that must be balanced in terms of revenues and expenditure. The revenues will consist in a combination of contributions from the EU, fees paid by selected and non-selected obliged entities, and any voluntary financial

[377] Art. 57, co. 1, *ibidem*.
[378] Art. 56, co. 1, *ibidem*.
[379] Art. 56, co. 3, *ibidem*.
[380] Art. 59, co. 1, *ibidem*.
[381] Art. 58, co. 1, *ibidem*.
[382] Art. 58, co. 4, *ibidem*.
[383] Art. 60, co. 1, *ibidem*.
[384] Art. 60, co. 2, *ibidem*.

contribution from Member States; while the expenditure will include staff remuneration, administrative and infrastructure expenses, and operating costs[385].

The Authority will levy an annual supervisory fee on all selected obliged entities and on a set of non-selected obliged entities meeting specific criteria. Such fee shall cover the expenditure incurred by the Authority in relation to the performance of its direct and indirect supervisory tasks, without exceeding such expenditure, and will be calculated according to a methodology stated in a delegated act adopted by the Commission, which will also specify the subset of obliged entities subject to fees[386].

As far as the establishment of the budget is concerned, the Executive Director will annually prepare the draft statement of the estimated revenues and expenses of the Authority for the following financial year, along with the establishment plan, and will send it to the Executive Board. Based on this document, the Board will adopt a provisional draft estimate of the budget and will send it to the Commission by 31 January. After that, the Commission will send the document to the budgetary authority, together with the draft general budget of the Union, and will also determine the amount of the subsidy to be charged to the general budget. Such contributions, together with the AMLA's establishment plan, shall be approved by the budgetary authority. Finally, the budget will be adopted by the Executive Board[387]. The Executive Director shall implement the Authority's budget, respecting the principles of economy, efficiency, effectiveness, and sound financial management[388].

Moreover, the AMLA will be audited by the Court of Auditors, while the European Parliament will grant budgetary discharge, as for other decentralised agencies[389].

Lastly, the AMLA will adopt anti-fraud measures aimed at combating fraud, corruption, and any other illegal activity[390], and will establish an internal IT governance at the level of the Executive Director, which will manage the IT budget and ensure regular reporting to the Executive Board on the compliance with IT security rules and standards[391].

[385] Art. 64, co. 1 – 4, *ibidem*.
[386] Art. 65, *ibidem*.
[387] Art. 66, *ibidem*.
[388] Art. 67, co. 1, *ibidem*.
[389] Art. 68, *ibidem*.
[390] Art. 70, *ibidem*.
[391] Art. 71, co. 1, *ibidem*.

4.3.8. Staff provisions

The Staff Regulations and the Conditions of Employment of Other Servants[392], along with Protocol (No 7) of the TEU and the TFEU on the privileges and immunities[393] will apply to the staff of the AMLA.

Moreover, members of the General Board and the Executive Board, all members of the staff of the Authority, including those appointed on a temporary or contractual basis, and any individual providing service to the Authority, shall comply with requirements of professional secrecy, even after their duties have ceased[394]. However, this shall not prevent the exchange of information with national or EU authorities for the purposes of preventing the risk of money laundering and terrorist financing[395].

Finally, the AMLA shall adopt its own security rules on the protection of classified and sensitive non-classified information[396].

4.3.9. Cooperation with other authorities

The AMLA shall cooperate in good faith with relevant external bodies, including EU authorities, other national competent authorities, and third-country authorities.

In particular, the AMLA shall closely cooperate with the ESAs[397], and, when drafting guidelines and recommendations having a significant impact on the protection of personal data, the Authority shall cooperate with the European Data Protection Board[398] to avoid duplication, inconsistencies and legal uncertainty related to data protection[399].

In addition, the AMLA shall cooperate with non-AML/CFT authorities, if necessary for the fulfilment of its tasks[400], and shall ensure effective cooperation and information exchange between those authorities and AML/CFT financial supervisors[401].

Moreover, the AMLA may participate in existing public-private partnerships established in one Member States or across several Member States by supervisory

[392] Art. 73, co. 1, *ibidem*.
[393] Art. 74, *ibidem*.
[394] Art. 75, co. 1 and 2, *ibidem*.
[395] Art. 75, co. 3, *ibidem*.
[396] Art. 76, co. 1, *ibidem*.
[397] Art. 77, co. 1, *ibidem*.
[398] Established by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("General Data Protection Regulation").
[399] Art. 77, co. 2, AMLAR.
[400] Art. 78, co. 1, *ibidem*.
[401] Art. 78, co. 3, *ibidem*.

authorities or FIUs, provided that the relevant national authority that has established such arrangement has authorised the participation of the AMLA in the partnership[402].

The AMLA may also conclude working arrangements with EU institutions, EU decentralised agencies and other Union bodies, acting in the field of law enforcement and judicial cooperation. These working arrangements may be of a strategic or a technical nature, and shall be aimed at facilitating cooperation and information exchange between the parties involved[403]. In particular, the Authority shall establish a close relationship with the European Anti-Fraud Office, the European Public Prosecutor's Office, Europol, and Eurojust[404].

In addition, the AMLA may develop contracts and establish administrative arrangements with AML/CFT authorities in third countries, as well as with international organisations and third-country administrations. Those cooperation arrangements shall not create legal obligations with respect to the EU and its Member States and shall not prevent Member States and their competent authorities from concluding bilateral arrangements with those third countries[405]. Besides administrative arrangements, the AMLA may develop model administrative arrangements, aimed at establishing consistent, efficient, and effective practices within the EU and at strengthening international cooperation in the fight against money laundering and terrorist financing. Public authorities and FIUs shall make every effort to comply with such arrangements[406].

Lastly, the AMLA shall facilitate the interaction between EU competent authorities and third-country authorities, in cases where such interaction concerns issues falling within the scope of the Authority's tasks[407].

[402] Art. 79, *ibidem*.
[403] Art. 80, co. 1, *ibidem*.
[404] Art. 80, co. 2, *ibidem*.
[405] Art. 81, co. 1, *ibidem*.
[406] Art. 81, co. 2, *ibidem*.
[407] Art. 81, co. 3, *ibidem*.

CHAPTER V: COMPARISON BETWEEN PRUDENTIAL SUPERVISION AND THE NEW AML/CFT SUPERVISORY FRAMEWORK

5.1. INTRODUCTION

The implementation of the AML/CFT legislative proposal presented by the Commission will radically modify the European AML/CFT framework, since it will introduce directly applicable rules and will establish a single European supervisory authority. This will lead to an increased harmonisation of AML/CFT rules, to an enhancement in the convergence of supervisory practices, and to improved coordination among FIUs, thus enhancing the effectiveness of AML/CFT supervision in the EU. Considering the facts that the SSM is characterised by the presence of a supranational supervisory authority, namely the ECB, and is based on a Single Rulebook, including directly applicable rules on prudential supervision, it can be argued that the implementation of the Commission's AML/CFT proposal will result in an increase in the similarities between the AML/CFT supervisory framework and the SSM[408].

The present chapter contains a comparative analysis between the European prudential supervisory system and the AML/CFT supervisory framework envisaged by the Commission's legislative proposal, which will highlight how the similarities between the two supervisory systems will increase. In particular, this chapter will start with a comparison between the governance models adopted by the two frameworks. Then, it will highlight the similarities and the differences between the supranational authorities involved in prudential and in AML/CFT supervision, by providing a comparison between the ECB and the AMLA, and between the EBA and the AMLA.

5.2. THE GOVERNANCE MODELS OF THE SSM AND OF THE NEW AML/CFT SUPERVISORY FRAMEWORK

The governance model of the AML/CFT supervisory framework will be deeply modified by the implementation of the new AML/CFT legislative proposal, which will lead to the establishment of a single European supervisory authority and to the creation of a two-tier system of supervision. In this sense, the governance model of the AML/CFT supervisory framework will become more similar to the one of the SSM,

[408] Interestingly, the author Dominik D. Schlarb, in the article *Rethinking anti-money laundering supervision: The Single Supervisory Mechanism - a model for a European anti-money laundering supervisor?*, suggests that the SSM could represent a valid model for AML/CFT supervision.

even though some differences will remain. This section contains a comparison between these governance models, taking into account the modifications introduced by the new AML/CFT legislative package. Specifically, this section will start by describing the governance models of the SSM and of the current AML/CFT supervisory system. The second part of the section will focus on the creation of the AMLA, by describing the nature of powers conferred on the new Authority and the division of competences between the AMLA and national AML/CFT supervisors, with the aim of highlighting the similarities between the new AML/CFT supervisory system and the SSM. The third part of the section will identify the differences between the two supervisory frameworks, concerning the exclusive competence of the ECB for certain supervisory tasks, the nature of the division of competences between supranational and national authorities, and the criteria determining the distinction between directly and indirectly supervised entities. Also, a problematic aspect related to the criteria for the identification of selected obliged entities will be highlighted, and two possible solutions to this problem will be suggested.

As section 3.2 has previously explained, models of administrative governance in the EU can be classified as parallel enforcement models, supportive models, and hierarchical models, according to the nature of powers conferred on supranational authorities and to the division of competences between national and supranational authorities. In this sense, the SSM can be described as a hybrid pragmatic model, characterised by a hierarchical structure and a semi-parallel exercise of responsibilities[409], since the entire system is headed by the ECB, which exercises a direct supervision on significant entities and an indirect supervision on less significant institutions. On the contrary, the existing AML/CFT supervisory system has adopted a supportive model of governance[410], where national competent authorities are endowed with direct supervisory powers and the EBA fulfils a role of support and coordination. However, several weaknesses of the AML/CFT framework have emerged in recent years, leading the Commission to propose a radical reform of the system, which will deeply modify its governance model.

The most significant innovation introduced by the proposal of the Commission is represented by the creation of the AMLA, a central AML/CFT Authority that will promote the convergence of supervisory practices and will exercise a role of

[409] Pizzolla, A., *cit.*, p. 19.
[410] Lo Schiavo, G., *cit*., p. 92.

coordination of FIUs, with powers that will be much more impactful than those conferred on the EBA by Regulation (EU) 2019/2175. After the establishment of this supranational authority, the new AML/CFT supervisory framework will acquire a hierarchical structure, headed by the AMLA. This architecture will be equivalent to the hierarchical structure of the SSM, which is headed by the ECB.

Concerning the nature of powers conferred on the supranational authority, the AMLA will be endowed with direct supervisory powers towards selected obliged entities, including the power to adopt pecuniary sanctions, as well as indirect supervisory powers with regards to the other entities. In this sense, the nature of powers of the AMLA will be similar to the direct and indirect powers of supervision conferred on the ECB.

As far as the division of competences between national and supranational authorities is concerned, the implementation of the new AML/CFT legislative package will create a two-tier system of supervision, comparable to the one of the SSM. In this framework, the institutions subject to AML/CFT supervision will be classified into two categories: the selected obliged entities, which will be directly supervised by the AMLA, and the non-selected obliged entities, which will be subject to the indirect supervision of the Authority. Analogously, the credit and financial institutions subject to prudential supervision are divided into significant entities, which are directly supervised by the ECB, and less significant entities, which are indirectly supervised by the Authority.

Although both the SMM and the new AML/CFT supervisory system are characterised by a two-tier architecture and are headed by a single European supervisory authority, three main differences between them can be highlighted.

The first difference lies in the fact that, notwithstanding the distinction between directly and indirectly supervised entities, the ECB retains exclusive competence over three supervisory tasks, namely granting authorisations to credit institutions, withdrawing such authorisations, and assessing notifications of the acquisition and disposal of qualifying holdings in credit institutions[411]; while the AMLAR does not refer to any tasks for which the new AML/CFT Authority shall be exclusively competent.

The second difference is that the distinction between direct and indirect supervision in the SSM is exercised at a practical level and is not a division of competences[412], as the

[411] Art. 4, co. 1, lett. a) and c), SSMR.
[412] Lo Schiavo, G., *cit*., p. 99.

CJUE has stated[413]. Indeed, the ECB retains the exclusive competence for the prudential supervision of credit institutions in the EU, but there is a delegation of powers to national competent authorities for the supervision of less significant entities[414]. The same conclusion cannot be drawn for the AMLA, in absence of case law examined by the CJEU. In any case, it is unlikely that the AMLA should be considered exclusively competent for the AML/CFT supervision of obliged entities, since national competent authorities have traditionally played an important role in this supervisory framework, and no explicit provision seems to foresee a conferral on the new Authority of the exclusive responsibility over the entire system.

The third difference concerns the criteria for determining which entities shall be subject to the direct supervision of the ECB and of the AMLA, respectively. As a matter of fact, the identification of directly supervised entities under the SSM relies on purely quantitative criteria[415], such as their size, the importance for the economy of the Union or any participating Member State, or the significance of their cross-border activities[416]. Differently, the identification of the selected obliged entities that will be directly supervised by the AMLA relies on a set of relatively strict and risk-based criteria[417], which take into account risk factor categories related to customers, products and services offered, transactions, delivery channels, and geographical areas. In particular, the selected obliged entities will be identified through a periodic assessment of the inherent risk profile of credit institutions that are established in at least seven Member States and other financial institutions that operate in at least ten Member States[418]. The choice of this risk-based approach may be justified by the fact that significant risks of money laundering often affect sub-units of larger businesses or relatively small individual entities[419], which tend to be exploited by criminals for the purpose of money laundering.

---

[413] See Landeskreditbank Baden-Württemberg v ECB. (2019). ECLI:EU:C:2019:372; and Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS). (2018). ECLI:EU:C:2018:1023.
[414] Lo Schiavo, G., *cit*., p. 99.
[415] Schlarb, D. D., *cit*., p. 80.
[416] Art. 6, co. 4, SSMR.
[417] European Central Bank, *Opinion of the European Central Bank of 16 February 2022 on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism* (CON/2022/4), para 2.2.
[418] Art. 12, co. 1, lett. a) and b), AMLAR.
[419] Bruun & Hjejle, *cit*., p. 26.

According to the documents accompanying the Commission's legislative proposal, only approximately 12 to 20 obliged entities will probably meet the criteria established by the AMLAR[420]. However, the number of entities that will fall under the direct supervision of both the ECB and the AMLA has not been estimated. With respect to these entities, the AMLA will exchange information and cooperate with the ECB in day-to-day supervision, suitability assessments and "common procedures"[421], including assessments of applications for granting authorisations to credit institutions, withdrawals of such authorisations, and assessments of acquisitions and disposals of qualifying holdings. Instead, in the case of less significant entities that will be directly supervised by the AMLA, the cooperation will be limited to the relevant aspects of the common procedures[422].

In its Opinion on the AMLAR, the ECB states that it would welcome the extension of the AMLA's direct supervisory tasks to a wider subset of entities that are directly supervised by the ECB, since this may enhance the level of consistency in the AML/CFT supervisory assessments of significant entities, which would support the prudential supervision of those subjects, for which some assessments related to AML/CFT risks may serve as inputs[423]. As a matter of fact, prudential and AML/CFT supervision are related because an entity operating in a risky business sector is likely to face significant AML/CFT risks as well[424]. For this reason, when prudential supervisors determine the safety and soundness of an entity, they shall also consider its AML/CFT profile[425].

Furthermore, a problematic aspect related to the criteria set out in the AMLAR can be highlighted. Considering the fact that selected obliged entities are identified based on their inherent risk profile, publishing their list would be equivalent to indirectly disclosing the high risk of money laundering and terrorist financing of such institutions, which is currently confidential information shared only among relevant authorities and only when such disclosure is necessary, and would therefore send unintended signals to

---

[420] CON/2022/4, para 2.1.
[421] As defined by Art. 2, point (3), SSMFR.
[422] CON/2022/4, para 2.1.
[423] *Ibidem*, para 2.4.
[424] European Parliament, (Deslandes, J., Dias, C., and Magnus, M.), *Anti-money laundering – reinforcing the supervisory and regulatory framework* (PE 614.496, (08/2019)), pp. 3-4.
[425] European Banking Authority, *Opinion of the European Banking Authority on communications to supervised entities regarding money laundering and terrorist financing risks in prudential supervision* (EBA-Op-2019-08), para. 4.

the markets or create reputational problems to the entities subject to the direct supervision of the AMLA[426]. A feasible solution to this problem would consist in the adoption of objective risk-based criteria that do not result in the indirect disclosure of confidential information[427]. Another possible solution would consist in approving a provision ensuring secure communication between the AMLA and the relevant prudential supervisors during the assessment process for the selection of directly supervised entities, before the publication of the final list, since this would enable prudential supervisors to analyse in advance the possible prudential implications of the risks associated with those entities[428].

In conclusion, the comparison between the governance models of the SSM and of the new AML/CFT supervisory framework can be summarised as follows. The governance model of the SSM can be described as a hybrid pragmatic model, characterised by a hierarchical structure headed by the ECB, and by a two-tier architecture. After the implementation of the new AML/CFT legislative proposal, the governance model of the new AML/CFT supervisory system will be similar to the one of the SSM, since it will adopt a hierarchical structure headed by the AMLA, as well as an analogous two-tier system of supervision. The differences between the two supervisory frameworks lie in the fact that the ECB can be considered as exclusively competent for the prudential supervision of credit institutions and must exercise three supervisory tasks even towards less significant entities, as well as in the different criteria for the identification of the entities subject to the direct supervision of the supranational authorities.

5.3. COMPARISON BETWEEN THE AMLA AND THE ECB

For the purpose of identifying the main similarities and differences between prudential and AML/CFT supervision, it is interesting to compare the supranational authorities at the top of the two supervisory systems, namely the ECB and the AMLA, respectively. This section will discuss the main differences between the two Authorities, concerning the type of entities that they supervise, their tasks, the types of regulatory instruments that they can adopt, and their organisational structures. After that, the similarities between the two Authorities will be presented, relating to their powers and to the establishment of JSTs in the context of direct supervision.

[426] CON/2022/4, para 2.2.
[427] *Ibidem*, para 2.2.
[428] *Ibidem*, para 2.2.

Before analysing the specific similarities and differences concerning only the field of supervision, it is important to highlight that the scope of action of the ECB is more far-reaching than the one of the AMLA and the other ESAs. Indeed, the ECB is the central authority in charge of both monetary policy and prudential supervision, even though the two functions are conducted separately, while the AMLA is only responsible for the oversight of the AML/CFT system, and the ESAs are only in charge of microprudential supervision in their respective sector of competence.

Focusing on prudential supervision, it is possible to identify some differences concerning the type of entities supervised by the ECB and the AMLA, the tasks conferred on the two Authorities, the types of regulatory instruments that they can adopt, and their organisational structures.

First, as far as the supervised entities are concerned, the institutions subject to prudential supervision under the SSM only belong to the financial sector, while the supervisory mandate of the AMLA includes both the financial and the non-financial sectors.

Second, the type of tasks entrusted to the two Authorities clearly differ due to the different type of supervision for which they are responsible. In particular, since the ECB is a prudential supervisory authority, its responsibilities include macroprudential tasks, concerning the capital requirements imposed on credit institutions, as well as microprudential tasks, related to the granting and withdrawal of authorisation to credit institutions; the assessment of notifications of acquisition and disposal of qualifying holdings; and the assessment of compliance with requirements imposed on credit and financial institutions, concerning risk management, organisation, and internal and external control mechanisms. Instead, the tasks of the AMLA consist in monitoring and ensuring the compliance of obliged entities with their AML/CFT obligations; overseeing the activity of financial and non-financial supervisors; and assuming a role of support and coordination of FIUs.

Third, both Authorities can adopt specific regulatory instruments aimed at ensuring the convergence of supervisory practices and the compliance by supervised entities with their legal obligations, even though the nature of such acts is different for the two Authorities. On the one hand, the ECB may issue regulations, decisions, guidelines, instructions, recommendations, and opinions. Among these acts, regulations and decisions are legally binding, hence institutions that do not comply with the obligations imposed by those acts are subject to pecuniary sanctions. On the other hand, the AMLA has the power to develop binding technical standards; to address guidelines and

recommendations to obliged entities, national supervisors and FIUs; to issue opinions addressed to the European Parliament, the Council, or the Commission; and to adopt binding decisions that require selected obliged entities to comply with their AML/CFT obligations. Contrary to guidelines and recommendations, binding technical standards are legally binding and directly applicable in all Member States, while decisions are binding only for the entity to which they are addressed.

Lastly, significant differences concern the internal organisation of the two Authorities. While the decision-making body of the AMLA is the General Board, which may alternatively adopt a supervisory or a FIU composition, depending on the subject to be discussed, the ECB has two separate decision-making bodies, namely the Governing Council and the Supervisory Board, which are respectively responsible for monetary policy and prudential supervision. Moreover, the ECB comprises a General Council, which is a transitional decision-making body that is intended to be dissolved once all EU Member States will adopt the single currency. A common organisational aspect of the two Authorities is that both of them have an Executive Board, which is endowed with executive tasks, and establish an Administrative Board of Review, which is in charge of performing the internal administrative review of the decisions taken by the Authorities in the exercise of their powers. Finally, the heads of the ECB and the AMLA are represented by the President and the Chair, respectively.

After having analysed the main differences between the ECB and the AMLA, it is possible to identify some similarities relating to the powers conferred on the two Authorities, including investigatory and supervisory powers, along with the power to impose pecuniary sanctions. Another common aspect concerns the establishment of JSTs for the supervision of directly supervised entities.

First, both the ECB and the AMLA are endowed with investigatory powers that allow them to fulfil their supervisory mandate. Indeed, both Authorities have the power to collect information from supervised entities, from any person belonging to them, and from third parties to whom those entities have outsourced functions or services, as well as the power to conduct investigations and on-site inspections[429]. However, while the ECB may exercise these powers towards any supervised entity, the AMLA is endowed with such powers only in the context of direct supervision.

[429] Artt. 10 – 13, SSMR; and Artt. 16 – 19, AMLAR, respectively.

Second, among their supervisory powers, both Authorities may require supervised entities to restore compliance with their obligations under applicable law, in their respective areas of competence. In particular, the ECB may at any time require supervised entities to implement all the necessary measures to ensure compliance with their obligations, in the event of noncompliance with their obligations under prudential regulation, the likelihood of breaching such requirements within the next 12 months, or the inadequacy of their internal organisation measures or the own funds and liquidity that they hold[430]. Similarly, the AMLA has the power to address binding decisions to selected obliged entities that do not comply with their AML/CFT obligations, may breach such requirements within the following 12 months, or have implemented measures that do not ensure a sound management and coverage of their risks[431]. It can be noticed that, while the ECB may exercise this power towards any supervised entity, the AMLA can exercise it only with respect to selected obliged entities.

Furthermore, both Authorities may acquire direct supervisory powers towards indirectly supervised entities, but the AMLA will need to follow a stricter procedure. Indeed, when necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national competent authorities, or upon request by a national authority, decide to acquire direct supervisory powers towards less significant entities[432]. Instead, the AMLA may acquire direct supervisory powers towards a non-selected obliged entity only after a procedure that involves the national supervisor concerned and subject to the authorisation from the Commission[433].

In addition, both the ECB and the AMLA are provided with analogous sanctioning powers. As a matter of fact, both Authorities shall impose administrative pecuniary sanctions on directly supervised entities that breach, either intentionally or negligently, a requirement imposed by directly applicable EU law or binding decisions of the Authorities themselves[434]. If the infringement concerns national law transposing EU Directives, both Authorities shall request that the relevant national competent authorities open a sanctioning procedure[435].

---

[430] Art. 16, SSMR.
[431] Art. 20, AMLAR.
[432] Art. 6, co. 5, lett. b), SSMR.
[433] Art. 30, AMLAR.
[434] Art. 18, co. 1 and 7, SSMR; and Art. 21, co. 1, AMLAR, respectively.
[435] Art. 18, co. 5, SSMR; and Art. 21, co. 9, AMLAR, respectively.

Finally, in the context of direct supervision, both the ECB and the AMLA shall establish a JST for the supervision of each directly supervised entity, which is composed of staff members from the Authority itself and from national competent authorities, working under the direction of a JST coordinator selected among the staff members of the Authority[436].

5.4. COMPARISON BETWEEN THE AMLA AND THE EBA

After having compared the ECB and the AMLA, it is meaningful to analyse the similarities and the differences between the EBA new AML/CFT Authority. The present section will start by describing the differences between the two Authorities, concerning their scope of action and the nature of their powers. After that, the comparative analysis between the EBA and the AMLA will show some similarities related to the role conferred on the two Authorities in their area of competence, the types of regulatory instruments that they can adopt, some of their tasks, certain powers conferred on the EBA and on the AMLA in the context of indirect supervision, their internal organisation, the financial provisions related to their budget, and the provisions applying to their staff.

Both the EBA and the AMLA are established in the form of decentralised agencies of the EU and act as European supervisors, in the field of microprudential and AML/CFT supervision, respectively. However, some differences can be identified concerning their scope of action and the nature of their powers.

First, concerning the scope of action of the two Authorities, the EBA exercises its powers towards credit and financial institutions, financial conglomerates, investment firms, payment institutions and e-money institutions[437]. Differently, the AMLA exercises its powers towards obliged entities belonging to both the financial and the non-financial sectors, national AML/CFT supervisors belonging to both sectors, and national FIUs.

Second, the nature of the powers entrusted to the two Authorities differs because of the following reason. While the EBA mainly exercises its supervisory mandate towards national competent authorities, with limited powers of intervention with regards to private-sector entities, the AMLA has direct supervisory powers with respect to selected obliged entities, and exercises an indirect supervision over non-selected obliged entities

[436] Art. 3, SSMFR; and Art. 15, AMLAR, respectively.
[437] Art. 1, co. 3, Regulation (EU) 1093/2010.

and over the obliged entities belonging to the non-financial sector. Hence, the AMLA is endowed with direct supervisory powers that are much more impactful than the powers entrusted to the EBA. In particular, in the context of direct supervision, the AMLA has the power to request any information from selected obliged entities; to conduct investigations and on-site inspections; to address binding decisions to selected obliged entities that do not comply with their AML/CFT obligations; and to impose pecuniary sanctions for breaches of directly applicable AML/CFT requirements or binding decisions of the Authority itself[438]. On the contrary, the EBA is not conferred the same type of powers in the context of microprudential supervision.

After having highlighted the main differences between the EBA and the AMLA, it is possible to identify a number of similarities between them, concerning the role conferred on the two Authorities in their area of competence, the types of regulatory instruments that they can adopt, some of their tasks, certain powers conferred on the EBA and on the AMLA in the context of indirect supervision, the internal organisation of the two Authorities, the financial provisions related to their budget, and the provisions applying to their staff.

First, both Authorities fulfil a role of coordination of national competent authorities and shall promote the convergence of supervisory practices in their respective areas of competence. More specifically, they shall contribute to the establishment of high-quality supervisory standards and procedures by developing binding technical standards, by adopting guidelines and recommendations, and by issuing opinions to the European Parliament, the Commission and the Council[439].

Second, some of the tasks entrusted to the two Authorities are similar in nature. Indeed, both of them shall monitor and assess market developments in their areas of competence[440]; perform peer review analyses on supervised entities[441]; and establish a centrally accessible database of supervised entities, in the case of the EBA[442], and of information collected from national supervisors, in the case of the AMLA[443].

---

[438] Artt. 16, 17, 18, 20 and 21, AMLAR.
[439] Art. 8, co. 2, lett. a) – d) and g), Regulation (EU) 1093/2010; and Art. 6, co. 4, lett. a) – d), AMLAR, respectively.
[440] Art. 8, co. 1, lett. f), Regulation (EU) 1093/2010; and Art. 5, co. 1, lett. a) and b), AMLAR, respectively.
[441] Art. 8, co. 1, lett. e), Regulation (EU) 1093/2010; and Art. 5, co. 2, lett. b), co. 3, lett. b), and co. 4, lett. b) AMLAR, respectively.
[442] Art. 8, co. 2, lett. j), Regulation (EU) 1093/2010.
[443] Art. 5, co. 1, lett. d), AMLAR.

Third, concerning the powers conferred on the two Authorities, it has already been highlighted that the AMLA is endowed with more impactful powers than the EBA, at least in the context of direct supervision. However, a number of similarities can be identified when considering the powers conferred on the AMLA in the field of indirect supervision. As far as indirect supervision is concerned, the AMLA exercises its oversight over national AML/CFT supervisors, but may acquire direct powers of intervention in exceptional circumstances, similarly to the EBA. More specifically, the EBA may acquire direct powers of intervention towards supervised entities that breach directly applicable Union law, after a procedure that involves both the national competent authority concerned and the Commission[444]. Similarly, the AMLA may adopt an individual decision addressed to a non-selected obliged entity that has committed a material breach of applicable AML/CFT law, but only after the Authority has requested the financial supervisor concerned to address the infringement committed by such entity, the national supervisor has not complied with that decision, and the Commission has authorised the acquisition by the AMLA of direct supervisory powers[445]. A similar procedure allows the AMLA to acquire the power to address an individual decision to an SRB, in the event that the non-financial supervisor overseeing such SRB has committed a breach of Union law, and has satisfied neither a request by the AMLA to take the necessary measures to restore compliance with its legal obligations, nor a formal opinion issued by the Commission to remedy to such noncompliance[446].

Another aspect to consider is the internal organisation of the two Authorities, which is very similar. As a matter of fact, both of them comprise two collegial governing bodies, namely the Board of Supervisors and the Management Board for the EBA, and the Executive Board and the General Board for the AMLA. The decision-making body of the EBA is the Board of Supervisors, where the heads of national competent authorities are endowed with voting powers; while the Management Board exercises executive and budgetary powers. Concerning the AMLA, the General Board acts as decision-making body, and may alternatively adopt a supervisory composition, with heads of national AML/CFT supervisors, or a FIU composition, with heads of national FIUs; while the Executive Board is endowed with executive and budgetary powers. Moreover, both

[444] Art. 17, Regulation (EU) 1093/2010.
[445] Art. 30, AMLAR.
[446] Art. 32, AMLAR.

Authorities designate an Executive Director in charge of the day-to-day management, and both of them are represented by a Chairperson. However, differently from the EBA, the AMLA establishes an Administrative Board of Review that shall perform an internal administrative review of the decisions taken by the Authority, while the EBA does not have the same body. Lastly, one of the bodies related to the EBA is the Board of Appeal, the joint body of the ESAs that is responsible for deciding upon any appeal presented by any natural or legal person against a decision taken by one of these Authorities.

Another common aspect concerns the financial provisions applying to the budget of the two Authorities. Specifically, both of them shall establish an annual budget, which shall be balanced in terms of revenues and expenses. Both Authorities incur in the same type of expenditure, including staff remuneration, administrative, infrastructure and operating expenses. Among the sources of revenues, both of them receive a contribution from the EU and fees collected from obliged entities, but the EBA additionally finances its operations through obligatory contributions from national competent authorities, while the AMLA may receive voluntary contributions from Member States[447]. Also, a very similar procedure is followed for the establishment of the budget of the two Authorities, in which the Executive Director shall prepare the draft budget and shall implement the budget, once it has been approved by the budgetary authority and it has been adopted by the Supervisory Board of the EBA and by the Executive Board of the AMLA, respectively[448].

Lastly, analogous provisions apply to the staff of the two Authorities, namely the Staff Regulations and the Conditions of Employment of Other Servants[449], and the Protocol (No 7) on the privileges and immunities, annexed to the TEU and the TFEU[450]. In addition, staff members of both Authorities must comply with obligations of professional secrecy[451].

[447] At. 62, Regulation (EU) No 1093/2010, and Art. 64, AMLAR, respectively.
[448] Art. 63, Regulation (EU) No 1093/2010, and Art. 66, AMLAR, respectively.
[449] Art. 68, Regulation (EU) No 1093/2010, and Art. 73, AMLAR, respectively.
[450] Art. 67, Regulation (EU) No 1093/2010, and Art. 74, AMLAR, respectively.
[451] Art. 70, Regulation (EU) No 1093/2010, and Art. 75, AMLAR, respectively.

CONCLUSION

The main objective of this dissertation has been to illustrate the radical innovations introduced by the package of legislative proposals presented by the European Commission to strengthen Anti-Money Laundering and Countering the Financing of Terrorism ("AML/CFT") regulation and supervision, along with highlighting the importance of the new Anti-Money Laundering Authority ("AMLA") for the enhancement of AML/CFT supervision in the European Union ("EU"). Since the structure of the AML/CFT supervisory framework envisaged by the Commission's legislative proposal is very similar to the structure of the Single Supervisory Mechanism ("SSM"), a comparative analysis between the two systems has been performed.

In the first chapter, the system of prudential supervision has been presented, with an overview of the international framework and a description of the prudential supervisory systems established in the EU, namely the SSM and the European System of Financial Supervision ("ESFS"). In particular, the SSM is the pillar of the European Banking Union that establishes a harmonised system of prudential supervision on credit institutions, which is characterised by a hierarchical structure headed by the European Central Bank ("ECB"), and by a two-tier architecture. A particular attention has been devoted to the ECB and to the European Banking Authority ("EBA"), which is the authority responsible for the microprudential supervision of the banking sector.

In the second chapter, both the international and the European frameworks of AML/CFT regulation and supervision have been presented. The analysis of the current European AML/CFT supervisory system has shown that this framework is characterised by a low level of harmonisation, since it is regulated by national laws transposing EU Directives and it is based on a structure of horizontal cooperation among national competent authorities. Even though the EBA has been recently conferred a role of support and coordination of national supervisors, the effectiveness of the AML/CFT system of supervision is still hampered by three main weaknesses. As a matter of fact, the absence of clear and consistent rules in EU legislation leads to an insufficient and ineffective application of AML/CFT measures by obliged entities; the inconsistency of supervisory practices across the Union results in an inadequate oversight of obliged entities by national supervisors; and the insufficient coordination and exchange of information among Financial Intelligence Units ("FIUs") hampers their ability to detect and report suspicious transactions, especially in cross-border cases.

After having described both prudential and AML/CFT supervision, the third chapter has presented a comparative analysis between the SSM and the existing European AML/CFT supervisory system. This analysis has identified significant differences in the governance models of these two framework; then, it has highlighted the challenges and the opportunities in front of them, both at present and in future perspective.

The fourth chapter has focused on the package of legislative proposals presented by the Commission to reinforce both AML/CFT regulation and supervision. This legislative package includes *inter alia* the introduction of a Regulation establishing clear and directly applicable AML/CFT rules, as well as the establishment of a supranational Anti-Money Laundering Authority. The implementation of the legislative acts included in the proposal will radically modify the structure of AML/CFT supervision, as it will lead to the establishment of a centralised AML/CFT supervisory system headed by the AMLA, which will be characterised by a two-tier system of supervision, where the obliged entities facing a higher level of risk will be directly supervised by the new Authority, while the other private-sector entities will be subject to the indirect supervision of the Authority.

Due to the establishment of a single European AML/CFT supervisory Authority and to the establishment of a two-tier supervisory system, the similarities between the structures of AML/CFT and of prudential supervision will increase, as the comparative analysis carried out in the fifth chapter has illustrated. Indeed, both the SSM and the new AML/CFT supervisory system will be characterised by a hierarchical structure and by a two-tier structure of supervision. Moreover, it has been shown that the AMLA will assume a central role in AML/CFT supervision, similarly to the ECB in the prudential supervision of credit institutions. Indeed, both Authorities will be endowed with direct and indirect supervisory powers, including the power to adopt pecuniary sanctions. However, some differences have been identified, concerning the scope of action of the two Authorities, their specific tasks, the types of regulatory instruments that they can adopt, and their organisational structure. Furthermore, the comparison between the AMLA and the EBA has highlighted several similarities concerning their role of promotion of high-quality supervisory practices, some of the tasks conferred on the two Authorities, the types of regulatory instruments that they can adopt, their organisational structure, as well as the financial and staff provisions applying to them. Nevertheless, the powers of the two Authorities are characterised by a different scope of action and a different nature. Indeed, the direct supervisory powers conferred on the AMLA are

much more impactful than the powers of the EBA; while the powers conferred on the AMLA in the context of indirect supervision are similar to the ones of the EBA.

The description of the chronological evolution of the AML/CFT supervisory system, in the light of the reform that will modify this framework in the upcoming years, along with the comparative analysis between the systems of prudential and of AML/CFT supervision in the EU, may allow us to draw the following conclusions.

First, it can be concluded that the effectiveness of AML/CFT supervision will increase thanks to the implementation of the Commission's legislative package. In particular, more detailed AML/CFT rules will be directly applied in Member States thanks to the adoption of a new AML/CFT Regulation, leading to a more effective and consistent application of AML/CFT requirements by obliged entities. The AMLA will partially contribute to the development of these rules, by adopting regulatory and implementing technical standards; by issuing guidelines and recommendations addressed to obliged entities, national supervisors and FIUs; and by addressing its opinions to the European Parliament, the Commission, and the Council. Furthermore, the quality and the consistency of supervisory practices will be ensured thanks to the establishment of the AMLA, which will directly supervise the obliged entities that are characterised by a higher level of AML/CFT risk and will guarantee the consistent supervision of the other private-sector entities by overseeing and coordinating the activity of national supervisors of both the financial and the non-financial sectors. Lastly, the AMLA will facilitate the cooperation and the exchange of information among FIUs by fulfilling a role of support and coordination.

Second, if the prudential and the AML/CFT supervisory systems are examined by adopting a chronological perspective, it is possible to notice a progressive increase in the level of harmonisation of both the legislative provisions and the supervisory practices adopted at the national level. The establishment of centralised supervisory systems and the conferral of direct and indirect supervisory powers on supranational authorities have contributed to the achievement of these objectives.

Lastly, it can be stated that the establishment of harmonised systems of prudential and AML/CFT supervision are necessary for preventing the risks of banking crises, money laundering and terrorist financing, which represent ongoing threats to the increasingly complex and interconnected financial system of the EU.

LIST OF REFERENCES

BOOKS AND ARTICLES

Alldridge P., *Money laundering and globalization*, in "Journal of Law and Society" vol. 35 (4), 2008, pp. 437 – 463.

Antoniazzi, S., *Il meccanismo di vigilanza prudenziale. Quadro d'insieme*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 175 – 191.

Bassiouni, M. C., and Gualtieri, D. S., *International and National Responses to the Globalization of Money Laundering* in Savona, E. U. (ed.), *Responding to Money Laundering. International Perspective*, ed. Routledge, London, 2004.

Borlini, L., and Montanaro, F., *The evolution of the EU law against criminal finance: the "hardening" of FTAF standards within the EU*, in "Georgetown Journal of International Law", vol. 48 (4), 2017, pp. 1009 – 1062.

Borlini, L., *Regulating Criminal Finance in the EU in the Light of the International Instruments*, in "Yearbook of European Law", vol. 36 (1), 2017, pp. 553–598.

Booth, R., Farrel, S., Bastable, Qc. G., and Yeo, N., *Money Laundering Law and Regulations. A practical guide*, Oxford: OUP, 2011.

Bruun & Hjejle Advokatpartnerselskab, *Report on the Non-Resident Portfolio at Danske Bank's Estonian branch*, 19 September 2018.

Buscemi, A., and Yallwe, H. A., *Money laundry and financial development*, in "Antiriclaggio & 231", vol. 0, 2001, pp. 227 – 258.

Csonka, P., *Organised Crime: An Overview of the Relevant Council of Europe Activities*, in Cullen, P. J., and Gilmore, J. W., (eds.), *Crime Sans Frontieres: International and European Legal Approaches*, Edinburgh University Press, Edinburgh, 1998, pp. 93 – 99.

D'Ambrosio, R*., Single Supervision Mechanism: Organs and Procedures*, in Chiti, M. P., and Santoro V., (eds.), *The Palgrave Handbook of European Banking Union Law*, ed. Palgrave Macmillan, Cham, 2019, pp. 157 – 182.

Ferran, E., and Babis, V., *The European single supervisory mechanism*, in "Journal of Corporate Legal Studies", vol. 13 (2), 2013, pp. 255 – 285.

Formisani, R., *Beneficial Ownership and Effective Transparency*, in Siclari, D., (ed.), *The New Anti-Money Laundering Law: First Perspectives on the 4th European Union Directive*, ed. Palgrave Macmillan, Cham, 2016, pp. 25 – 43.

Gardella A., *L'EBA e i rapporti con la BCE e con le altre autorità di supervisione e di regolamentazione*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 115 – 138.

Gilmore, B., and Mitsilegas, V., *The EU Legislative Framework against Money Laundering and Terrorist Finance: A Critical Analysis in the Light of Evolving Global Standards*, in "The International and Comparative Law Quarterly", vol. 56 (1), 2007, Cambridge University press, pp. 119-140.

Gilmore, W. C., *Dirty Money. The evolution of international measures to counter money laundering and the financing of terrorism*, ed. Council of Europe Publishing, Paris, 2011.

Godinho Silva, P., *Recent developments in EU legislation on anti-money laundering and terrorist financing*, in "New Journal of European Criminal Law", vol. 10 (1), 2019, ed. SAGE, pp. 57 – 67.

Gortsos, C. V., *European Banking Union Within the System of European Banking and Monetary Law*, in Chiti, M. P., and Santoro V., (eds.), *The Palgrave Handbook of European Banking Union Law*, ed. Palgrave Macmillan, Cham, 2019, pp. 19 – 40.

Ioannides, E*., Fundamental Principles of EU Law against Money Laundering*, ed. Ashgate Publishing, Farnham, 2014.

Kirschenbaum, J., and Véron, N., *A better European Union architecture to fight money laundering*, Bruegel Policy Contribution, No. 2018/19, ed. Bruegel, Brussels, 2018.

Koster, H., *Towards better implementation of the European Union's anti-money laundering and countering the financing of terrorism framework*, in "Journal of Money Laundering Control", vol 23 (2), 2020, pp. 379 – 386.

Lackhoff K., *Single Supervisory Mechanism*, ed. C.H. Beck, München, 2017.

Lo Schiavo, G., *The Single Supervisory Mechanism (SSM) and the EU Anti-Money Laundering framework compared: governance, rules, challenges and opportunities*, in "Journal of Banking Regulation", vol. 23 (1), 2021, pp. 91 – 105.

Micossi, S., *Dalla crisi del debito sovrano all'Unione bancaria*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 29 – 52.

Mitsilegas, V., *Money laundering counter-measures in the European Union: a new paradigm of security governance versus fundamental legal principles*, Ph.D. in Law, The University of Edinburgh, 2000.

Ortino, M., *L'Unione bancaria nel sistema del diritto bancario europeo*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 65 – 90.

Papadopoulos, T., *European System of Financial Supervision*, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2014, available at SSRN: https://ssrn.com/abstract=2638620.

Pizzolla, A., *The role of the European Central Bank in the Single Supervisory Mechanism: A new paradigm for EU governance*, in "European Law Review", vol. 43 (1), 2019, pp. 3 – 23.

Ramunno P. and Razzante R., *Riciclaggio e finanziamento al terrorismo di matrice islamica*, in "Filodiritto", 2007, available at: https://www.filodiritto.com/riciclaggio-e-finanziamento-al-terrorismo-di-matrice-islamica.

Savona, E. U., and De Feo, M. A., *International Money Laundering Trends and Prevention/Control Policies*, in Savona, E. U. (ed.), *Responding to Money Laundering, International Perspectives*, ed. Routledge, London, 2004.

Schlarb, D. D., *Rethinking anti-money laundering supervision: The Single Supervisory Mechanism - a model for a European anti-money laundering supervisor?*, in "New Journal of European Criminal Law", vol. 13 (1), 2022, pp. 69–90.

Scholten, M., Luchtman, M., and Schmidt, E., *The proliferation of EU enforcement authorities: a new development in law enforcement in the EU*, in M. Scholten and M. Luchtman (eds.), *Law Enforcement by EU Authorities. Implications for Political and Judicial Accountability*, ed. Edward Elgar Publishing, Northampton, 2017, pp. 1 – 27.

Schott, P. A., *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, World Bank Publications, 2006.

Sorace, D., *I "pilastri" dell'Unione Bancaria*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 91 – 114.

Torchia, L., *La nuova governance economica dell'Unione europea*, in Chiti, M. P., and Santoro, V. (eds.), *L'unione bancaria europea*, ed. Pacini Giuridica, Pisa, 2016, pp. 53 – 64.

Van den Broek, M., *Preventing money laundering: A legal study on the effectiveness of supervision in the European Union*, ed. Eleven International Publishing, Den Haag, 2015.

Vogel, B., and Maillart J. – B., *National and International Anti-Money Laundering Law: Developing the Architecture of Criminal Justice, Regulation and Data Protection*, ed. Intersentia, Cambridge, 2020, p. 1025.

CASE LAW

Landeskreditbank Baden-Württemberg v ECB. (2019). ECLI:EU:C:2019:372.

Meroni & Co. Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community (1957/1958) ECLI:EU:C:1958:7 and ECLI:EU:C:1958:8.

Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA (Fininvest) v Banca d'Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS). (2018). ECLI:EU:C:2018:1023.

SPEECHES

Bristow, K., *Transnational organized crime as a national security threat*, speech at George Washington University, 29 January 2015.

Draghi, M., *Monetary policy and the outlook for the economy*, speech at the Frankfurt European Banking Congress *Europe into a New Era – How to Seize the Opportunities*, Frankfurt am Main, 17 November 2017.

BANK OF ITALY

Bank of Italy, *Disposizioni di vigilanza in materia di sanzioni e procedura sanzionatoria amministrativa*, 29 August 2020.

Bank of Italy, *Disposizioni in materia di adeguata verifica della clientela per il contrasto del riciclaggio e del finanziamento del terrorismo*, 30 July 2019.

BASEL COMMITTEE ON BANKING SUPERVISION

Basel Committee on Banking Supervision, *Statement on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*, 1988.

COUNCIL OF EUROPE

Council of Europe, *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, 8 November 1990.

Council of Europe, *Explanatory report to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, 8 November 1990.

FATF Recommendations, *International standards on combating money laundering and the financing of terrorism and proliferation of weapons of mass destruction*.

EUROPEAN UNION

Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.

Commission Staff Working Document, *Impact Assessment accompanying the Anti-Money Laundering Legislative Package* (SWD/2021/190 final).

Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

Council Recommendation No. R(80)10 of 27 June 1980 on measures against the transfer and safekeeping of funds of criminal origin.

Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

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.

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

European Banking Authority, *Mandate of the Standing Committee on anti-money laundering and countering terrorist financing (AMLSC)*, (EBA/DC/2020/309).

European Banking Authority, *Opinion of the European Banking Authority on communications to supervised entities regarding money laundering and terrorist financing risks in prudential supervision* (EBA-Op-2019-08).

European Banking Union, *Report on the future AML/CFT framework in the EU* (EBA/REP/2020/25).

European Central Bank, *Opinion of the European Central Bank of 16 February 2022 on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism* (CON/2022/4).

European Central Bank, *SSM Supervisory Manual – European banking supervision: functioning of the SSM and supervisory approach* (QB-04-19-099-EN-N (03/2018)).

European Commission, *Communication from the Commission on an action plan for a comprehensive Union policy on preventing money laundering and terrorist financing* (C/2020/2800 final).

European Commission, *Communication from the Commission to the European Parliament and the Council towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework* (COM/2019/360 final).

European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy* (COM/2020/605 final).

European Commission, *Report from the Commission to the European Parliament and the Council assessing the framework for cooperation between Financial Intelligence Units* (COM/2019/371 final).

European Commission, *Report from the Commission to the European Parliament and the Council on the assessment of recent alleged money laundering cases involving EU credit institutions* (COM/2019/373 final).

European Commission, *Report from the Commission to the European Parliament and the Council on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities* (SWD/2019/650 final).

European Commission, *Report from the Commission to the European Parliament and the Council on the interconnection of national centralised automated mechanisms (central registries or central electronic data retrieval systems) of the Member States on bank accounts* (COM/2019/372 final).

European Parliament, (Deslandes, J., Dias, C., and Magnus, M.), *Anti-money laundering – reinforcing the supervisory and regulatory framework* (PE 614.496, (08/2019)).

Multilateral Agreement on the practical modalities for exchange of information on AML/CFT pursuant to Article 57a(2) of Directive (EU) 2015/849, concluded between the European Central Bank and competent authorities.

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 (COM/2021/423 final).

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 (COM/2021/421 final).

Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (recast) (COM/2021/422 final).

Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (COM/2021/420 final).

Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999. Art. 66, co. 1, Regulation (EU) No 1093/2010, as modified by Regulation (EU) 2019/2175.

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.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("General Data Protection Regulation").

Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.

Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC.

Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities.

Treaty on European Union, OJ C 191, 29.7.1992, pp. 1–112 (consolidated version).

Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47 – 390 (consolidated version).

UNITED NATIONS

General Assembly Resolution 35/195 of 15 December 1980.

General Assembly Resolution 36/168 of 16 December 1981.

General Assembly Resolution 37/168 of 17 December 1982.

General Assembly Resolution 37/198 of 18 December 1982.

General Assembly Resolution 38/93 of 16 December 1983.

General Assembly Resolution 38/122 of 16 December 1983.

General Assembly Resolution 39/141 of 14 December 1984.

General Assembly Resolution 39/142 of 14 December 1984.

General Assembly Resolution 39/143 of 14 December 1984.

General Assembly Resolution 40/121 of 13 December 1985.

General Assembly Resolution 40/122 of 13 December 1985.

United Nations *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* ("Vienna Convention"), 1988.

WEBSITES

BIS official website: www.bis.org.

ECB official website: www.ecb.europa.eu.

Egmont Group official website: www.egmontgroup.org.

FATF official website: www.fatf-gafi.org.

FSB official website: www.fsb.org.