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European Commission signals in favour of an EU anti-money laundering body

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On 24 July, the European Commission (EC) released a communication addressed to the European Parliament and the Council towards better implementation of current European anti-money laundering (AML) rules. In a report published together with the communication, the Commission points at a number of deficiencies related to recent money laundering scandals in the banking sector such as the Danske Bank, the Deutsche Bank and the Pilatus Bank cases.

The report concludes that most failings are the result of ineffective supervision. Not only were the banks analysed found to not comply with the most basic AML requirements, they also had not been subject to sufficient control and oversight by public authorities. This would have allowed for earlier detection of anomalies and timely remedial action.

The EU has achieved integration of its financial market, but the supervisory system remains patchy with weak spots that are actively used by criminals to channel their ill-gotten gains through a financially integrated EU. All the cases analysed in the report involved cross-border payments and transfers, which is a challenge in the context of insufficient harmonisation of national supervisory frameworks, standards, structures and capabilities across the EU. To add another layer of complexity, an effective AML supervisory system would not only require cross-border coordination and cooperation among AML supervisors, but also with other competent authorities such as prudential supervisors and financial intelligence units.

This fragmentation is particularly worrisome in the case of group supervision. In the current system, the prudential supervision of a group's branch – which checks that the branch is holding enough capital and adequately controlling for risks – is carried out in the group's home country. On the other hand, AML supervision is done by the host country of each branch. For example, in the Danske bank case, AML supervision fell under the Estonian AML supervisor while prudential supervision fell in the remit of the Danish supervisor.

The EU level suffers from a similar lack of integration and coordination, with AML supervisory powers falling under the European Banking Authority (EBA) while prudential supervision is the responsibility of the European Central Bank (ECB). Until recently, the EU had very limited powers in AML supervision and its prudential supervisory approach did not take AML risk factors sufficiently into account. The recent reform expanding the role and responsibilities of the European Banking Authority in the AML field is encouraging, but it does not go far enough.

The governance of the EBA also raises questions as to whether it will be able to take adequate measures in case of Member States' failure to implement the standards. The EBA's main decision-making body is the Board of Supervisors, which is composed of the banking authorities of the 28 EU member states.

To see the conflict this can create, one need only look at the recent decision by the Board of Supervisors to bury an EBA report concluding a possible breach of law by Member States in the Danske bank case.

Such events clearly show the need to clarify the rules and responsibilities within the EU when it comes to AML supervision. Transparency International supports the Commission's statement that "[addressing the issue] may require conferring specific anti-money laundering supervisory tasks to a Union body" and call on a revamping of the EU supervisory model.

Greater powers and resources should be granted to the EU to carry out independent analysis and investigation in a timely and proactive fashion. The EU should be better equipped to orchestrate cross-border coordination and cooperation between all competent authorities including AML supervisors, prudential supervisors and FIUs, particularly in the case of group supervision.

The EU should also be given the power to sanction supervisory authorities and individual firms found in breach of EU law and regulations. If the EBA was to be granted such powers, then the governance of the institution should also be reformed to increase its independence vis-à-vis Member States. Its power to sanction AML failing by banks or Member States should not just exist on paper. Finally, the EU should explore ways to further increase coordination and better integrate EU-level AML and prudential supervisory activities.

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