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„The European Union's Fight Against Dirty Money – How Effective Is It and How Can It Be Improved?"

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> "I am asked how words can frighten criminal organisations. But it's not the words that are frightening: it's the readers."
> *Roberto Saviano*

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Abstract

Money laundering, the processing of criminal proceeds to disguise their illegal origin, is a severe crime that rewards criminal acts and threatens societies and economies. It is estimated that organised crime groups in the EU earn €110 billion per year that need laundering, and merely 1.1% of the criminal proceeds are confiscated. Therefore, a better understanding of money laundering and the fight against it is needed. The status quo of the EU anti-money laundering framework is presented. With an integrative and critical literature review as well as eight semi-structured expert interviews that combine insights from theory and practice this thesis investigates whether the current anti-money laundering framework is effective and how it can be improved. The analysis demonstrates that the current framework is not effective in fighting money laundering. Consequently, plenty of room for improvement remains, including strengthening cooperation among the Financial Intelligence Units of the Union and between law enforcement authorities. Supervisory authorities must better enforce rules, particularly of companies acting across the EU. The main objective will be to continuously improve the anti-money laundering framework to make it increasingly difficult for criminals to launder their money in the EU. This work contributes to a more effective fight against dirty money and, ultimately, (organised) crime.

Zusammenfassung

Geldwäsche, die Verarbeitung von Erträgen aus Straftaten, um deren illegale Herkunft zu verschleiern, ist ein schweres Verbrechen, das kriminelle Handlungen belohnt und Gesellschaften und Volkswirtschaften bedroht. Schätzungen zufolge erwirtschaften organisierte Verbrecherbanden in der EU jährlich 110 Milliarden Euro, die gewaschen werden müssen, und nur 1,1 % der kriminellen Erlöse werden beschlagnahmt. Daher ist ein besseres Verständnis der Geldwäsche und ihrer Bekämpfung erforderlich. Der Status quo der EU-Geldwäschebekämpfung wird präsentiert. Anhand einer integrativen und kritischen Literaturanalyse sowie acht halbstrukturierten Experteninterviews, die Erkenntnisse aus Theorie und Praxis miteinander verbinden, wird in dieser Arbeit untersucht, ob die derzeitige EU-Geldwäschebekämpfung effektiv ist und wie sie verbessert werden kann. Die Analyse zeigt, dass die derzeitige Bekämpfung von Geldwäsche auf EU-Ebene nicht effektiv ist. Folglich gibt es noch Verbesserungsspielraum, einschließlich der Stärkung der Zusammenarbeit unter den Financial Intelligence Units sowie zwischen den Strafverfolgungsbehörden der EU. Die Aufsichtsbehörden müssen die Vorschriften besser durchsetzen, insbesondere bei Unternehmen, die EU-weit tätig sind. Das Hauptziel besteht darin, die Geldwäschegesetze kontinuierlich zu verbessern, um es Kriminellen immer schwerer zu machen, ihr Geld in der EU zu waschen. Diese Arbeit trägt zu einem effektiveren Kampf gegen schmutziges Geld und letztlich gegen (organisierte) Kriminalität bei.

List of Abbreviations

AML	Anti-money laundering
AMLA	Anti-money laundering authority
AMLD	Anti-money laundering Directive
AMLD1	First Anti-money laundering Directive
AMLD2	Second Anti-money laundering Directive
AMLD3	Third Anti-money laundering Directive
AMLD4	Fourth Anti-money laundering Directive
AMLD5	Fifth Anti-money laundering Directive
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
DNFBPs	Designated non-financial businesses and professions
EC	European Commission
ECB	European Central Bank
Eurojust	European Union Agency for Criminal Justice Cooperation
EUROPOL	The European Union Agency for Law Enforcement Cooperation
ESA	European Supervisory Authorities
EU	European Union
EUR	Euro
FAQ	Frequently asked questions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSRBs	FATF-Style Regional Bodies
GDP	Gross domestic product
IBAN	International Bank Account Number
IMF	International Monetary Fund
KYC	Know your customer
ML	Money laundering
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MS	Member State
M&A	Mergers and Acquisitions
n.d.	No date
OE	Obliged entity
PEP	Politically exposed person
STR	Suspicious transaction report
UNODC	United Nations Office on Drugs and Crime
US	United States

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1. Introduction

1.1 What is Money Laundering?

The Financial Action Task Force (FATF), the international standard setter in anti-money laundering and countering terrorist financing, defines money laundering (ML) as "the processing of criminal proceeds to disguise their illegal origin" (FATF FAQ, n.d.). Figure 1 shows a typical cycle of ML. The basic case of ML comprises three stages. The ML act starts with a criminal having dirty money in cash he[1] earned, for example, from selling drugs that he needs to launder. First, the criminal typically deposits the money into a bank account, thus placing the money into the financial system. After that, the layering stage starts. The money is sent across different domestic and international accounts without any objective purpose apart from concealing the money's origin. After the layering stage, when the criminal ought to be sufficiently convinced that an outsider could not tell where the money originally came from, the money can be integrated into the legal economy. The criminal may use his ill-gotten proceeds to buy real estate, company shares or luxury goods. At this point, the money is laundered, as the formerly dirty money has been integrated into the regular and legal economic cycle. There are much more and more sophisticated ML schemes which are presented in chapter 4.3. The United Office on Drugs and Crime (UNODC, n.d.) points out that a ML scheme may not necessarily run through all three stages and may combine or repeat certain stages.

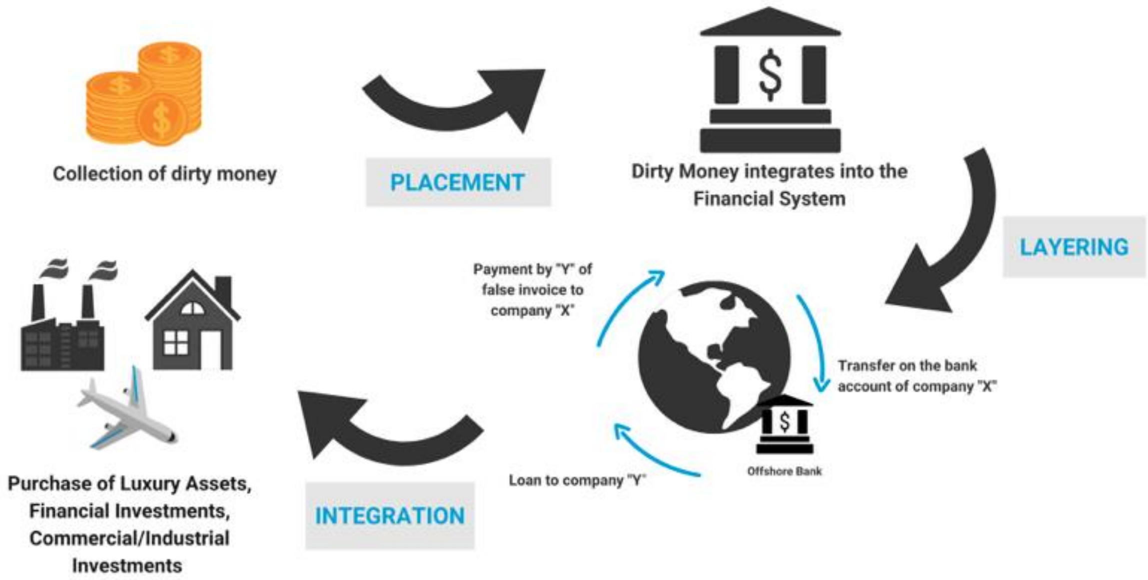

Figure 1: The Money Laundering Cycle (UNODC, n.d.)

[1] When referring to an undefined person, such as "the criminal" or "the client", the personal pronoun he shall represent all genders.

1.2 Differentiation Between Money Laundering and Terrorist Financing

European Union (EU) legislation is enacted for both purposes of anti-money laundering (AML) and countering terrorist financing. When detecting ML, the main focus lies on the money's origin to differentiate between clean money stemming from legitimate sources and dirty money stemming from crime. When detecting terrorist financing, the focus is not on the money's origin but instead on its destination. Hence, authorities want to prevent that terrorist organisations receive financing. Put simply: While both deal with capital flows, one stems from a crime and the other serves to commit a crime (Ferwerda, 2013). Terrorist organisations may be financed with legitimate money and with criminally obtained money. Terrorist organisations are dependent on financing to procure resources to pursue activities and attacks (UNODC, n.d.). Another difference between ML and terrorist financing is that the former is a cycle where the criminal at the end gets his money back, whereas the latter is a linear process where an individual or organisation provides money to a terrorist organisation (UNODC, n.d.). This thesis will focus on ML only, following Ferwerda's (2013) argumentation that both phenomena need to be separated for academic analysis.

1.3 Relevance: Why is it Important to Study Anti-Money Laundering?

How much money is being laundered is, by nature, difficult to assess. A popular reference is the International Monetary Fund's (IMF) consensus range of 2 to 5% of the global gross domestic product (GDP) (Camdessus, 1998). To have a rough idea of how much money is laundered in the EU, it is estimated that organised crime groups earn €110 billion per year (Savona & Riccardi, 2015). The prosecuting authorities were able to confiscate 1% of these earnings (Europol, 2017).

It is imperative to conduct more research and deepen the knowledge about ML, which is the first step to a more effective fight against it. A look at the consequences of ML illustrates the importance of AML. ML is a severe crime that rewards criminal acts and poses a serious threat to democracy and society (FATF FAQ, n.d.). The international organisation concludes that if organised crime groups can launder money, they can infiltrate entire sectors of the legal economy and financial institutions or execute political influence via donations or bribes. If the possibility of laundering proceeds stemming from criminal activity would be complicated or prevented, the (economic) incentive to commit crimes would be drastically reduced.

In recent years, the topic of money laundering has had increasing attention and coverage in the media due to prominent scandals. There is a financial scandal in Germany involving the digital payment provider Wirecard which eliminated more than €20 billion in market capitalisation in a few days, and creditors still claim €12.4 billion (Weiguny, 2021; Steinmann & Rosenkranz 2021). The scandal was primarily an accounting and market manipulation scandal where €1.9 billion in the balance sheet were not found. However, at the end of August 2021, after the scandal had evolved in June 2020, Handelsblatt reported that Germany's Financial Intelligence Unit (FIU) did not process 30 Suspicious Transaction Reports (STRs) involving Wirecard (Bender & Holtermann, 2021). According to the article, the German bank Commerzbank alone sent STRs detailing 343 suspicious transactions totalling €356 million in the period between 2013 and 2019. Furthermore, the FIU had to admit that it did not analyse and forward the STRs to law enforcement and only did so after Wirecard had already collapsed, violating its obligations.

Another prominent and one of the biggest ML scandals took place at Danske Bank. In 2018, the bank communicated that suspicious transactions of €200 billion originating primarily from Russia had passed through the Estonian branch between 2007 and 2015. It is unclear how much money was indeed being laundered. Still, the bank had to pay fines to US and Danish authorities of Danish Krone 15.5 billion (€2.08 billion) in total. (Milne, 2022)

A recent corruption scandal involving former vice-president of the European Parliament (EP) Eva Kaili as well as acting and former Members of the EP shook the EU in December 2022. Belgian authorities accuse Kaili and others involved of building a criminal organisation, corruption and money laundering. The accused are suspected of having received money from Morocco and Qatar in return for political favours. Authorities found €1.5 million in Kaili's apartment in Brussels. In February 2023, she is still detained in custody. (Bundeszentrale für politische Bildung, 2023)

1.4 AML Policy in the European Union

The EU's strategy on criminal justice, under which the combat against money laundering falls, is a shared competence between the EU and the Member States (MS) (EC criminal justice, n.d.). The European Commission (EC) justifies this approach by highlighting the internationalisation of organised crime groups which requires aligned laws between EU countries. Additionally, this will enhance the cooperation and mutual trust between MS. The legislative process is in broad terms the following: The Commission proposes directives which are adopted by the European Parliament and the National Parliaments. It is up to the National Parliaments and agencies how they implement the directive, however, the objectives and direction set by the EU

Directive must be met. According to Schroeder (2020), the legal basis for the AML directives is the internal market competence, Article 114 of the Treaty of the Functioning of the EU, with its four freedoms, particularly the free movement of capital.

Figure 2 demonstrates how the EU AML Policy works in practice. The European Banking Authority supervises the financial institutions in the MS, whereas there are national agencies in each MS supervising obliged entities (OE). There are financial sector OEs, such as banks and insurance companies, and non-financial sector OEs, i.e., notaries and lawyers. The obliged entities are supposed to follow strict know-your-customer procedures as part of the customer due diligence. Know-your-customer is at the heart of AML since it is essential to know the customer, his background and his financials in order to be able to assess whether the customer is acting according to his usual behaviour or whether he acts somehow suspiciously. If an OE suspects a customer to be involved in ML, it is obliged to file a Suspicious Transaction Report to the FIU. The FIU then analyses the transactions in the report and decides whether to pass it on to law enforcement for further investigations or to discard it. If another MS is involved, the FIU is supposed to inform its counterpart.

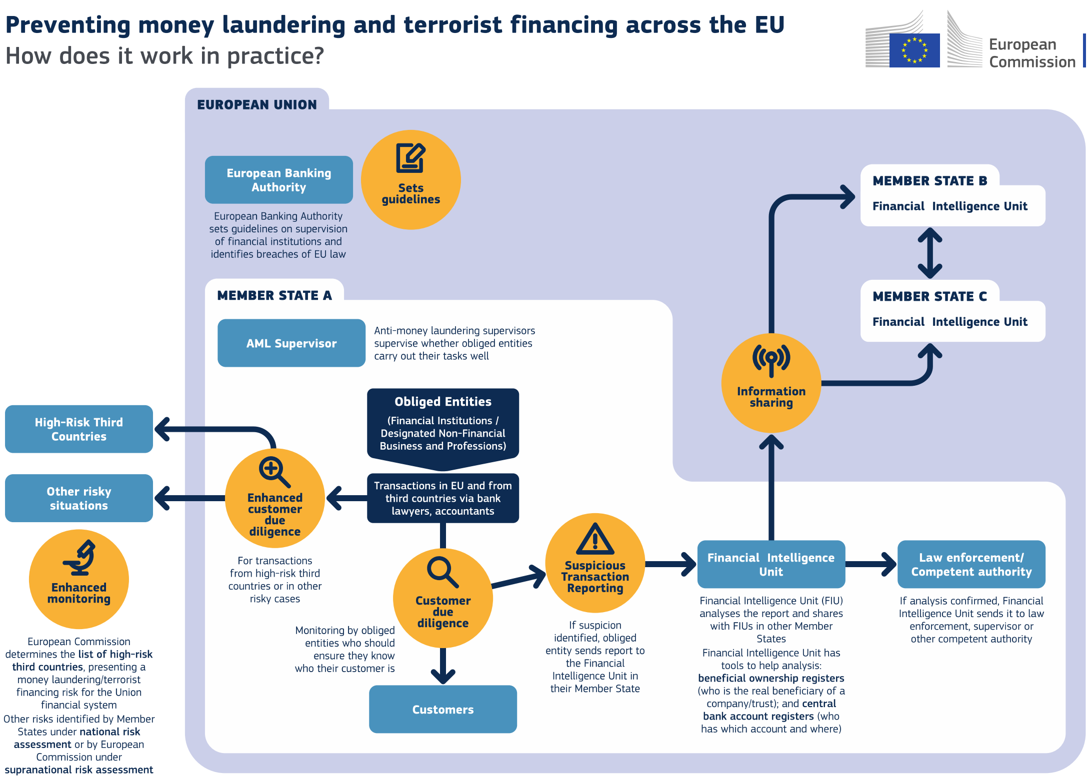

Figure 2: EC’s overview of the EU AML policy in practice (EC overview AML, n.d.)

1.5 Research Question

The focus of this thesis is the EU's approach to money laundering. Firstly, because the EU and its MS share competences in this regard. Hence, the anti-money laundering policy is shaped at the EU- and the MS level. Secondly, money laundering is an international, if not global phenomenon. The four freedoms of the EU – free movement of goods, capital, services and people – despite their great benefits, carry also disadvantages, such as the facilitation of money laundering across borders. According to a report from Europol in 2017, more than 5000 organised crime groups were being investigated while 70% of these tend to be active in three or more countries (Europol, 2017). Campana (2013) clustered Italian mafia activities and the territory in which they tend to be carried out. The preferred locations for money laundering, the author finds, are Austria, Eastern Europe, France, Germany and the United Kingdom.

The research question of this thesis is: *How effective is the EU AML framework and how can it be improved?* The research question entails two parts. In a first step, the status quo of the EU's current framework is examined. The online Cambridge Dictionary defines effectiveness as "the quality of being successful in achieving what is wanted". Hence, to assess whether the current EU AML framework is effective, it must be investigated whether it achieves its goals set. The EU's fourth anti-money laundering directive formulates the following goals of "protecting society from crime and protecting the stability and integrity of the Union's financial system" (p. 1), which need to be "balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs" (p. 1). Hence, there are two goals. First, deterring crime, i.e. ML, and second, preventing the influx of dirty money into the EU's financial system. At the same time, achieving these goals should not be too burdensome for the OEs and incur excessive compliance costs. In the second step, depending on how effective the framework is and the weaknesses identified, improvements to the AML framework are provided.

The research question is answered by conducting an integral and critical literature review on the AML framework. The literature review's purpose is to examine whether academics criticise or laude the current framework. The literature review is complemented by eight semi-structured expert interviews. AML experts specialised in different realms of AML are asked about EU AML and, most importantly, whether they deem the framework effective and what measures they propose for further improvement. Both the literature and the interviews are qualitatively analysed by the meaning of words. Out of these analyses, this thesis concludes whether the framework is in fact effective or not and proposes suggestions for improving the framework.

The aim of this paper is to assess the effectiveness of the EU's current approach to money laundering and, ideally, to contribute to more effective policies in a better fight against money laundering and (organised) crime at large. To achieve that, AML is the appropriate starting point because it goes after what is most precious to criminals: their money. The FATF calls money laundering the "Achilles heel of criminal activity" since, without profit, criminality is not worthwhile (FATF FAQ).

1.6 Outline

Chapter 2 presents the thesis' theoretical framework, providing an overview of prevalent theories on EU integration, what the theoretical bases of an effective international AML framework are, whether the term "failing forward" applies to the EU's AML framework and theories focussing on criminals and ML. The thesis' methodology is presented in chapter 2 as well. Chapter 3 gives an overview of the current EU AML framework, describing the FATF's role and its 40 recommendations, summarising the anti-money laundering directives (AMLDs) and discussing other relevant legislation as well as the EC's 2021 legislative proposal on AML. Chapter 4 follows with a literature review on AML, discussing the effects, estimates and schemes of ML and the role of data protection. The research question is answered in chapter 5, which analyses specific realms of the EU's AML framework and proposes improvements to the framework. Chapter 6 concludes with a summary and conclusions.

2. Theoretical Framework

2.1 Prevalent Theories on EU Integration and "Failing Forward"

Since EU AML policy is a shared competence between the EU and its MS, and the AML policy is shaped at the Union level, it is important to look at the EU integration and how this, in turn, impacts the framework. Lindberg (1963 as cited in Niemann et al., 2019, p. 46) defines integration as follows:

> "The process whereby nations forego the desire and ability to conduct foreign and domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs: and the process whereby political actors in several distinct settings are persuaded to shift their expectations and political activities to a new centre."

In the following, two theories describing the process of EU integration will be presented. These will be neofunctionalism, the prevalent theory in the 1960s, as well as liberal intergovernmentalism, which has acquired the status of alternative to neo-functionalism (Hoffmann, 1995). According to Moravcsik & Schimmelfennig (2019), liberal intergovernmentalism has become the baseline theory of EU integration.

The father of neofunctionalism is Ernst Haas, who first formulated the concept in the 1950s and 1960s. Haas made clear that his is merely an approach to explaining a part of the process of EU integration rather than a comprehensive, explanatory theory. Two key aspects underly neofunctionalism. First, the process of integration is characterised as "transformative" (p. 47), i.e., integration also causes other parts of the process to change, namely goals and the participants and institutions involved. Second, it is "pluralist" (p. 47) in that not only government institutions are involved in the integration, but also private actors, such as political parties, social movements and companies. According to neofunctionalism, there are five assumptions that drive the integration process. First, the actors involved are rational and self-interested. However, these traits may be inconstant over time, depending on experiences. Consequently, what mainly drives integration is that national actors realise that national decision-making is limited. Second, once institutions are established, their employees further advance the integrative process by undertaking new projects by which they influence domestic actors in favour of the process too. Third, because these institutions are newly created, the actors are inexperienced, and decision-making is done step-by-step with unintended consequences, which is why Haas terms this "stumbling" (Haas, 1958 as cited in Nieman et al., 2019, p. 48). Fourth, neofunctionalism repudiates the logic of a zero-sum gum and instead calls integration a positive-sum game in which all actors involved can benefit from supranational decision-making. Fifth, as a consequence, actors are more intertwined and therefore realise that only more interdependent decision-making can appropriately solve intertwined problems. Moving further, such embedded problems that can best be solved by further integration describe the phenomenon of spillover, which further propels integration. (Niemann et al., 2019)

According to Niemann et al. (2019), neofunctionalism is the most critically viewed theory on European integration. For instance, it is criticised that not enough attention was dedicated to actors' sovereignty and nationalism as potential impediments to integration as well as reasons for varying degrees of integration desired by actors (Hoffmann, 1995; Moravcsik, 1993).

The counterpart to neofunctionalism in this thesis shall be liberal intergovernmentalism. The first assumption that underlies liberal intergovernmentalism is that countries are essential actors in so-called "international anarchy" (p. 65). That is, countries prefer negotiating with counterparts on the international stage rather than via a centralised institution. In this sense, Moravcsik (1993) describes the European Community as "the most successful example (…) of policy coordination" (p. 1). Second, states are assumed to fulfil a purpose and to act rationally. In other words, among a number of alternatives, they select the one that maximises or satisfies their utility. Hence, collective international rational choices of states lead to international cooperation. Specifically, the decision to collaborate internationally can be explained in three stages. First, states formulate their issue-specific preferences and, based on these, reach international agreements in a second step. The result of such agreements will depend on relative bargaining powers. States that have more information available or that need an agreement less than others have more bargaining power. Third, international institutions are established to preserve the agreements reached in the long term. The necessity for international cooperation arises out of limitations of national decision-making (Moravcsik, 1998). How do international institutions facilitate international cooperation? They reduce the transaction costs inherent to international agreements. (Moravcsik & Schimmelfennig, 2019)

The framework of liberal intergovernmentalism is often criticised for dealing mostly with major agreements or "grand bargains" (p. 80) and not with the EU's day-to-day decision-making. While the researchers admit that this is a valid point of criticism, they counter that this claim tends to be exaggerated and that day-to-day and intergovernmental decisions follow a similar pattern. Another point of criticism is that liberal intergovernmentalism processes lead to unforeseen and unrequested results. The authors again state that this criticism is not entirely wrong and maintain that such unwanted deviations remain seldom and in line with the broader liberal intergovernmentalism theory. (Moravcsik & Schimmelfennig, 2019)

How can cooperation in AML in the EU be argued from a neofunctionalism and a liberal intergovernmentalism perspective? Based on the previous literature review of the two prevailing theories on EU integration, this thesis offers the following. From a neofunctionalist perspective, the EU AML framework could be explained as follows. EU AML is a pluralist endeavour since many actors, such as OEs, law enforcement and supervisory authorities, but also the FATF, are involved in developing and implementing the AML framework. A driver of unified AML is the realisation of MS and actors involved that a national MS-based fight on ML is very limited in its scope, given the single market and the transnational nature of ML. Lastly, institutions like the EC and the FATF can be considered the leaders of EU AML integration. These institutions advance further integration after a common approach to AML has been initiated, spilling over to more and more cooperation and integration. The liberal intergovernmentalist view on EU AML, this thesis argues, would be more holistic. States, acting rationally and maximising their utility, decide on acting on the international stage, perhaps even at the global after the principle, the more countries involved, the better. Based on their preferences, states reach an agreement which the actors aim to preserve in the long term by creating an institution. This could be the FATF which was founded in 1989 by the G7 and preceded the first anti-money laundering directive. At the Union level, being aware that the EU should be at the centre, this institution could be the EC which embodies the EU's willingness to a common AML regime by shaping the EU AML policy and by resenting the Union at the FATF.

Blauvelt (2014) argues that neofunctionalists would consider a common approach on AML a spillover from cooperation on monetary policy. Hence, integration is promoted by collaborating on another topic of monetary policy, namely AML. Liberal intergovernmentalism, on the other hand, Blauvelt maintains, would declare commercial interests as the key impetus for AML collaboration, emphasising a commitment to EU values.

The expression "failing forward" describes the process of crises that shake the EU and test its viability and strength and ultimately lead to more cooperation and integration (Jones et al., 2021). The authors list such examples, e.g., the refugee crisis, Brexit or the Covid-19 pandemic. This thesis argues that the EU's AML policy is not an example of "failing forward". Although the EU argues with recent ML scandals and supervisory failures to establish an EU supervisory body and AML regulation (EC Impact Assessment, 2021), this thesis argues that these scandals were neither the primary impetus for more integration nor shaking the EU. Particularly because these were ML scandals of a national, not a European, dimension. What mainly drives EU AML policies is, on the one hand, the consensus that such a cross-border, global phenomenon that threatens the entire single market can best be fought off with a unified approach. On the other, it is the FATF as an international standard setter to which the EU adjusts its AML policies in order to keep track – precisely because ML is a global threat.

2.2 The Effectiveness of International Anti-Money Laundering Frameworks

The following chapter elaborates on what an effective AML framework should be based on in theory and what challenges might arise in this endeavour. Carrington and Shams (2006) suggest that the effective implementation of AML policy is the key to effectiveness, while Verdugo Yepes (2011) argues that compliance is most important. Simmons (1998) points out that one must differentiate between compliance, implementation and effectiveness. Compliance can be defined as an actor's behaviour that is in line with the required behaviour, while non-compliance constitutes behaviour that differs from what is required (Young, 1979). It is argued that implementation, i.e., adopting policies, does not automatically lead to compliance (Simmons, 1998). In addition, Simmons maintains that compliance is a necessary but insufficient condition for effectiveness since a state may be compliant with an AML framework which is ineffective. In summary, for an effective AML framework, a state should implement and be compliant with its effective requirements. Harmonisation of AML measures across borders to avoid fragmentation and loopholes is an important component as well (Carrington & Shams, 2006; Friedrich & Quick, 2019; Unger, 2020). It is, however, not enough to have harmonised rules across borders in place if their enforcement is not equally ensured by supervisory authorities equipped with similar tasks and powers (Van den Broek, 2011).

A basic prerequisite for AML is that countries, in fact, consider ML a crime that must be tackled (Carrington & Shams, 2006; Verdugo Yepes, 2011). Moreover, it is a major challenge to have harmonised rules concerning the acquisition, maintenance and transfer of information relevant to law enforcement in AML (Carrington & Shams, 2006). However, the researchers point out this would be essential given the increasing interconnectedness of financial systems and the international dimension of ML. A strand of literature analyses the impact of domestic factors on the effectiveness of international AML regimes. Putnam (1988) holds that a functioning AML system hinges on the effectiveness of its MS. He introduces an explanation with the two-level game, in which international policy is firstly developed at the domestic level and secondly at the international level through intergovernmental negotiations. These two levels develop interdependencies. Domestic factors influencing international cooperation could be cultural, such as religion, institutional and economic (Lenschow et al., 2005). The authors hypothesise that countries that are culturally, institutionally and economically akin are more likely to cooperate. For a functioning international framework, minimum requirements should be fulfilled by MS, e.g., a functioning judicial system, the rule of law, measures against corruption and a willingness to comply (Verdugo Yepes, 2011; Demtriades & Vassileva, 2020). A country's geographical location and size should not be neglected either. Demetriades & Vassileva (2020) argue that small Eastern European countries bordering Russia are the gateway of dirty Russian money into the EU's single market, while larger Western European countries are often the actual objective where the money is laundered.

2.3 Rational Choice Theory in Crime

The rational choice theory describes the decision-making process that people go through when making rational choices, and it provides reasons and predictions for behaviour consistent with preferences. McCarthy & Chaudhary (2014) give a good overview of the assumptions of the rational choice theory relating to crime. For different outcomes, people have preferences which are stable. These preferences depend on expected benefits (e.g. monetary, emotional, social) and costs (e.g. opportunity, sunk, monetary, emotional, social). Depending on the cost-benefit ratio, people expect utility from a certain action taken. These expectations are subjective because people have imperfect information since they cannot access or process all information available. And based on this imperfect information, people build their individual expectations. People's attitudes towards risk and uncertainty play an important role in their preferences. However, not the preference for risky decisions is central, but which utility people derive from risky and uncertain situations. A risk-seeker will typically choose a fair gamble, while a risk-averse person will prefer the sure gamble. Risk-neutral people would be indifferent. Consequently, rational choices are in line with the aforementioned assumptions and "consistent with the maximisation of utility" (p. 4). Even if people take different decisions in the same situation, they are rational if they are in line with their individual and subjective preferences. The authors emphasise that the term rational does not refer to terms such as thoughtful or reflective but simply that people's decisions are consistent with their preferences. (McCarthy & Chaudhary, 2014)

The idea of applying rational choice theory to crime was introduced by Beccaria's work "On Crime and Punishment" (1764) and Bentham's "Principles of Penal Law" (1788) (Eide 2000, Ferwerda 2008, McCarthy & Chaudhary 2014). Bentham wrote ([1788] 1843, p. 399 as cited in Ferwerda, 2008, p. 2):

> "The profit of the crime is the force which urges man to delinquency: the pain of the punishment is the force employed to restrain him from it. If the first of these forces be the greater, the crime will be committed; if the second, the crime will not be committed."

Bentham describes a decision-making process that hinges on the cost-benefit analysis of committing a crime. If the benefits of committing a crime outweigh the costs and the risks, the offence is committed (Gilmour, 2015).

The benefits of criminal activity can be monetary, i.e., the proceeds gained from theft, fraud or drug trafficking. Benefits can also be psychic. That can include peer approval after having succeeded or demonstrated bravery, the thrill of danger or the satisfaction of wants. Costs, on the other hand, may be material costs that come with the procurement of gear necessary, such as weapons or cars, psychic costs, e.g., fear or guilt and punishment and opportunity costs. Punishment costs may comprise costs that arise out of sanctions, fines or incarcerations, but also legal costs and informal sanctions, such as the shame or social stigma of being imprisoned and the potential damages to personal relationships with family, friends and at the workplace and with employers. The opportunity costs are the earnings out of legal activity forgone while preparing and executing the crime and while serving a sentence. (Eide, 2000)

So according to rational choice theory, criminals undertake the same decision-making process of weighing costs against benefits and deciding according to the derived expected utility and their preferences that non-criminals undertake when making decisions. The difference is that criminals weigh the expected utility of illegal actions against the expected utility of legal actions (McCarthy & Chaudhary, 2014). So when criminals offend, it suggests that they come to the conclusion that the benefit and utility they expect from a crime is higher than the expected utility of a comparable legal action (Eide, 2000; McCarthy & Chaudhary, 2014). Otherwise, rational choice theory suggests that criminals opt for legal action. According to Gilmour (2015), the criminal is always correct in assessing the viability of a crime and "regardless of whether an action is perfectly rational, partly rational, or wholly non-rational, it is always rational from the perspective of the offender" (Tierney, 2009, p. 13).

Why is rational choice theory suitable for ML? Rational choice theory concentrates on the "careful thinking and sensible decisions" (Felson, 1993, p. 1497) of criminals and not on the driving factors and the reasons behind committing a crime (Gilmour, 2015). Gilmour discusses the usefulness of different criminological theories for developing a comprehensive understanding of organised crime and ML activities in order to develop countermeasures afterwards. An example of such a criminological theory is the self-control theory which posits that particularly people with low self-control of their behaviour are prone to committing crimes (Gottschalk, 2012). Individual trait theory suggests that criminals have certain traits that "contribute towards criminality" (Tharshini et al., 2021, p. 1), e.g., psychopathy, low self-control and difficult temperament (Tharshini et al., 2021). While criminological theories are valuable in explaining the causes of crimes and why crimes are committed, Gilmour criticises that their scope remains limited to understanding the criminals themselves and less the criminal activity. Therefore, knowledge of the rationale that criminals apply and their decision-making process is limited. That is the reason why gaining a comprehensive understanding of the crimes committed and, based on that, developing effective countermeasures aimed at fighting these criminal phenomena in the long term is questionable by taking into consideration criminological theories. Gilmour stresses that his argument is not that rational choice theory is predominant but that it better captures the reason why certain ML schemes are chosen. Hence, the focus is on the criminal act, not on the criminal. (Gilmour, 2015)

2.4 The Economics of Crime and Money Laundering

Bentham's work was later updated by Becker's 1968 paper "Crime and Punishment: An Economic Approach", which became famous also as "the economics of crime" (Eide, 2000; Ferwerda, 2008; McCarthy & Chaudhary, 2014). Becker's reasoning was for the government to find ways and measures that would deter criminals from illegal conduct and thereby increase the costs of crime to such a degree that the benefits of crime would not be worth it (Ferwerda, 2008). According to Becker, a criminal will commit a crime if the expected utility from the crime is higher than the utility the criminal could derive from other legitimate activities. The expected utility depends on the probability of getting caught, the punishment and the income available as a law-abiding citizen and as a criminal. This thinking is based on the deterrence theory. The theory suggests that offenders can be deterred from committing offences if the probability of getting caught is high enough or the punishment is severe enough (Gottschalk, 2010). In regard to rational choice theory, the costs of crimes are increased to an extent where they outweigh the benefits, and the rational choice would be to desist from the offence. Eide (2000), who conducted a review of criminometric studies, found that empirical results confirm the deterrence theory that there is a negative relation between the probability of getting caught and severe punishment and the expected utility of crimes and the level of crimes. These findings corroborate Becker's rationale that a higher probability of conviction and higher punishments will render criminality unattractive and lower crime.

Ferwerda (2008) goes a step further and proposes "the economics of crime and money laundering" as an extension of Becker's "economics of crime". This model comprises two different crimes, namely, the predicate offence and the cleansing of illicit funds. Here, the criminal is confronted with two distinct probabilities of getting caught and receiving punishment for the two offences, respectively. In addition to that, transaction costs arise out of the money laundering act that represents all the resources necessary to launder dirty money (Masciandaro, 1999; Ferwerda, 2008). These transaction costs can be separated into two categories. There are technical costs that incur to execute the specific ML scheme or technology. On the other hand, there are costs that arise due to AML regulation. The more effective these regulations are at preventing ML, the higher the costs to circumvent these regulations to launder money. The rationale is that effective AML measures make it more difficult and expensive for perpetrators to clean their profits which is mirrored by higher costs that arise in the ML process. The two types of transaction costs may be interrelated since more AML regulation may translate into higher costs and difficulties in undertaking certain ML schemes. (Ferwerda, 2008)

Ferwerda (2008) comes up with the "market offence function" (p. 6), where O captures the sum of all offences except for ML[2].

$$O = O(\underset{(-)}{\overline{p}}, \underset{(-)}{\overline{f_o}}, \underset{(-)}{\overline{q}}, \underset{(-)}{\overline{f_{ml}}}, \underset{(-)}{\overline{z}}, \underset{(-)}{\overline{tc}}, \underset{(\pm)}{\overline{u}})$$

Figure 3: The market offence function (Ferwerda, 2008)

The sum of all offences O depends on p the probability of conviction for the predicate offence, f_o the monetary equivalent to the sanctions the perpetrator receives in case of a conviction, q the probability of conviction for money laundering, f_{ml} the monetary equivalent to the sanctions the perpetrator receives in case of a conviction for money laundering, z the probability of conviction for the predicate offence after ML was exposed, tc the transaction costs that arise from money laundering, and u the average of all the other influences. As can be seen underneath the function, the relation between all the variables (except for u) and the sum of all offences is negative, meaning that an increase in the variables leads to a lower number of offences committed. Since u captures the average of all other influences, its effect is unclear.

[2] The mathematical derivation of the function shall be omitted and can be looked up at Ferwerda (2008) p. 4 f.

The function reflects the model's assumption that AML measures increase the probability that ML offenders will be convicted and sanctioned for ML offences, the probability that the ML offender will also be convicted for the predicate offence and the transaction costs to ML (Masciandaro, 1999; Ferwerda, 2008).

Ferwerda (2008) empirically tests his theoretical model. He identifies four different areas of AML. "Legal" comprises the justice system of a country and whether ML is criminalised, "private sector" covers obligations of the private sector in the fight against ML, "public sector" entails whether countries have a functioning FIU or supervision in place and "international cooperation" assesses whether countries adopted international treaties on mutual legal assistance or extradition. The researcher tests the effects these four AML variables have on the level of crime in 17 countries. The results show that three variables, "legal", "private sector" and "international cooperation", have a negative impact on the crime level, while "international cooperation" has the strongest negative impact. "Public sector" has a positive effect but is statistically and economically insignificant. (Ferwerda, 2008)

While Ferwerda's 2008 "Economics of Crime and Money Laundering" focuses on the individual committing crimes, Masciandaro's 2007 "Economics of Money Laundering: A Primer" is a microeconomic model that analyses the ML behaviour of criminal organisations. The assumption underlying the model is that criminal organisations, as posited by Becker for individual criminals, base their decision-making on whether to commit a crime on the probability of being caught and the severity of the punishment. Thus, criminal organisations "undoubtedly follow the same approach" (Masciandaro, 2007, p.5) of rational choice that single criminals undergo when deciding if and how much of the ill-gotten gains they launder. Just as Bentham wrote in 1843, they weigh benefits against costs.

According to Masciandaro (2007), the act of ML can be, economically speaking, defined as transforming potential purchasing power into actual purchasing power since dirty money can be theoretically used in the legal economy, however, the risk of detection is significant. If, however, the dirty money is successfully laundered, the risk of detection and incrimination is substantially lower. Hence, laundered money can be invested more freely where the expected return is the highest and with lower risks of detection as the origin has been disguised, which in total generates a higher value for the owner. Whereas dirty money, limited by the significant risk of detection and the subsequent fear and caution, has a curtailed usability and therefore generates lower value. That is where Masciandaro identifies the utility of ML: cleaned proceeds lower the probability of getting caught and receiving punishment while increasing the expected return because the clean money can be spent with profit in the legal economy or reinvested in the illegal sector. This potentially higher profitability, in combination with lower risks of prosecution, translates into the greater utility of laundered money for the criminal group. The dirty money, on the other hand, has a utility of zero as it cannot be immediately used without incurring incrimination costs. Following successful ML, the advantages are the following three for the beneficiaries:

1. Economic value is created. The former potential purchasing power of dirty money is now actual purchasing power as the ML act integrated the ill-gotten gains into the legal economy. The disguised origin lowers the risk that the actual dirty money and the predicate offence are discovered, and sanctions that would apply are averted.
2. The subsequent investment of dirty money in the legal sector increases the sphere of influence of criminal organisations Masciandaro calls “pollution” (2007, p. 6).
3. The increased economic power and influence permit the criminal groups to better cover their criminal activities, i.e., “camouflaging” (Masciandaro, 2007, p. 6).

The decision whether to launder money and, if so, how much of it depends on the benefits and costs of ML. Naturally, if the costs of ML were zero, the decision of whether to launder or not would be an easy one. However, since ML is a crime, the costs are substantial and the criminal organisation is confronted with a dilemma: if the ML is successful, the organisation has kept its proceeds and can make use of it. If the ML is unsuccessful and detected, the costs are immense: the ill-gotten gains are lost, and severe sanctions await the perpetrators. The utility hence depends on the benefits and costs that criminal organisations face. The utility increases with increasing expected return of the reinvestment of the laundered money while it decreases with an increased probability of crime detection and severe punishment. Masciandaro states that the expected utility hinges on the amount of money laundered. As can be seen in Figure 3, the expected utility is an inverse u-shaped curve. (Masciandaro, 2007)

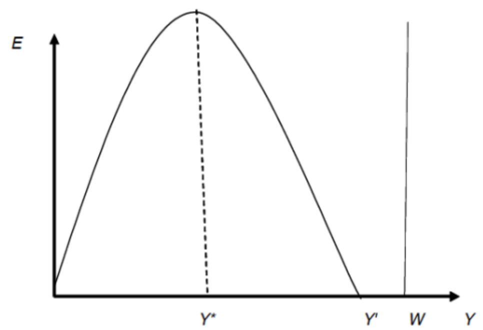

Figure 4: The expected utility of a criminal organisation (Masciandaro, 2007)

E is the expected utility, W stands for the income generated from illegal activity, and Y is the amount of illegal income to be laundered. Initially, the expected utility of the criminal organisation increases with increasing income that is laundered until it reaches its peak at Y^*, which is the ideal amount to reach the maximum expected utility. After that point, the expected utility keeps falling with increasing income laundered until the expected utility is zero at Y'. The reasoning behind the graph, according to Masciandaro (2007), is that for an amount of income Y being laundered to the turning point of Y^*, the criminal organisation's expected utility rises because the amounts of money laundered are manageable, and so are the corresponding risks attached to it. For every amount of money laundered that exceeds Y^*, the expected utility gradually shrinks. That is because the potential damages associated with the risks of detection and punishment increase with ever higher amounts of dirty money to be laundered to the extent that lower the expected utility. This is also due to the fact that Masciandaro (2007) assumes that the sanctions are a multiple of the amounts of money laundered. Hence, the potential damage that looms after detection is so high that it reduces the expected utility of ML until it is zero for Y'. (Masciandaro, 2007)

It is also assumed that the profitability of each cleansed euro is higher than the costs of laundering every euro. Consequently, increasing the profitability of the laundered money will increase the propensity to ML, while decreasing ML costs will have the same effect. More effective AML measures and more severe punishment, on the other hand, will decrease the propensity to ML. The amount of money laundered will be negatively affected by effective AML measures and severe punishment. An important determinant for the propensity to launder money is also the profitability of the laundered money. Obviously, if the profitability rises, the incentive to launder money rises too. On the contrary, the shrinking profitability of cleaned money lowers the propensity to launder money. Moreover, the author also suggests examining the relationship between the costs of ML, i.e., the price of ML, and the amount of capital to be laundered, i.e., the demand for ML. This relationship is negative with shrinking demand for a service with increasing prices and vice versa. (Masciandaro, 2007)

2.5 Methodology

This chapter will exposit how the research question – *How effective is the EU AML framework and how can it be improved?* – is going to be answered. First, the framework's status quo is presented, with a summary of the AMLDs building its basis. In addition to that, other legislation that is integral to AML in the EU is presented, such as freezing and confiscation and illicit cash movement. The EC's legislative package that entails proposed amendments to the current framework is included as well. In order to assess the framework's effectiveness and to suggest improvements, a literature review is conducted which will be complemented by eight semi-structured expert interviews.

This thesis identifies six levels of the AML framework. At level one at the forefront are the OEs, which monitor clients and file STRs if ML is suspected. The FIUs which receive STRs and discard or forward them to law enforcement are at level two. Law enforcement at level three investigates ML cases. At level four, supervisory authorities are tasked with enforcing AML rules and overseeing their application. At level five is politics, which enacts laws. Additionally, at level six there is the public, e.g., consisting of journalists, non-governmental organisations or researchers, that fulfils the important role of raising awareness for ML problems and looks into conspicuous circumstances.

First, chapter 5 offers an introductory literature review concerning EU AML is provided along with critical views on assessing the effectiveness of an AML framework. Second, to enable an in-depth analysis, the effectiveness of every step of a typical ML case is examined. Starting with examining how effective OEs are in detecting ML and filing STRs, how effectively FIUs process the reports and law enforcement investigate ML cases, and the essential task of authorities supervising OEs. The analysis focuses to the greatest extent possible on the European dimension of AML, thus highlighting particularly cooperation among MS, for example.

The literature review conducted is a qualitative integrative and critical literature review following Torraco (2005) and Snyder (2019). As Torraco (2005) explains, the goal of critical and integrative literature reviews is to analyse an existing framework, recognise its weaknesses, and out of that analysis, develop a new framework. This is precisely the objective of the present thesis: to examine how the academic literature assesses the existing EU AML framework, whether it lauds or criticises it. This thesis will not produce an entirely new framework but, based on the weaknesses identified in the previous literature review, will derive suggestions for improvements. The objective is in line with an integrative and critical review's function according to Snyder (2019), namely, to not mention all available articles but to collect and contextualise findings on the effectiveness of EU AML.

Literature was mostly searched for in Google Scholar or the University's online library either by topic, title or author. The most important selection criterion was an article's relevance to the thesis, which was established by reading the abstract and skimming the main body. Another criterion was the publication date. Literature which is older than 2015 might be of limited use since starting in 2015, the latest three AMLDs and other legislation has been enacted, amending the framework. Since the thesis covers an EU topic, literature comprising the entire Union was of special interest. This is also the reason why official documents and reports entailing the entire Union are relied upon, such as from the EC, Europol, Eurojust or the FATF. Academic literature covering the Union is rather rare compared to work focussing on single MS. Literature dealing exclusively with third countries was excluded. If finding literature covering the EU proved difficult, scholarly work comprising some MS representing the Union was looked for.

This work comprises eight semi-structured expert interviews. The aim in the selection was to cover all of the six levels of the AML framework identified in the beginning with at least one expert. Another goal was to have at least one interviewee from an EU institution. Both goals were reached, as can be seen in Table 1. The OEs are represented by the banker and the senior compliance manager specialised in consulting the non-financial sector. Hence, both the financial sector and the non-financial sector OEs are covered. The legal advisor in the EP and the official of the EC are categorised under politics. The researcher covers the public and the supervisory official, the prosecutor and the FIU official cover the remaining levels. The list of questions was individual for every interview, however, five core questions were posed to every interviewee. These core questions were:

- Briefly introduce yourself and explain your tasks and activities in AML.
- In your personal view: What is the goal of AML?
- How effective do you think the EU's AML policy is? In other words: How good is the EU's AML effort in achieving the EU's stated goal (protecting the European financial system from ML and improving international cooperation) and your stated goal?
- In your view: What measures should be taken (both at the EU and the national level) to improve the existing AML framework?
- Is there anything else you would like to add on the topic of AML in the EU?

Surprisingly, the last question was very helpful, as most interviewees offered additional insights that were not covered by the list of questions. The remaining questions were formulated according to the interviewee's job in order to best make use of their expertise. Various topics of AML were discussed in the interviews. The interviewees working in the EP and EC, for instance, were asked more about the benefits and challenges of a European approach to AML or the legislative package. The prosecutor was asked about international cooperation among prosecuting authorities or on freezing and confiscation.

This thesis attempted to create a sort of discussion among the experts by confronting an interviewee with a question that had come up in a previous interview. For instance, the researcher criticised the practice of German prosecutors, so the prosecutor was confronted with that view. Moreover, the interviewees working at the EP and EC were asked whether there are considerations on tackling that problem on the EU level. As was the case with the prosecutor demanding the EU to act on shell companies. Additionally, interviewees were confronted with relevant current affairs or with findings in studies.

The questions' purpose was to allow the interviewee and interviewer to prepare themselves. For this purpose, the list was sent one week before the scheduled appointment. During the interviews, the questions provided orientation, the goal, however, was to have a natural dialogue, not strictly adhering to the list of questions (Friedrich & Quick, 2019). The lists of questions comprised eleven to seventeen questions and the interviews took 30 minutes to two hours. Seven interviews were held via online video meeting and were audio-recorded and transcribed. During one telephone interview, notes were taken, and a memory log was written, reconstructing the interview immediately afterwards. This interviewee asked not to be recorded.

The academic work utilised and the interviews were qualitatively analysed by the meaning of words, submitting them to a content analysis focusing on key statements (Mayring, 2010; Teichmann, 2017). Both groups of sources were thoroughly and repeatedly read to look for insights into the effectiveness and improvements of the AML framework. The analysis of academic work and interviews was combined in order to ideally combine insights from theory and practice from which the framework will benefit most, as this thesis argues. Input from both was always and evenly considered in order to render the analysis comprehensive. Since the core of this thesis is combining theory and practice, both perspectives were included – regardless of whether they might confirm each other or not. Agreement between the two sources gives weight and underlines an argument. Possible differences or contradictions were also mentioned. Neglecting the latter two would be biased, dishonest and non-transparent, ultimately distorting the results. Adams and Cox (2008) note that while interviews offer the possibility of collecting more detailed insights from interviewees, they are also time-consuming, findings will be based on a lower number of subjects and the analysis is subjective and prone to a researcher's own biases.

Job description	Duration of interview	Language of the interview	Format of the interview	Date of the interview	Transcript Pages
Official at the Austrian Financial Intelligence Unit	1h 4 minutes	German	Webex meeting	22.11.2022	17
Research consultant	50 minutes	German	Zoom meeting	13.12.2022	15
AML Officer at a German bank	34 minutes	German	Telephone interview	15.12.2012	Three pages of memory log (interviewee asked not to be recorded)
Legal Advisor and AML expert in the European Parliament	43 minutes	English	Zoom meeting	19.12.2022	12
Senior public prosecutor specialised in AML	1h 58 minutes	German	Zoom meeting	20.12.2012	40
Senior compliance manager of a German AML service provider	36 minutes	German	Microsoft Teams meeting	20.12.2012	12
Official at a German regional council (regional AML supervisory authority)	52 minutes	German	Zoom meeting	21.12.2022	15
Official at the Unit Financial Crimes at the European Commission	54	English	Webex meeting	16.01.2023	14

Table 1: Overview of the eight experts interviewed

3. The EU Anti-Money Laundering Framework

3.1 The Financial Action Task Force

The international standard setter in the fight against money laundering is the FATF. The FATF was founded in 1989 by the G-7 Summit and the President of the European Commission to lead the international approach to money laundering. The organisation was mandated with three tasks: to set standards against money laundering and promote and monitor their effective implementation. The World Bank, the IMF, and the Security Council of the United Nations have recognised the FATF's 40 Recommendations as non-binding international standards in the fight against money laundering. (FATF History, n.d.; FINMA, n.d.)

The FATF's third Recommendation states that countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. The United Nations 1988 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the first international instrument to define money laundering as a crime and to urge countries to adopt measures to confiscate criminal proceeds. In 2000, the United Nations Palermo Convention Against Transnational Organised Crime was signed. The convention urges State Parties to set up Financial Intelligence Units, strengthen international cooperation, and take stricter measures regarding customer identification and the reporting of suspicious transactions (UN AML, n.d.).

14 MS of the EU are members of the FATF (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and Sweden) as well as the European Commission as regional organisation representing the EU. The remaining MS (Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Slovakia) are part of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). Although these MS are not members of the FATF, they are represented by the EC as a member of the FATF. MONEYVAL is the European of nine FATF-Style Regional Bodies (FSRBs) that are present in the world to involve as many countries as possible in the FATF network that are not FATF members. MONEYVAL comprises 46 countries and is an organisation of the Council of Europe. The FSRBs' main task is to promote the implementation of the FATF's Recommendations. With its structure of 39 members and nine globally present FSRBs, the FATF reaches more than 200 jurisdictions that endorsed its 40 Recommendations (FATF Countries, n.d.).

Unsurprisingly, a temporal link between the first release of the FATF Recommendations in 1990 and the publication of the first AMLD (AMLD1) in 1991 and subsequent publications can be drawn. All of the AMLDs mention the FATF's Recommendations as international standards and the need to meet these international standards in order to keep pace with the global impetus in the fight against ML. The Recommendations can also be a supporting argument, as was the case for the proposal to include tax crimes as a predicate offence to ML, where the directive mentioned that the FATF suggests doing so (AMLD3, p.3).

3.2 The Financial Action Task Force's 40 Recommendations

The FATF's 40 Recommendations are not only considered but also titled "the international standards on combating money laundering and the financing of terrorism & proliferation". 37 countries and two regional organisations are members of the FATF. Taking into account the heterogeneity of countries, the Recommendations are considered to be legally non-binding soft laws which need to be adapted to every country's circumstance (FATF Recommendations, 2022; Vogel & Maillart, 2020).

To begin with, the FATF lists six essential measures that countries should adopt:

- Analyse and determine the risks, develop countermeasures and coordination
- Pursue money laundering
- Apply pre-emptive measures for the financial and other sectors
- Equip competent authorities with adequate powers and responsibilities
- Make beneficial ownership accessible and transparent
- Enable international cooperation. (FATF Recommendations, 2022)

The first Recommendation states that countries should understand their level of risk of ML and, according to that, apply a risk-based approach to the fight against it. Second, countries should have in place coordination of AML policies as well as nationwide cooperation between competent authorities. As already mentioned, it is recommended to criminalise ML on the basis of the Vienna Convention and the Palermo Convention while including serious crimes to the list of predicate offences which shall be as long as possible. The countries are advised to freeze and confiscate the properties laundered and the proceeds derived from ML. Such measures should be allowed even without a criminal conviction, and the burden of proof that the property has a legal origin should be on the suspect, not the authorities. Recommendations five to eight only apply to terrorist financing and the financing of proliferation and are therefore omitted here. In section D, the FATF lists preventive measures that should be applied. These measures include, e.g., that secrecy laws of financial institutions should not hinder the adoption of the Recommendations. The FATF registers specific customer due diligence measures to be taken when dealing with new customers, when transactions exceed the threshold of $/€ 15,000 or when there is a suspicion. Moreover, the prohibition of anonymous accounts is advocated. The organisation gives guidance on record-keeping, proposing to keep information for at least five years. Additional measures should be taken for politically exposed persons (PEPs), cross-border corresponding banks, money or value transfer services and wire transfers. New emerging technologies shall be constantly identified and examined in order to understand possible new inherent risks for ML. The 17th Recommendation discusses the possibility for financial institutions of contracting out the customer due diligence obligations to third parties and which criteria to consider in such a case, e.g., that the third party itself is supervised and that the contracting entity possesses copies of the service provided. Recommendation 18 urges countries to ensure that parent companies and foreign branches and subsidiaries are subject to the same group-wide AML obligations. The FATF also addresses the issue of higher-risk countries. Financial institutions are supposed to impose enhanced customer due diligence on countries that the FATF identifies as fraught with risks. The recommendation does not elaborate on the enhanced measures. On the other hand, the FATF may name countries with deficiencies to take appropriate countermeasures, which are not specified.

Recommendation 20 states that financial institutions shall communicate suspicion of ML to the FIU, whereas number 21 suggests that communication with the FIU for the purpose of fighting ML shall be an exception to the profession's secrecy requirements. Moreover, suspects shall not be informed that they are subject to a ML suspicion. Subsequently, a list of designated non-financial businesses and professions (DNFBPs) is given, which apply customer due diligence measures. These DNFBPs comprise casinos, real estate agents, dealers in precious metals and precious stones, lawyers, notaries, other independent legal professionals and accountants, as well as trust and company service providers. Recommendations 24 and 25 promote the transparency of beneficial ownership concerning legal persons and legal arrangements, such as trusts.

The FATF urges countries to place financial institutions under adequate supervision to ensure that the Recommendations are followed. The subsequent 27th Recommendation defines the powers of supervisors, which include the power to impose various administrative and pecuniary sanctions. Similarly, DNFBPs shall be supervised by supervisors or self-regulatory bodies on a risk-based approach. The list of Recommendations also covers the topics of law enforcement.

FIUs shall be established in every country to receive STRs, and law enforcement authorities shall be provided with the necessary responsibilities and powers to prosecute ML. As general requirements, the FATF demands that countries keep statistics on AML policies to track their effectiveness and efficiency while urging competent authorities and supervisors to give financial institutions and DNFBPs guidance and feedback on their AML activities. Recommendation 35 states that countries should have in place "effective, proportionate and dissuasive" sanctions that can be imposed on natural and legal persons for not complying with AML regulations. Section G, with the final five Recommendations, covers the topic of international cooperation. First of all, the FATF recommends becoming a party to several conventions, such as the already mentioned Vienna and Palermo Conventions, to have in place the legal instruments to cooperate internationally. Second, it urges countries to cooperate to the greatest extent possible and avoid conflicts of jurisdictions and, as far as possible, to not refuse requests for mutual legal assistance. International cooperation also envisages extradition to avoid protecting offenders in safe havens. To ensure that, Recommendations 39 proposes to declare ML an extraditable offence. Finally, Recommendation 40 states that countries should ensure that their authorities are able to cooperate to the greatest extent possible, both spontaneously or upon request.

3.3 The First EU Anti-Money Laundering Directive 91/308/EEC

The following shall be a summary of the AMLDs with the purpose of outlining the EU AML framework as it is today and reconstructing the path towards it. The summaries entail the aspects that are deemed most important. In the course of the summaries, only fundamental amendments, additions or new provisions are going to be discussed in order to avoid repetitions.

The international AML effort evolved in a few years, starting with the Vienna Convention in 1988, followed by the FATF's foundation in 1989, which published its first AML recommendations in the subsequent year, 1990. A year later, on 10th June 1991, the EU AMLD1 was published.

The AMLD1 urges the MS to prohibit the act of money laundering and involves credit and financial institutions as obliged entities in its framework. These institutions are obliged to conduct basic customer due diligence, identifying the customer whenever a business relationship is established. This customer identification obligation also applies when transactions of European Currency Unit 15,000 or more are processed or, regardless of the amount, whenever there is a suspicion of money laundering. The AMLD1 recognises that law enforcement depends on the cooperation of the private sector to properly fight money laundering and so requires credit and financial institutions to file suspicious transaction reports. Although the directive addresses only credit and financial institutions as obliged entities, Article 12 demands to include other professions where money laundering activities are likely to occur. Further specifics as to which professions might be included, in which case and how specifically they might be included, are not elaborated, leaving a vague provision for the MS to transpose. The AMLD1 only lists drug-related offences as predicate offences to money laundering. At the same time, the directive acknowledges that proceeds from other offences may be laundered too. Similarly, as with OEs, it states that the range of predicate offences may be extended if the proceeds are likely to be laundered. Again, this provision is not further specified. To enable harmonised implementation of this directive, a contact committee named "the Committee" is formed. The Committee, comprising representatives of the EC and the MS, is a platform for MS to communicate problems in the transposition process or demand further regulation, as well as an advisory body to the EC.

All in all, the EU AMLD1 is the first approach to tackle money laundering at the EU level. It sets the basics for today's fight against dirty money with the requirements to conduct customer due diligence when acquiring a customer or when a certain threshold of a transaction is reached and to file an STR. However, many of the provisions remain vague (details of the customer due diligence, the STR's recipient, a possible extension of OEs and predicate offences), and the circle of OEs is limited to credit and financial institutions. Moreover, the aspect of supervision, i.e., the monitoring of OEs' compliance with the rules, is not mentioned.

3.4 The Second EU Anti-Money Laundering Directive 2001/97/EC

The second AMLD (AMLD2) was published on 4th December 2001. The AMLD2 is an effort to improve and tighten the EU's AML framework by increasing its scope and by addressing the loopholes or deficiencies of the AMLD1. Regarding the unclear responsibilities of which authority receives the STRs and which authorities shall supervise the OEs, the directive states that the authorities of the MS where the branch is located are supposed to receive the STRs and be the responsible supervisors. Article 1 (E) expands the range of predicate offences to money laundering. While the AMLD1 only includes drug-related crimes as a predicate offence, the AMLD2 introduces the term "serious crimes", which includes drug-related offences, crimes committed by criminal organisations, serious fraud, corruption and any offence which generates substantial profit and is sanctioned with a severe prison sentence. Additionally, MS may add any offence they deem appropriate for the purpose of the directive. A similar expansion is decided for the OEs. The AML framework, apart from the credit and financial institutions, now includes auditors, external accountants, tax advisors, real estate agents, notaries and other legal professionals as well as dealers in high-value goods and casinos. These OEs are now obliged to conduct proper customer due diligence, report suspicious transactions and collaborate with authorities responsible for the fight against money laundering.

3.5 The Third EU Anti-Money Laundering Directive 2005/60/EC

The third AMLD (AMLD3), published on 26th October 2005, is a reaction to the updated FATF's 40 recommendations in 2003.

Article 3 (6) establishes the term "beneficial ownership" and defines it as follows: "the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted". As for corporate entities, the beneficial owner is "the natural person who ultimately owns or controls a legal entity" (Art. 3 (6) (*a*) (*i*)). The threshold for such ownership is set at owning 25% plus one share. If a beneficial owner cannot be determined, the natural person who manages the entity will be selected. Beneficial ownership information shall also be established for trusts and foundations. The conclusion of this obligation to determine the beneficial owner is the prohibition for credit and financial institutions to maintain anonymous accounts where the beneficial owner is unknown (Art. 6).

Article 8 (1 *a* and *b*) describes the scope of the customer due diligence measures: OEs shall identify the customer and, if necessary, the beneficial owner. In the identification of the beneficial owner, the risk-based approach shall be applied, taking appropriate measures in relation to the risk profile. Moreover, the purpose and the nature of the business relationship shall be inquired about (Art. 8 (1) (*c*)). Later on, the business relationship and the transactions shall be monitored to ensure that there is consistency between the two (Art. 8 (1) (*d*)). The identification of the customer and the beneficial owner must be performed before entering the business relationship or before transactions take place (Art. 9 (1)). The identification can also be slightly postponed, i.e., in the process of the establishment of the business relationship, if the low-risk profile allows for that and if it is deemed necessary to not disrupt the course of business (Art. 9 (2)). Should it not be possible for OEs to identify the customer, the beneficial owner or the nature of the business relationship, the OE may not provide services to the customer and may terminate an existing business relationship (Art. 9 (5)). Additionally, it may consider filing an STR. OEs such as independent legal professionals may be exempted from this provision when defending or representing that client. Occasionally and according to the risk profile, existing customers are supposed to be subject to customer due diligence procedures (Art. 9 (6)).

The proposed legislation institutes the risk-based approach to the AML framework, acknowledging the diverging risks of money laundering depending on the OE, the business sector it operates in and its customers. Depending on the level of risk, customer due diligence measures can vary (Art. 8 (2)). While a lower risk of money laundering allows for simplified customer due diligence (Art. 11), higher risks of money laundering demand enhanced customer due diligence (Art. 13). Simplified customer due diligence means that the measures of identifying the customer and beneficial owner and inquiring about the purpose of the business relationship when entering a business relationship or when transactions of €15,000 or more take place are omitted when dealing with the following entities: credit and financial institutions that are OEs or that are located in third countries that have in place comparable AML provisions, listed companies that are subject to disclosure requirements and domestic public authorities (Art. 11 (1, 2)). Enhanced customer due diligence, on the other hand, provides for measures to be taken in addition to the already described measures (Art. 13 (1)). Such measures apply, e.g., when a customer was not present for a prior identification. In this case, the OE must identify the customer with the help of additional documents or information provided by another credit institution.

Enhanced customer due diligence also applies to PEPs resident in MS or in third countries (Art. 13 (4)). Article 3 (8) defines PEPs as natural persons who hold or used to hold “prominent public functions”. Immediate family members and people known to be close to PEPs are included in the PEP status. In relation to PEPs, the OEs are obliged to determine whether the client is indeed a PEP, senior management must approve of the business relationship, the origin of wealth must be identified, and the customer relationship must constantly be under observation (Art. 13 (4)). It is possible to assign the customer due diligence obligations to a third party which performs them on behalf of the OE; however, the OE remains ultimately responsible for the fulfilment of its obligations (Art. 14).

The AMLD3 requires MS to establish Financial Intelligence Units as recipients of suspicious transaction reports (Art. 21 (1)). The FIU’s tasks are to analyse the received reports and to forward the suspicious transactions to law enforcement if money laundering is suspected (Art. 21 (2)). The receiving FIU shall always be the one located in the territory of the sending entity.

Article 26 clearly states that the disclosure of information for the purpose of complying with AML requirements, such as the filing of STRs, does not constitute a breach of confidentiality.

This AMLD also addresses the supervision of OEs (Art. 37 (1)). MS shall ensure that the competent authorities monitor the OEs and that the supervisors are sufficiently equipped with personnel, resources and the necessary powers to fulfil their tasks (Art. 37 (2)). As for credit and financial institutions and casinos, the competent authority shall possess enhanced supervisory powers, including possible on-site inspections (Art. 37 (3)). Regarding some natural and legal persons, such as auditors and notaries, risk-based supervision may be applied (Art. 37 (3, 4)). Moreover, Article 39 (1) introduces penalties, which shall be "effective, proportionate and dissuasive", for natural and legal persons who violate national laws adopted to transpose this directive.

The AMLD3 once again increases the scope of the EU AML framework, which can be observed solely in the length of the document and the 47 Articles the directive consists of compared to the 5 Articles of the previous directive. Specifically, this piece of legislation introduces central aspects of today's AML approach, such as beneficial ownership, politically exposed persons, the Financial Intelligence Units, penalties to breaches and the risk-based approach of the framework.

3.6 The Fourth EU Anti-Money Laundering Directive 2015/849 and the Fifth EU Anti-Money Laundering Directive (EU) 2018/843

The fourth and fifth AMLDs (AMLD4 and AMLD5) are going to be analysed jointly since the AMLD5 of 2018 is an amendment of the AMLD4 published in 2015. Therefore, the amendments undertaken by the AMLD5 are going to be presented right away, along with introducing the AMLD4.

While the AMLD4 does not expand the list of OEs in Article 2, the AMLD5 does. First, the OEs in the sectors of tax advisory and real estate are extended (Art. 2 (1) (*a*) (*d*). In addition to tax advisors, also all those providing assistance or advice on tax matters shall be OEs and next to real estate agents and also those agents who rent real estate for which the monthly rent exceeds €10,000. Second, new OEs are introduced, which for the first time comprise services providing the exchange of virtual currencies and fiat money, custodian wallet providers and art dealers. Virtual currencies are defined as a "digital representation of value that is not issued or guaranteed by a central bank or public authority (…) accepted by natural and legal persons as a means of exchange which can be transferred, stored and traded electronically" (Art. (18)). Such custodian wallet providers are "services to safeguard private cryptographic keys (…) to hold, store and transfer virtual currencies" (Art. 3 (19)). Moreover, persons storing and trading art and those acting as intermediaries in art trading are OEs if transactions exceed €10,000.

An important and major amendment by AMLD 5 is the declaration of terrorist offences and tax crimes as predicate offences to ML (Art. 3 (4) (*a*) (*f*)). For the identification of the beneficial owner of a legal entity, the AMLD4 defines "indirect ownership". While the AMLD3 only provides for direct ownership, i.e., 25% plus one share of an entity, the natural person(s) controlling the company which owns more than 25% can be declared indirect owners (Art. 3 (6)). Similarly, if the companies holding more than 25% are under the control of the same natural person(s), they can be regarded as direct owners. Article 3 (9 - 11) lists prominent public functions that a person holding the status of a politically exposed person is or has been holding. That list includes heads of State, members of parliament as well as the management of state-owned enterprises and directors of international organisations. Article 3 (10, 11) clearly defines family members of such PEPs, such as the spouse, the children and parents, and "persons known to be close associates", which can be, e.g., a person that has close business relations with the PEP. Precise definitions of PEPs, their family members and "persons known to be close associates" must be known, since enhanced customer due diligence, which is set out in AMLD 3, would apply to them. When the PEP no longer holds the prominent public function, the PEP status and the corresponding enhanced customer due diligence measures shall persist for at least another 12 months (Art. 22).

After the AMLD3 institutes the risk-based approach to customer due diligence, the AMLD4 provides for an EU-wide assessment of the ML risks. To fully comprehend the risks inherent to ML in the EU, risk assessments are to be conducted at three levels. The EC is responsible for analysing the ML risks in the internal market as well as cross-border risks (Art. 6). Naturally, the assessment is shared with MS and OEs to inform them but also to enable them to contribute to the risk assessment. Additionally, the European Supervisory Authorities (ESAs) are required to issue a joint opinion on the risks of ML. Article 7 defines the risk assessment to be conducted by the MS on a national level. The purpose of the assessment, which also includes possible data protection concerns in connection to AML, is to obtain a picture of the risk level of ML in the respective country in order to develop a national AML strategy. The assessments shall be shared with the EC, the ESAs and other MS. Lastly, OEs shall assess the risk inherent to their business, considering factors such as business sector, geographic region and clients (Art. 8). Responsible supervisors are to be notified. What is imperative to risk assessments is to draw adequate responses to the ML risks, to share them and to regularly update them.

Article 9 sets out factors for the identification of "high-risk third countries" which have in place AML measures deemed insufficient. Such factors are, e.g., the criminalisation of ML, customer due diligence measures and the overall effectiveness of the AML system. The AMLD4 does not elaborate on which measures or consequences apply when such a "high-risk third country" is identified. To assist the OEs in assessing whether simplified customer due diligence is appropriate, the AMLD4 provides guidance for risk assessment. Annex II of the directive entails a list of factors of lower ML risk (Art. 16), and Article 17 mandates the ESAs to issue guidelines for credit and financial institutions on the application of simplified customer due diligence.

Regarding enhanced customer due diligence, the AMLD5 introduces Article 18*a,* which entails a detailed list of measures to take when OEs deal with high-risk third countries. Such enhanced measures include, among others, the requirement to garner additional information on the beneficial ownership and the source of wealth of the customer as well as securing senior management approval for establishing or continuing a business relationship. Where applicable, OEs may apply additional measures that limit business relationships with natural or legal persons in high-risk third countries, and MS may refuse to open their markets to branches from these countries and may, vice-versa, forbid OEs to set up a branch in these countries. Branches and subsidiaries of OEs in high-risk third countries are not subject to enhanced customer due diligence if they comply with the EU's AML framework through group-wide policies (Art. 18 (3)). The enhanced measures also compel OEs to analyse the background and purpose of transactions that are complex, unusually large, follow an unusual pattern and do not seem to have an economic or lawful purpose – independent of the customer (Art. 18 (2)). Again, the AMLD4 assists MS and OEs with a list in Annex III of factors that indicate potentially higher risks of ML and tasks the ESAs to publish guidelines on enhanced customer due diligence.

The directive also provides for rules for branches and subsidiaries of OEs in third countries. If the AML rules are not as strict as those of the EU, the branches are required to follow group-wide EU rules – if that is permitted by the third country's laws (Art. 45 (3)). In case the local laws do not permit stricter AML standards, additional measures that effectively mitigate the increased ML risk are to be taken, and competent authorities in the MS are to be notified (Art. 45 (5)). The Article does not explain what the additional measures consist of. However, if the additional measures prove to be insufficient, competent authorities expand their supervisory mandate, which may include demanding the OE not to initiate or terminate business relationships in the third country. The ESAs shall formulate regulatory standards for such cases to give OEs guidance (Art. 45 (6)).

While the AMLD3 lists beneficial ownership information as part of multiple customer due diligence obligations, the AMLD4 dedicates beneficial ownership an entire chapter, mirroring its increasing importance in the AML framework. Article 30 obligates OEs to collect and hold accurate beneficial ownership information; otherwise, sanctions may be imposed. To ensure that this information is accessible and known, a central register, e.g., a company register, shall entail beneficial ownership information. This central database shall be accessible to the FIU, the competent authorities and the OEs. While the AMLD4 enables access to "any person or organisation that can demonstrate a legitimate interest" (Art. 30 (5c)), the AMLD5, in a major amendment, grants access to the general public. The only access requirements may be the registration and a possible fee to be paid. The publication of information shall meet data protection requirements, and exemptions for natural persons who are minors or who would be in danger due to the publication are possible. The information shall remain accessible for at least five years and ten years at most in the database after the entity's cancellation from the register. Similar transparency rules apply to beneficial ownership of trusts and foundations with the difference that access to the information in the central register remains restricted to natural or legal persons that must provide a legitimate reason instead of guaranteeing public access (Art. 31).

A further central amendment introduced by the AMLD5 is the central account register which collects bank account information identified by the International Bank Account Number (IBAN) of any natural or legal person (Art. 32*a*). Only the FIU and other competent authorities have access to the central account register. The register entails the name of the person acting on behalf of the customer, the beneficial owner of the account, the IBAN number and the opening and closing date of the account. The data must be deleted from the register at the latest five years after the account has been closed. Similarly, Article 32*b* obliges MS to collect information on the legal ownership of real estate so that it can be quickly shared with FIU and competent authorities. However, in contrast to the beneficial ownership information in the company registers and the account registers, information on real estate neither has to be centralised nor does it have to entail the beneficial owner, merely the legal owner.

Articles 47 and 48 of the AMLD4 deal with the topic of AML supervision. The directive particularly stresses the competences of cross-border supervision of groups. In principle, the authorities where the OE is located are responsible for supervision (Art. 48 (4)). So the local authority where the subsidiary is located, e.g., is required to supervise the OE's subsidiary. To ensure effective supervision, the supervisory authorities are required to cooperate and exchange information. That is, the local authority supervising the subsidiary is required to communicate with the authority supervising the parent company in the MS where the head office is located (Art. 48 (5)). In order to enable this effective supervision and cooperation, the AMLD5 urges MS to communicate to the EC a list of the supervisory authorities with relevant contact details (Art. 48 (1*a*)). Contrary to the AMLD3, which restricts risk-based supervision to some OEs, e.g., notaries and auditors, such a limitation to selected OEs is not mentioned in the AMLD4, enabling an application to all OEs (Art. 48 (6)). The conditions of risk-based supervision are that the authority is aware of the ML risk of the OE, that on-site and off-site access to all relevant information is given and that the frequency and intensity of on-site and off-site supervision corresponds to the ML risks inherent to the OE. The ESA guidelines provide details on risk-based supervision (Art. 48 (10)). The AMLD5 adds the following: If an OE proves to be non-compliant with AML rules or its AML system is prone to weaknesses or failings, the supervisory authority is allowed to take appropriate temporary measures which are not specified (Art. 48 (4)).

The AMLD4 stresses the importance of cooperation in AML. While the AMLD3 entails one provision on cooperation, the AMLD4 develops nine. The directive addresses different types of cooperation, urging MS to enable national cooperation among the competent authorities as well as urging competent authorities to cooperate with the ESAs (Art. 49, 50). The AMLD5 introduces a provision on the cooperation between competent authorities of different MS, demanding to not allow for any restrictions to such cooperation (Art. 50*a*). The article also lists cases in which cooperation shall not be denied, such as cases involving tax matters or when an authority requests cooperation to an authority that is not its counterpart. A central pillar of the EU's AML framework is the FIUs and their ability to cooperate with each other. To promote this cooperation, Article 51 provides for the EU FIU's Platform where representatives of the EU FIUs convene to communicate, provide advice, address problems or develop standards for STRs. The directive urges MS and the FIUs to cooperate "to the greatest extent possible" (Art. 52). The FIUs shall share any information that might be relevant and shall cooperate regardless of the predicate offence involved and also when the predicate offence is unknown (Art. 53(1)). Requests for collaboration may be only refused in exceptional circumstances where such collaboration would violate national law (Art. 53 (3)). The MS are required to elaborate on such exceptional circumstances to avoid misuse.

Supervisors of credit and financial institutions too are urged to collaborate with each other and with the European Central Bank (ECB) (Art. 57*a*). It is clearly stated that the obligation of professional secrecy shall not be an impediment to cooperation – including corresponding authorities in third countries that respect professional secrecy. According to Article 57*b*, supervisors of credit and financial institutions may share information with other supervising authorities, with those authorities investigating ML and – in specific circumstances – with Parliamentary inquiry committees or courts of auditors.

The directive provides in detail in which cases which sanctions apply (Art. 59 (1)). Breaches to the AML rules that are serious, repeated and systematic in the areas of customer due diligence, STRs, record-keeping or internal controls are to be sanctioned. Administrative sanctions include a public statement stating the breach and the natural or legal person involved as well as a ban of natural persons involved from exercising managerial functions in an OE (Art. 59 (2)). Pecuniary sanctions are set at twice the profit that was gained with breaches of at least €1,000,000. Specific sanctions apply to credit and financial institutions. MS may also decide to impose additional and stricter sanctions that may exceed the amounts mentioned in the directive. The sanctioning strategy follows the principle of "naming and shaming", as competent authorities shall publish on their official website the nature of the breach and the sanctioned natural or legal persons (Art. 60 (1)). The publication shall happen after the definitive sanction has been communicated to those sanctioned. The authorities may refrain from or delay the announcement where detrimental consequences, such as jeopardising the sanctioned persons or the investigation, are a possibility. The announcement shall remain online for five years, shorter periods may apply to personal data entailed in the announcement, according to data protection rules. Article 60 (4) lists factors that determine the gravity of administrative sanctions, e.g., the severity and duration of the breach, the advantage gained, and the damage caused to third parties as well as previous breaches and whether there was cooperation with authorities. Article 61 is dedicated to facilitating the reporting of breaches and to the protection of reporting entities.

The AMLD4, in combination with the AMLD5, brings fundamental changes to the EU's AML framework ten years after the AMLD3. Terrorist offences and tax crimes are introduced as predicate offences. The status of politically exposed persons was unified across the EU by presenting specific functions that qualify for such a status. EU-wide risk assessments were to be conducted that cover different risk levels, such as cross-border, national and business-related. Also increasing risks posed by third countries with insufficient AML rules were targeted by facilitating their identification and applying enhanced customer due diligence measures if necessary as well as enabling risk-based supervision. The directives institute central registers for beneficial ownership information, which are publicly available, and for bank accounts. Additionally, legal owners of real estate must be registered. The directives emphasise the importance of cross-border cooperation, particularly of the FIUs, establishing standards of such cooperation and urging MS to enable the highest level of cooperation. Finally, the provisions state in which particular cases which pecuniary or administrative sanctions apply to offenders.

3.7 EU Anti-Money Laundering Directive (EU) 2018/1673

The AMLD 2018/1673 “on combating money laundering by criminal law”, published October 23rd 2018, aims at further aligning AML measures between MS by establishing minimum rules regarding the definition of criminal offences and sanctions (Art. 1 (1)). Article 1 (2) slightly reduces the framework’s scope, as ML cases where the criminal proceeds stem from crimes which affect the Union’s financial interests, i.e., the Union’s budget, are no longer considered to be predicate crimes. Instead, these cases are now treated separately with specific rules laid down in Directive (EU) 2017/1371.

The directive heavily expands the definition of criminal activity and the list of predicate offences (Art. 2). It provides for a precise definition of what should be considered a criminal activity, namely any crime that is punished with imprisonment for a maximum of one year or for a minimum of six months. All criminal activities that fall under this definition are predicate offences to ML. Additionally, while the AMLD4 lists six predicate offences to ML, 22 predicate offences are listed in the new directive that, in any case, fall within the definition of criminal activity. Some new predicate offences are e.g., environmental crimes, piracy, insider trading and market manipulation as well as cybercrime. The directive also defines ML offences, now urging MS to prosecute ML even when the offender suspected or should have known that the money stemmed from a crime (Art. 3(2)). Moreover, convictions for ML are possible without a prior conviction related to the predicate offence or full knowledge of the predicate offence to ML (Art. 3 (3)). Paragraph *c* of Article 3 enables the prosecution of ML that involved predicate offences that were committed in other MS or third countries, given that these predicate offences would have constituted a crime in the prosecuting MS as well.

Although “aiding and abetting, inciting and attempting” (Art. 4) of ML is not new to the AML framework, since the AMLD4 includes it in the definition of ML (Art. 1 (*d*)), it is worth mentioning that the AMLD 2018/1673 dedicates an article to it and states that, e.g., the attempt alone constitutes a crime. Minimum rules are also provided in terms of penalties for natural persons (Art. 5). The maximum term for ML shall be four years of prison at minimum. MS may decide to impose stricter or additional measures. Besides penalties for natural persons, the AMLD 2018/1673 establishes sanctions for legal persons (Art. 8). Possible sanctions can be the exclusion from access to public funding, the disqualification from commercial activities or the closure of establishments. All of the aforementioned sanctions can be temporary or permanent. The liability of legal persons for actions taken by natural persons, i.e., ML committed individually or within the organisation for the benefit of the organisation, was emphasised (Art. 7). This applies to employees that have leading positions within the legal entity. The legal entities’ liability for natural persons, however, does not exclude that these natural persons will be prosecuted too.

Article 6 of the directive lists factors that constitute aggravating circumstances. Such aggravating circumstances can be that the money was laundered within a criminal organisation or an OE (Art. 6 (1)), the amount laundered is “considerable”, which is not further specified, or in case specific predicate offences, such as terrorism, corruption, human or drug trafficking, are involved (Art. 6 (2)). It is not stated what consequences arise in aggravating circumstances. For the first time, the directive explicitly urges MS to freeze or confiscate the proceeds gained from criminal activities (Art. 9).

Given the transnational nature of ML, Article 10 regulates how MS shall establish their jurisdiction in ML cases of international dimension. In principle, a MS is entitled to establish its jurisdiction over cases in which the crime was committed on its territory or the delinquent is one of its citizens. MS can also claim jurisdiction over a case in which the crime was committed outside its territory if the offender resides on its territory or for the benefit of a legal entity established on its territory. If more than one MS claims jurisdiction over a case, they shall decide which MS prosecutes so the efforts and resources of prosecuting are centralised in one MS. The factors influencing the decision shall be the following: the territory on which the crime was committed or on which the offender was found, country of origin of the offender or the victim and the residence of the offender.

Finally, MS are urged to furnish law enforcement authorities prosecuting ML with the same investigative tools made available to authorities prosecuting organised crime or serious crimes. Further details are not provided.

Overall, the AMLD 2018/1673 goes a step further in terms of establishing EU minimum rules in order to align the MS' efforts and avoid loopholes in the AML framework that criminals might exploit. The directive presents a common definition of criminal activity for the MS under which all predicate offences to ML fall. The list of predicate offences is heavily expanded from previously six to 22. Moreover, prison sentences that apply to natural persons and sanctions of legal persons are harmonised, and standards are defined on which basis the jurisdiction of international ML cases shall be determined. The MS are encouraged to enable ML convictions in case the predicate offence is unknown and to provide law enforcement authorities with the same investigative tools made available to authorities prosecuting organised crime or serious crimes.

3.8 Legislation on Freezing and Confiscation

The freezing and confiscation of criminal proceeds is an important aspect of the fight against dirty money to deprive criminals of their proceeds and to minimise the incentive to commit crimes. Due to the transnational nature of organised crime groups and money laundering activities, the freezing and confiscation Directive 2014/42/EU provides minimum rules for MS aimed at closing possible loopholes for criminals across the EU and improving cooperation. Europol estimates that 2.2% of the estimated criminal proceeds are frozen across the EU and 1.1% are ultimately confiscated (Europol, 2016).

The directive provides for the freezing (Art. 7) and confiscation (Art. 4) of proceeds derived from ML, but also from other criminal offences, such as among others, corruption, fraud, terrorism and attacks against information systems (Art. 3). According to Article 4, the proceeds derived from ML, for example, or the instrumentalities with which ML was committed or property with a corresponding value of the proceeds or instrumentalities can only be confiscated following a final conviction of the ML offence. Confiscation is defined as the "final deprivation of property ordered by a court" (Art. 2 (4)). Until a confiscation is ordered, authorities can freeze the property, i.e., take temporary control (Art. 2 (5)). The directive urges MS to enable extended confiscation for which a final conviction is not necessary but for which it suffices that the court is satisfied or convinced that the proceeds were gained through a crime (Art. 5 (1)). The crimes for which extended confiscation is possible are, among others: active and passive corruption in the private or public sector and involvement in a criminal organisation (Art. 5 (2)). The directive also provides for certain safeguards for suspects against freezing and confiscation orders (Art. 8). Such safeguards are, inter alia, the right to a fair trial (Art. 8 (1)), that the freezing order is sustained only as long as necessary (Art. 8 (3)), that the properties frozen can be retrieved if they are not confiscated (Art. 8 (5)) as well as the right to challenge freezing (Art. 8 (4)) and confiscation order (Art. 8 (6)). Centralised offices shall be established that will manage the frozen properties (Art. 10 (1)), sell and transfer the properties (Art. 10 (2)), if necessary and which will make the confiscated properties available for public interest or social purposes (Art. 10 (3)).

EU legislation on freezing and confiscation includes regulation 2018/1805 "on the mutual recognition of freezing orders and confiscation orders" (p. 1). The legislation provides rules for the cooperation of MS, specifically in the case when a MS recognises and executes freezing or confiscation orders from another MS (Art. 1). The crimes eligible are those that are punished with imprisonment of a maximum of at least three years in the state that issues the freezing or confiscation order and which are in the list of 32 crimes entailed in Article 3. The executing authority receiving the requests from another MS shall treat the orders as equivalent to freezing or confiscation orders from domestic authorities (Art. 7 (1)). However, there are reasons to deny or postpone such orders. Articles 8 and 19 define cases where freezing orders and confiscation orders may be denied. Reasons for denying both freezing and confiscation orders are, inter alia: when the orders contradict the principle of ne bis in idem (a person cannot be punished twice for the same offence), privilege or immunity impedes the procedure or the crime involved is not part of the list of Article 3 (Art. 8 (1), Art. 19 (1)). Moreover, grounds for postponing freezing and confiscation orders are, inter alia, when such orders might jeopardise ongoing criminal investigations or the property concerned is already frozen or confiscated (Art. 10 (1), Art. 21 (1)). It may occur that executing freezing and confiscation orders proves to be impossible simply because the property cannot be confiscated, as it has been already confiscated, it disappeared, or it was destroyed (Art. 13 (3), Art. 22 (3)). The regulation furthermore states that in cross-border freezing and confiscation orders, the laws of the executing country shall apply and that only authorities of that MS shall have the decision-making authority (Art. 23 (1)). Similarly, the management and disposal of the frozen or confiscated property fall within the competence of the executing state (Art. 28 (1)).

In light of the war in Ukraine, the EC forwarded a proposal for a new asset recovery and confiscation directive on 25th May 2022. The new directive allows MS to freeze and confiscate properties derived from violating restrictive measures (Art. 2 (3)), in other words, sanctions imposed by the EU. This is especially timely and relevant as the EU imposed sanctions as a reaction to the Russian attack on Ukraine. The new directive heavily expands the list of criminal offences it applies to. Article 2 (1), for instance, adds crimes of illicit trafficking in weapons and environmental crimes. Article 2 (2) inserts a new and separate list of crimes which are all committed within criminal organisations, such as tax crimes. The proposal requires every MS to install asset recovery offices. The main function of these offices will be to improve the cooperation between MS in tracing and identifying property subject to freezing or confiscation orders and in communicating with counterparts (Art. 5 (1, 2)). To stress the importance of cooperation, Article 9 (1) states that asset recovery offices shall share any information that is necessary to fulfil the tasks set out in Article 5. Also centralised registries of frozen and confiscated property are introduced (Art. 26 (1)) so that asset recovery offices and other competent authorities can quickly access relevant information (Art. 26 (2)) as to which property is currently frozen or confiscated, its value and who the owners and beneficial owners are (Art. 26 (3)).

3.9 Regulation on Illicit Cash Movements

Since typical ML schemes involve a high number of transactions across borders, it is even more important for AML to have tools in place to detect and follow such illegitimate capital flows. The transfer of funds regulation 2015/847 of the EU requires payment service providers to collect information on payers and payees involved in transactions (Art. 1). This regulation applies when one of the payment service providers involved is established in the EU, regardless of the currency (Art. 1). There are payment methods such as payment cards, electronic money instruments and mobiles phones which, according to their low ML risk, may be exempt from this regulation (Art. 2 (3)). Hence, the risk-based approach is applicable in this realm as well when payment service providers must decide on how to deal with transactions that lack required information (Art. 12). When a transaction occurs, the payment service provider of the payer is required to supplement the transaction with information on the payer and the payee. The name, account number, address and document of the payer must be given as well as the name and account number of the payee (Art. 4 (1, 2)). For transactions that involve only payment service providers from the EU, the payment account number of the payer and payee suffice (Art. 5 (1)). Payment service providers of payees as OEs of the AMLD4 should consider filing an STR if the necessary information is missing (Art. 9).

3.10 The European Commission's Proposed Legislative Package to Renew the EU AML System

3.10.1 The Proposed Regulation for the Anti-Money Laundering Authority

The EC, with its proposal for establishing an Anti-Money Laundering Authority (AMLA), envisages an integrated AML supervisory system at the Union level. AMLA shall be the centrepiece of this supervisory system along with the existing national supervisors. The EC impact assessment (2021), analysing the EU's AML framework status quo, resulted in deficiencies of EU-wide AML supervision that prompted the proposal to establish AMLA. The reported findings on EU AML supervision are discussed in detail in chapter 5.4.

AMLA will have four main tasks. First, it shall directly supervise selected OEs of the financial sector that are in business in multiple MS and which pose significant ML risks in various MS. Direct supervision will be conducted in Joint Supervisory Teams consisting of AMLA and the national supervisor's staff members. AMLA will be able to do on-site visits as well as impose administrative sanctions on OEs. Second, AMLA's indirect supervisory tasks will consist of overseeing national supervisors of the financial and non-financial sectors. In case of emergency, if the national supervisors request assistance from AMLA or if AMLA deems the national supervisor's work insufficient, it may take over the supervision of an OE of the financial sector. The EC official interviewed was very keen to emphasise the national supervisor's value and importance in AML. Third, the authority will be in charge of assisting FIUs in identifying transnational ML cases and thus fostering international cooperation of FIUs. Fourth, AMLA will have the authority to issue standards and guidelines for supervisors, OEs and FIUs. (AMLA proposal, 2021)

The improvements expected from AMLA are that supervision at the Union level will enable better and more effective supervision of Eu-wide operating OEs as well as more comprehensive and speedier cooperation among FIUs. AMLA will be assigned the European Banking Authority's (EBA) AML competences. Considerations of extending the EBA's AML competences were discarded. The reasons were that the EBA lacks experience in direct supervision and in dealing with the non-financial sector. And an intricate division of decision-making, separating AML powers from all other non-AML powers, would have been needed. The proposal states that AMLA will be established in early 2023. At the time of writing in mid-February 2023, a headquarter of the authority has not yet been found. (AMLA proposal, 2021)

3.10.2 The Proposed Anti-Money Laundering Regulation

The EC for the first time proposes an AML regulation which is directly applicable law in the MS. Until now, the AML framework consisted of directives which need transposition into national law and which guarantee "minimum harmonisation" (EC official, p. 2) among MS. The proposal refers to the impact assessment's (2021) finding of the current AML framework's absence of clear and consistent rules that triggered the proposal of an AML regulation. The impact assessment further states that MS and OEs have adopted AML rules to a varying degree. The differences lay in MS' selection of OEs, identification of beneficial ownership of legal entities, powers of supervisors and FIUs and the cash ceiling. These differences create uncertainty among companies which may be OEs in one MS but not in another. Multinational enterprises thus are subject to varying AML obligations across the EU, which may hamper their compliance. The impact assessment concludes that the diverging implementation leads to "insufficient and ineffective application of AML/CFT obligations that fails to adequately prevent criminals" (p. 19) from laundering money in the EU. Thus, the fragmentation and loopholes identified triggered the proposal for a regulation. (AML proposal, 2021)

The proposal emphasises that there are only certain realms that are included in the regulation, namely the rules that apply to OEs. The rest remains within the scope of the directives. The EC official interviewed points out that it would be inappropriate to regulate by law where MS shall locate their FIU or supervisor. The major amendments following the proposal are the following. The list of OEs will be expanded to include, inter alia, crypto-asset service providers and crowdfunding platforms. The regulation lays down in greater detail rules for OEs regarding the identification of ML risks or the obligation to nominate a compliance manager responsible for the adoption of AML rules. In terms of customer due diligence, the proposal entails more detailed specifications on customer identification compared to previous directives. Requirements regarding third countries are revised. For the identification of third countries and their classification according to their risk level, the EC will rely on the FATF or on its own assessments. Third countries will be classified into two categories. The first corresponds to high-risk third countries subject to all enhanced customer due diligence measures. The second category of third countries is subject to enhanced due diligence measures adopted to the particular country. AMLA may assist the EC in classifying third countries. (AML proposal, 2021)

New requirements concerning PEPs provide, among other things, that MS are obliged to communicate a list of functions that qualify for the PEP status. OEs may outsource their due diligence duties to external service providers, but the ultimate responsibility nevertheless remains with the OEs. Moreover, the proposal excludes certain countries, e.g., high-risk third countries, where such service providers may not be located. The aforementioned problem with diverging definitions of beneficial ownership across MS is now tackled with a uniform threshold of 25% plus one share that constitutes beneficial ownership. The definition of beneficial ownership does not differ from previous definitions, but it defines a uniform threshold. Previously, the threshold was a minimum standard and MS set lower thresholds, complicating the identification of beneficial owners across the Union, as the impact assessment demonstrates. The regulation attempts to harmonise the reporting behaviour of OEs across the Union as much as possible by providing concrete reference points to look for in suspicious transactions, e.g., customer information, the risk profile and the circumstance of the transaction. Moreover, AMLA is tasked with developing a reporting template to be used in the entire EU. The regulation provides for a cash ceiling for one-off purchases of goods or services worth more than €10,000. Lower cash ceilings in place in MS remain valid. The cash ceiling does not include private transactions among individuals. Furthermore, anonymous crypto-asset wallets are banned. (AML proposal, 2021)

3.10.3 The Proposed Anti-Money Laundering Directive

This proposal also points to the impact assessment's (2021) finding of the current AML framework's absence of clear and consistent rules, as discussed in more detail in the previous chapter, that gave the impetus to present a new AMLD. As the AML regulation draft states, the regulation covers requirements applicable for OEs, while the directive will focus on topics that demand more leeway for MS, broadly described as the "organisation of the institutional AML/CFT system" (AML proposal, 2021, p. 2).

The novelties of the directive are the following. The draft provides guidance for OEs on how to handle missing information on beneficial ownership or how to act when in doubt about the information provided. In the former case, the company shall state in the register that there is no beneficial ownership information and provide reasons. In case of doubt on the information provided, the respective company is supposed to provide additional documents for verification, such as protocols or minutes of board meetings. Besides describing the FIU's analysis function, the draft for the first time lists access to information that shall be made available to the FIUs. For instance, the directive demands direct access to information on wire transfers or on OEs, direct access to fiscal data, real estate registers, international travel data or national passports and visa registers. Furthermore, direct or indirect access shall be granted to any information kept by public authorities or private entities for the purpose of fighting crime. The directive demands that FIUs publish annual activity reports and give OEs feedback on their STRs. AMLA is tasked with supporting FIUs in harmonising information exchange. The new directive lays down tasks and powers for supervisors to enable effective AML supervision. Such tasks are, e.g., handing over relevant information to OEs, including risk assessments, constantly assessing OEs' ML risks and overseeing their compliance with AML requirements. For the first time, an AMLD includes self-regulatory bodies in the AML framework. Self-regulatory bodies may supervise professions of the non-financial sector, e.g., notaries or lawyers. The directive demands that these self-regulatory bodies are also subject to supervision to ensure effective AML supervision on their part. (AMLD proposal, 2021)

In addition to the pecuniary and administrative sanctions introduced by prior directives, the new directive proposes measures to be applied to minor breaches where sanctions do not apply. Examples of such measures are recommendations, public statements or orders directed towards OEs. In this endeavour, AMLA will be tasked with categorising breaches according to their severity along with listing measures and sanctions that apply correspondingly. (AMLD proposal)

3.10.4 The Transfer of Funds and Certain Crypto-Assets Regulation

The EC also proposed a regulation "on information accompanying transfers of funds and certain crypto-assets" as a recast of the existing regulation 2015/847. As the title indicates, the proposal adds crypto-assets and crypto-asset service providers to the existing regulation that requires payment service providers to collect and transmit information whenever funds are transferred. The proposal now acknowledges the ML risk inherent to crypto assets and imposes the same requirements on them that payment service providers are already subject to in the existing regulation. Crypto assets, such as Bitcoin and Ethereum, are part of the family of virtual assets that are defined by the FATF as a "digital representation of value that can be traded digitally or transferred and can be used for payment and investment purposes (…) and do not include representations of fiat currencies (…)" (FATF Recommendations, 2022, p. 132) upon which this recast relies. Similarly, the definition of crypto-asset service providers corresponds to the FATF's definition of virtual asset service providers that "on behalf of natural or legal person exchange between virtual assets and fiat currencies, exchange between one or more forms of virtual assets or transfer virtual assets (…)" (FATF Recommendations, 2022, p. 133). Crypto-asset service providers of the sender are required to garner and transfer information when they execute traditional wire transfers, or they transfer crypto-assets to another OE that is another crypto-asset service provider, such as a bank, for example. The requirements apply to transactions in fiat currency and crypto assets. The information included in the transaction shall be the name, account number, address and personal document of the sender as well as the name and account number of the recipient. The new regulation applies when crypto assets are exchanged for fiat currency and vice versa; transactions that involve only the exchange of crypto assets are not subject to the regulation (Mussler, 2022). (transfer of funds regulation, 2021)

4. State of Research

4.1. Effects of Money Laundering

It is important to lay out which effects ML has for two reasons. First, to illustrate the negative consequences. And second, building on the consequences to highlight the relevance, urgency and importance of AML. Some researchers have been focussing their attention on the effects that money laundering has. Ferwerda (2012) maintains that there is one direct effect of penalising ML, namely that law enforcement has an additional instrument or “second chance” (p. 31) to catch offenders. Through AML, law enforcement can get to the predicate offence. All other effects of criminalising ML would be indirect, Ferwerda deducts. Hendriyetty and Grewal (2017), in line with the FATF, for instance, show that money laundering leads to increased criminal activity. So money laundering incentivises to commit more crimes while also reducing tax revenues and broadening the shadow economy. Dowers and Palmreuther (2003) focus on a wider field of consequences. They find that money laundering causes a more vulnerable financial system and has damaging macroeconomic effects causing monetary and socio-economic instability. Similarly, unchecked money flows create changes in money demand that are not explicable and volatile flows of money and exchange rates (FATF FAQ, n.d.). The international standard setter adds that businesses which are exploited for ML suffer reputational damages and risk complicity and infiltration by criminal groups. In addition, considering the bigger picture, the FATF points out, ML compromises ethical standards, threatens society, democracy and the rule of law, particularly with the jeopardy of money launderers infiltrating economic sectors or influencing political decisions with bribes.

Camdessus (1998) claims that dirty money is spent less profitably than legitimate money and thus hinders economic growth. This diverse spending pattern between dirty and legitimate money is logical since criminals are primarily interested in protecting their gains from the grasp of law enforcement authorities and less in high investment returns (Walker, 1995). Where such dirty and legitimate money competes, Walker maintains, prices and competition might be likely distorted as criminals may have more capital at their hands to spend and displace legitimate buyers from the market. However, according to Ferwerda (2012), there are also positive effects of ML. The influx of laundered money results in more available capital and higher earnings for financial sector businesses. The author also asserts that academics are undecided on the net long-term positive or negative effects of ML and states that most effects of ML are derived from theory without sources or evidence. In this regard, Unger et al. (2006) write that “most literature on ML effects is pure speculation” (p. 102), while Gerbrands et al. (2022) conclude that there is almost no empirical support for such findings.

The interviewees offer similar insights on the effects of ML. The regional official, the prosecutor and the EC official stress the distorting impact of ML on markets. The EC official points out that ML hinders fairness in the financial system for all participants and increases insecurity. The regional official mentions that the inflow of dirty money inflates prices, while the prosecutor names a specific example where investments of a real estate fund in the Berlin real estate sector caused suspicion and resentment in public (p. 29). Regarding the political dimensions, the regional official offers that her primary goal in AML is to impede any criminals from exerting political power thanks to their ill-gotten gains. The compliance officer urges that ML is not a victimless crime and that if ML goes unchecked, criminal groups will “scratch at the state and call it into question” (p. 8), and ultimately, “every state can start packing their bags” (p. 8). The FIU official raises the problem of lost tax revenues for governments.

4.2. Estimates of Money Laundering

A controversial stream of literature is concerning the magnitude of money laundering. Having a picture of how much money is estimated to be laundered can be argumentative support for governments to underline their AML efforts and to allocate AML resources (Ferwerda, 2012). However, there are researchers who criticise estimates of money laundering as inaccurate or misleading and, therefore, counterproductive (Thioumi, 2005; Pol, 2018). Unsurprisingly, official figures do not exist, and if estimates are conducted, they are often presented with a range, reflecting the uncertainty. Unger (2013) outlines the methods of measuring money laundering. On the one hand, proxies are utilised, such as estimation in relation to GDP, the global proceeds of crime or the discrepancies in the balance of payments. A common reference is the IMF’s “consensus range” of 2 to 5% of the global GDP (Camdessus, 1998). While Unger (2013) notes that this estimate by proxy is not scientific, Ferwerda (2012) terms it as a “guesstimate” (p. 14).

On the other hand, there are estimations through economic models. One of those is Walker’s gravity model, which is regarded as one of the most influential and disputed (Ferwerda, 2012). Walker estimates ML per country in four steps searching for crime data in each country, estimating the proceeds of these crimes, calculating the percentage of the proceeds that are laundered and finally, estimating how the laundered money is distributed worldwide. In summary, the total money amount laundered equals the amount of crime multiplied by the proceeds and multiplied by the share which is laundered. The downside to this model is that the estimates may not be reliable since the assumptions lack empirical support and the data available is scarce. However, Ferwerda (2012) concludes that the model's results appear solid because they are in the IMF's consensus range. (Ferwerda, 2012)

Ferwerda et al. (2020) calculate with an econometric gravity model that in OECD countries, 1.9% of the GDP is laundered, whereas globally, the average is 3% of GDP. To have a rough idea of how much money is laundered in the European Union (EU), it is estimated that organised crime groups in the EU earn €110 billion per year (Savona & Riccardi, 2015). Europol (2017) vaguely considers 0.7 to 1.28% of the EU GDP suspicious. Bussmann (2018) estimates that at least €100 billion are laundered annually in Germany alone, of which €20 billion are laundered in the non-financial sector. Notably, the prosecutor and the regional official unasked expressed scepticism toward Bussmann's estimate.

4.3 Money Laundering Schemes

The following chapter summarises the literature and relevant findings in the interviews conducted in regard to different ways to launder money. Knowing the criminals' ML strategies is important in order to best develop AML measures tailored to the schemes. The chapter will be divided into two subchapters. The first analyses traditional ML schemes, and the second focuses on online ML techniques, including cryptocurrencies, that emerged in recent years with the age of digitalisation. This shall not be an exhaustive overview of ML schemes, as there are endless ways to launder money. Rather, the most relevant schemes identified in reviewing academic literature and the interviews are described.

4.3.1 Traditional Money Laundering Schemes

The FATF (2006) identifies three main methods to launder money: through physically moving cash, via the financial system and via physically moving and trading goods. The most basic way to launder money is shown in Figure 1 (p. 1), which is a classic depiction of ML with its three stages of placement, layering and integration. The criminal has dirty cash on hand that he made by selling drugs, for example, and deposits it into his bank account. A single criminal with little cash could be finished here already, given that the deposit does not raise the bank's suspicion. A network of drug dealers that deposit higher amounts of money may need to split up the deposits into small amounts in the first place, so-called smurfing (Teichmann, 2020). And subsequently, transfer the money across different accounts, domestic and abroad, to conceal the origin. The challenge here is not to alarm the bank. Should the bank inquire about the origin, justifications like gifts, heritage, cash salary or tips may suffice. However, this scheme is limited to small amounts of money. An alternative that allows for higher amounts of money to be laundered is cash-intensive businesses (Ferwerda, 2012). Such businesses can be restaurants and cafes that are run normally to uphold the facade with periodic dirty cash infusions in the form of fake invoicing.

While these two schemes are operated with cash and oftentimes attempt to penetrate the financial system, there are predicate offences, for instance, fraud, where the ill-gotten gains are already placed in bank accounts by the victim (Ferwerda, 2012). At this point, the layering immediately starts in order to hide the origin. A commonly used strategy to transfer money across a host of bank accounts, the FIU official explains, is the use of money mules. Money mules make their bank account available to forward dirty money and are paid with a small commission. Money mules may also cash out the proceeds and hand them to criminals, which may require more ML steps afterwards (Custers et al., 2020). The official points out that the money mules may actually be recruited with credible job advertisements and may be employed with contracts of employment as brokers, for instance. Hence, money mules may be unaware that they are committing a crime. On the contrary, there are ML schemes to avoid the financial sector, e.g., casinos and Hawala banking (Teichmann, 2020). Hawala banking is a money transfer system that works with codes, the prosecutor explains. Person A goes to a Hawala broker in Country A, deposits money and asks the money to be transferred to Country B. A specific code is defined to ensure that the money goes to the correct recipient. The Hawala broker in Country B is notified by the broker in Country A of the code and amount of money deposited. The money's recipient in Country B must now merely say the correct code, and he will receive the money from the broker in Country B. The brokers retain a provision fee.

The FATF (2006) defines trade-based ML as "the process of disguising the proceeds of crime and moving value through the use of trade transactions" (p. 5). Specifically, the FATF lists four basic techniques: over- and under-invoicing, multiple invoices, over and under-shipment or falsely declared products or services. An example of over-invoicing is when Company A sells Company B products worth €50,000 for €60,000. Company B pays Company A €60,000 and sells the product for €50,000 at the market. Company A transfers the excess €10,000 back to Company B. Alternatively, Company A sells Company B products worth €50,000 but sends four invoices with various justifications, ideally involving multiple bank accounts. Company B thus has an apparently legitimate reason to pay €200,000 for products worth €50,000. Naturally, both companies need to be in on the schemes for them to function. Both schemes provide a façade to funnel more dirty money than justified by market prices into the economic cycle. (FATF, 2006)

The prosecutor lists trade-based ML as one scheme that is most difficult to investigate because it would be challenging to comprehend the transactions. Trade-based ML becomes even more complex when mixed with goods whose values are difficult to measure, such as art, becoming a “dream” (p. 16) for criminals, as the prosecutor puts it. He describes a fictitious example. A person buys a piece of art for €200,000 and a few weeks later sells it for €2,000,000 to someone else. The buyer can justify the price by saying that the painting is simply so much worth to him. And although the prosecutor recognises a suspicion, he states that his hands are tied.

Another means of laundering money is through investments in the real estate sector. The relatively high security and popularity of investments, the potential profits through rent or resale, and the possibility to use property privately or for business render real estate an attractive ML vehicle (Ferwerda, 2012). Furthermore, since real estate registers only list legal owners, it is possible to hide the beneficial owner. ML strategies in real estate may consist of paying the price fully or in part with ill-gotten gains, which is even possible in cash in Germany, for example (Teichmann, 2017). In addition, according to Teichmann, criminals would eye degenerated property which can be renovated, financed with the criminal proceeds, and sold for a higher price afterwards. The researcher interviewed participated in a research project called “Wem gehört die Stadt” (Who owns the city?, European project: Cities for Rent), whose goal is to identify the beneficial owners of real estate in European cities. The research project demonstrated that a significant share of European real estate is owned anonymously. The main finding concerning ML, the researcher explains, is that the European real estate market or companies are the target of money from foreign criminals prewashed abroad and funnelled into the real estate market through the international financial market. And the anonymous ownership structures behind real estate and company shares help conceal the money’s origin.

Criminal organisations, the prosecutor explains, employ or buy companies providing professional ML services. In fact, the FATF (2018) terms this phenomenon “professional money laundering” defined as “individuals, organisations and networks that are involved in third-party laundering for a commission” (p. 6). Third-party ML means that the launderer was not involved in the predicate offence. The FATF report presents the business model of professional money launderers, which consists of three stages. First, the service providers collect the criminal proceeds in cash or receive them via bank accounts or virtual currencies. Second, the ML takes place, e.g., with the help of virtual currencies, shell companies or trade-based ML. Third, the laundered proceeds are returned to the client. Reasons to engage professional ML services are to separate to the greatest extent possible the act of ML from the predicate offence and exploit the know-how and network of professional launderers in cleaning large amounts of money internationally. (FATF, 2018)

Other ways of laundering money are the purchase of gold, jewellery, diamonds, antiquities and art or with the help of consulting companies, Mergers and Acquisitions (M&A) transactions and currency exchanges (Teichmann, 2017).

4.3.2 Online Money Laundering Schemes

The rise of the internet has not only enabled new business opportunities but also opportunities to commit crimes and, consequently, also new means to launder money. According to estimates, cybercrimes generated damages totalling $6 trillion in 2021, which, in terms of numbers, would constitute the third largest economy in the world (Wronka, 2022a). Types of cybercrimes can be, inter alia, phishing emails/messages, online fraud, stealing credit card information and ransomware, i.e., hacking a computer, blocking its owner from access and granting access only after a ransom has been paid to the perpetrators. What makes the internet so attractive for ML is the anonymity, avoidance of personal interactions with victims and law enforcement and the rapidity of actions and global access to victims (Wronka, 2022a). Since cybercriminals are not limited by borders, Wronka (2022a) points out, they can conduct their business anywhere, being better able to cover their traces. Furthermore, online businesses and websites are cheap, quick and easy to construct for hideouts (Alsaibai et al., 2020).

A way to launder money online is through gambling. Such gambling providers usually offer multiple anonymous payment options to place money, such as credit cards, cryptocurrencies or debit cards (Wronka, 2022a). Once the money is placed, it can be laundered, for instance, with so-called Chip Dumping: A group of people involved in the scheme gamble and intentionally lose, so one receives the entire money, which is then cashed out (Zefera et al., 2021). A simpler scheme could be to deposit the money, make a few gambles with small amounts just to pretend, and then withdraw the money (Wronka, 2022a). The criminal can now justify the money with winnings at online gambling. Mickhaylov and Frank (2016), in their analysis of ML strategies of Russian hackers, find that online gambling is the second most used scheme. Wronka (2022a) lists the following advantages to ML via online gambling: First, the websites are oftentimes not registered, which means that authorities are unaware of them. Second, online gambling attracts large sums of money worldwide, and the bulk of money facilitates avoiding suspicion.

Also the video gaming industry, with its 3.2 billion players and $184.4 billion in revenue in 2022, can be a lucrative spot for ML (Newzoo, 2022). Companies in the gaming industry are not OEs and thus lack AML regulation (Wronka, 2022a). Criminals, with so-called in-game trades, can buy objects, tools or game currency in video games using vouchers or stolen credit cards, thus placing their dirty money. Although selling or exchanging these goods for real currency outside the game is not allowed, these rules can be easily circumvented by offerings in black markets. Criminals attract buyers by offering the items at lower prices. (Richet, 2013; Wronka, 2022a)

Alternative ML schemes can take place in social media networks or on crowdfunding platforms. Social media users may be victims of online fraud and buyers of ill-gotten gains, typically virtual currencies (Zhou et al., 2017). The criminal proceeds are advertised on social media and subsequently sold at online retailers such as eBay. Alternatively, social media users may be acquired as money mules who participate in a series of transactions or cash out the illegally obtained prey (Wronka, 2022a). By creating fake crowdfunding campaigns, on the other hand, money launderers may use stolen credit cards to funnel money into the platform and withdraw it (Teichmann et al., 2022).

ML in cryptocurrencies, defined in chapter 3.6, was estimated to be $23.8 billion in 2022 and $61.7 billion in total in the past five years from 2018 to 2022 (Grauer et al., 2023). There are numerous reasons why cryptocurrencies are used for ML purposes. First, transactions are anonymous. The transaction works as follows: The sender, acting under a public key as a pseudonym, sends the cryptocurrency to the recipient's public key. The transactions, such as with Bitcoin, are registered in a public ledger, the blockchain. So transactions can be tracked and linked to a public key, but the identity remains only known to the cryptocurrency platform. Second, transactions are decentralised, i.e., there is no intermediary, as transactions are executed on the platform. Thus, there is no intermediary like a bank or payment service provider that could monitor the transaction. Third, worldwide transactions within seconds across borders are possible. (Wronka, 2022b)

Since cryptocurrency transactions can be traced back to public keys, a so-called mixer can be used to conceal the link between sender and recipient (Clusters et al., 2020). A mixer receives Bitcoins, for example, mixes different Bitcoins, adds new ones and ultimately sends them back to a different key (Van Wegberg et al., 2018). The prosecutor interviewed claims that the use of Bitcoins would be "wonderful" (p. 20) for law enforcement and easier to trace than cash because transactions are tracked on the blockchain. However, mixers would pose a challenge. Although there are tools to decipher transactions executed through mixers, the results are often based on probabilities which would be difficult to withstand in court. The FIU official complains that the identification of the person holding the cryptocurrency would be more complicated than with bank accounts. The official also mentions the masses of transactions and the fact that cryptocurrency platforms are scattered all over the world in different jurisdictions as challenges.

The FIU official reports from experience that it is often the case that criminals buy cryptocurrency vouchers with incriminated money and thus convert their fiat money into cryptocurrency. At that point, the money is often vanished for law enforcement. Custers et al. (2018) confirm the official's experience. They find that perpetrators, in a second step, usually buy goods with the crypto capital, forward the assets to other accounts or credit cards and then withdraw them or simply leave the assets where they are. Usually, the authors find, a combination takes place. Wronka (2022b) maintains that criminals may also deposit their assets into Bitcoin ATMs, which is rare, though, since too conspicuous. Alternatively, the darknet would be common for exchanges of fiat money into crypto assets. In the subsequent layering stage, the researcher depicts two alternatives: either conduct a series of transactions or use a mixer to cover the tracks. Finally, according to Wronka, the laundered assets are integrated into the legal economy by converting them into fiat money or by utilising the crypto assets for purchases. In 2022, around 50% of the ill-gotten gains in cryptocurrencies were transferred to centralised exchanges where the assets can be converted into fiat money (Grauer et al., 2023).

4.4 Data Protection in Anti-Money Laundering

Data protection sits at the heart of AML, given the importance of cross-border information exchange between OEs, FIUs, law enforcement and supervisory authorities. Not least due to the increased use of electronic payment methods, a person's bank account statement can reveal insights into daily habits or very private information, such as political, cultural, religious and sexual orientation (Milaj & Kaiser, 2017; Vogel & Maillart, 2020). Wojciech Wiewiórowski, the European data protection supervisor, in fact, demands that data connected to someone's sexuality or ethnicity be left out of the AML framework (Wiewiórowski, 2021). The threshold for OEs to forward such information on customers to the authorities is low. The AMLD4's article 33 (1) *a* states that STRs need to be filed whenever an OE "knows, suspects or has reasonable grounds" to suspect ML. The FIU official states that a banker's "gut feeling that something is not right" (p. 6) suffices. The prosecutor succinctly summarises the problem of data protection in AML:

> "Everyone is suspected. So when the reports still came to us, for an unusual thing or for a clumsily formulated reason for the transfer – because with the report comes automatically the account data and everything – then I have people's lives in front of me for something where I would say, I don't think the state should know that. At that time, it went to me, to the LKA, to the BKA (German state and federal police office) and led to a file mark and things like that. And that's not the point of criminal law from my point of view" (p. 22).

Vogel & Maillart (2020) note that whether a suspect's personal data will be filed to law enforcement primarily depends on untrained employees of OEs who may sloppily handle such delicate information and may be driven by economic interest rather than earnest intentions. In addition, people are unaware that they are monitored and that their data is forwarded to law enforcement authorities due to the no-tipping-off requirement (Milaj & Kaiser, 2017). Milaj & Kaiser (2017) investigate the AMLD4's data protection rules. They conclude that the constant data collection without knowledge of the subject would constitute an invasion of privacy which is "very serious, as it generates the feeling of being subject of constant surveillance" (p. 125). Furthermore, they find that the data protection rules of the AMLD4 are excessive and would violate the citizen's rights to privacy and data protection. The researcher interviewed, the prosecutor, Vogel & Maillart (2020) and Milaj & Kaiser (2017) concord that certain investigation rights that were abolished for law enforcement were outsourced to the private sector of OEs. This led to an "auxiliary investigative activity" (p. 9) for OEs, the researcher says. The prosecutor exemplary names data retention and dragnet searches. The researcher interviewed opines that following the "all crimes" approach "it has become established in principle that very often data can be collected and analysed without suspicion under the guise of combating money laundering" (p. 7). He identifies violations and serious invasions of privacy and data protection rights of citizens, which could only be justifiable in the fight against organised crime in his opinion.

The controversy regarding data protection in AML triggered a recent judgement of the Court of Justice of the European Union (CJEU) invalidating Article 5 (*c*) of the AMLD4 as amended by the AMLD5 – that beneficial ownership information must be publicly available – due to privacy and data protection concerns (CJEU, 2022). The judgement is in line with Wiewiórowski's (2021) opinion who states that access should be limited to competent authorities and OEs in complying with AML. The researcher, on the other hand, criticises the ruling because it would impede public transparency and journalists' work, calling it "absurd" (p. 6).

The legal adviser of the EP points out that AML rules need to be proportionate and that risks of ML and freedom rights need to be considered. He points to totalitarian states that unsuccessfully attempted to extinct crime with total control of their population. Asked about data protection, the FIU official replies that although the topic is frequently discussed, it plays a minor role in day-to-day dealings. He refers to legal bases allowing for extensive information exchange. The senior compliance manager thinks that data protection rules "should enable more possibilities" (p. 10), as they are hindering swift and comprehensive information exchange.

5. The Effectiveness of the EU Anti-Money Laundering Policy

5.1 Effectiveness of the EU Anti-Money Laundering Framework

A major research stream in ML is focused on assessing the effectiveness of AML frameworks (Tiwari et al., 2020). According to the authors, the motivation for analysing the effectiveness of AML policies lies in providing a justification for the major costs incurred by AML. Following this line of thought, Ferwerda (2018) assessed the effectiveness of AML in the EU from a cost-benefit perspective. The author weighs the costs of AML, such as budgets for supervision and law enforcement agencies, against its benefits which are considered to be the confiscated proceeds and the reduced money laundering. The difficulty of this approach is that the costs are possible to estimate, however, the benefits are difficult to quantify. Hence, the estimated costs of €2,157,059,590 outweigh the benefits of €23,176,102 by far. Ferwerda concludes that the cost-benefit analysis evokes a dilemma that positions an expensive AML policy with unknown benefits against the legal and moral obligations of the rule of law to fight money laundering.

Some researchers focus on the harmonisation of AML measures, arguing that harmonisation increases the effectiveness of an AML framework (Putnam, 1988; Friedrich & Quick 2019; Unger, 2020). According to Unger (2020), harmonisation, i.e., coordination among MS regarding the exchange of information, fines and agreements on new EU bodies, reduces legal and practical impediments. The researcher also points out that the US AML policy is more effective because it's more powerful due to its extraterritorial power. In other words, the US can fine and prosecute non-US banks utilising US-Dollars even outside the US. Implementing such extraterritorial power for the EU would be challenging, particularly because not all MS are part of the Eurozone. In general, it is complicated unifying AML even in a community of states such as the EU where MS have differing legal and institutional systems as well as varying goals and interests (Unger, 2013).

Zoppei (2015) offers a critical evaluation of the effectiveness of AML in the EU. The fact that there is little evidence of the effectiveness of the current policies in place would make them just "symbolic" (p. 142). Moreover, Zoppei mentions the negative effects of AML policy on poorer and developing countries, which have to cope with policies which are designed for more sophisticated financial systems and which are expensive. Also, the social costs of punishment and exclusion should not be forgotten. All in all, Zoppei concludes that the AML policies do not fulfil the principle of proportionality and therefore proposes alternatives: higher investments in education, a higher priority on secret jurisdictions and offshore financial centres, which are often involved in money laundering, and legalising drugs so that the proceeds do not have to be laundered. Also Vogel and Maillart (2020) critically view approaches to assessing the effectiveness of AML systems for various reasons. They maintain that unclear objectives and lack of data on AML complicate such an endeavour. Additionally, they hold that AML is a tool to identify the predicate offence, and as such, AML is an "ancillary subsystem" (p. 895) to the criminal justice system. Consequently, it would be insufficient to evaluate the effectiveness of a criminal justice system merely on the basis of AML rules.

Pol (2018), too, offers a very critical and almost cynical assessment of the effectiveness and outcomes of AML measures with his paper "Uncomfortable truths? ML = BS and AML = BS^2". The author assesses the effectiveness of AML by utilising interdiction rates as an interim proxy indicator. Interdiction rates measure the share of criminal proceeds that are frozen or confiscated. However, it remains unclear whether AML measures or other measures lead to the confiscation of criminal proceeds. Another study by Pol (2017) finds that around 80% of forfeitures in New Zealand's real estate sector were due to traditional policing methods independent of AML policies. To get a picture of international interdiction rates, the study cites, among others, Europol's statistics which show that in the EU, 2.2% of the criminal proceeds are frozen and 1.1% are confiscated as well as the UNODC numbers demonstrating that 0.2% of the criminal proceeds are seized annually, whereby criminals keep 99.8% of their earnings. The UNODC's report contrasts the 0.2% seized globally linked to ML with illicit opiates and cocaine seizures of 20% and 40%, respectively, posing the question of "whether money launderers really are so much smarter than drug traffickers, or whether there is something wrong with the existing control system?" (UNODC, 2011, p. 131). Pol concludes that the status quo of the AML system "appears almost completely ineffective" (p. 1) in tackling money laundering and that "more of the same" (p. 304) will not change that. (Pol, 2018)

Deleanu and Ferwerda (2014) take a different approach to assessing the effectiveness of AML policy in the EU. They weigh estimates of ML in terms of percentage of GDP, i.e., the threat of ML in a country, against various policy measures, i.e., the corresponding responses to the threat, and assess whether the responses taken are proportionate to the risk of ML. The study considers seven policy responses: compliance score with FATF Recommendations; legal effectiveness; implementation timeliness of the AMLD3; FIU response scores, such as data access, budget and the processing of STRs; information flow score, international cooperation score and the number of convictions. The authors acknowledge that, for instance, diverging availability of data and the compliance with FATF Recommendations or the timelines of transposing the AMLD3 represent more "law in the books compliance" than "law in action compliance" (p. 189) and make cross-country comparisons problematic. To interpret the results, MS are classified into three zones. A white zone where the threat of ML is low, but the policy response indicator is high. Here, the policy response is over-proportional in relation to the risk and the country is on the "safe side" (p. 199). The black zone indicates high threats and disproportionally low policy responses. MS in the grey zone show medium threats and more or less proportionate responses. The results demonstrate that most MS are in the white zone for most indicators. For the policy response indicators, such as information flow score and the number of convictions, most countries are in the grey zone, except for two and five countries in the black zone, respectively, suggesting that there is room for improvement. The authors conclude that the MS "perform relatively well" (p. 204), as most end up in the white zone. However, every MS can improve in at least one policy indicator.

5.2 Effectiveness of Obliged Entities Submitting Suspicious Transaction Reports

It is worth analysing how effective the system of STRs is since they are at the core of the AML system. The OEs are at the forefront of the efforts to fight ML with their obligations to identify customers in the know-your-customer process as part of customer due diligence and to monitor customer behaviour and transactions. In case of suspicion, an STR must be filed to the responsible FIU. The STR filed by the OE gets the ball rolling. The FIU analyses the STR and decides whether to discard the report or send it to the prosecuting authorities for further investigation if the suspicion is confirmed. Without the OEs and their STRs, the FIUs and prosecuting authorities are basically blind and the AML system is non-functioning. This setting, where the government – which is primarily responsible for fighting ML including its law enforcement and prosecuting authorities – depends on information that only OEs can provide, can be classified as a principle-agent relationship with information asymmetry (Masciandaro & Filotto, 2001; Takats, 2007). Out of this constellation, an agency problem arises because banks, for example, can decide which information to pass on and may refuse to forward negative information (Takats, 2007).

According to Masciandaro and Filotto (2001), the success of AML regulation hinges on the OEs' level of acceptance, while its effectiveness increases with increasing influence on the OEs to follow their obligations. Whether OEs consider the obligations acceptable depends on the compliance costs they incur. The regulations should not allow for ineffective or counterproductive measures since that would increase the risk of ML. In the end, the risk of

ML will be a result of the balance between costs and expected gains from the AML regulation. (Masciandaro & Filotto, 2001)

This thesis suggests distinguishing between accepting the status of OE and acceptance of specific AML regulations because there is an important difference between the two. While it can be assumed that credit and financial institutions widely accept their mandate to monitor customers and transactions and to file STRs, especially since they have been the only addressees since the very first AMLD in 1991 and compliance departments are standard. The senior compliance manager suggests utilising the number of filed STRs as an indicator of OEs' awareness of their duties. According to a Europol (2017) study, 50% of STRs filed by the financial sector in 2013/2014 came from credit institutions and banks, being "overwhelmingly the most significant" (p. 14) reporting entities. Additionally, all FIUs in the EU name credit institutions and banks as their primary sender of STRs. The study also finds that merely ten per cent of the incoming STRs are forwarded to law enforcement. Also the AML officer does not question the fact that his bank is part of the AML system. The senior compliance manager, too, states that the awareness in the financial sector is different compared to that of the non-financial sector.

5.2.1 The Financial Sector Obliged Entities

Asked which challenges his bank faces in complying with AML regulation, the AML officer points out that requirements for banks have grown following the AMLD 2018/1673. Among professionals and in the literature (e.g. Vogel & Maillart, 2020), the term "all crimes" approach is established, which refers to the AMLD 2018/1673 Article 2 (1), which states that "any kind of criminal involvement" that is punished with imprisonment for a maximum of one year or for a minimum of six months, is regarded a predicate offence to ML. Prior to this amendment, the AMLDs entailed specific lists of predicate offences. In practice, this means that if OEs observe any crime that falls within the specified threshold in connection with a ML suspicion, they must report it to the FIU. As a consequence, the AML officer states that his bank's "reporting volume to the FIU has increased" (p. 1). He went so far as to claim that "we report a lot, but the mass of reports crushes the authorities" (p. 2). The EC official confirms this assessment, reporting that EU FIUs in meetings with the EC would complain about how they are overwhelmed by the number of STRs received. In addition to that, the banker affirmed the question of whether the bank would rather report too much than too little to avoid fines and liability. The prosecutor corroborates the overreporting phenomenon. He claims that his office would "collapse immediately" (p. 6) if the FIU were to forward every report it considers suspicious. To be able to manage that number of reports, the state of Hesse alone would be forced to engage an additional 500 police officers and 50 prosecutors, he estimates (p. 35).

That is also due to the fact that OEs are only excessively fined if they miss reporting a case which is later prosecuted for ML (Takats, 2007). As a countermeasure, Takats (2007) proposes to establish reporting fees for falsely informing competent authorities and reducing excessively high fees for not reporting.

The problem that arises out of overreporting is the decreasing quality and effectiveness of STRs because the FIUs lose track of reports and they have difficulties in prioritisation (AML officer). The prosecutor adds that the reporting threshold is below the penal threshold of initial suspicion. As the FIU official points out, OEs tend to report anything that looks somehow suspicious. In fact, there does not have to be a concrete suspicion, merely an AML officer's "gut feeling that something is not right" (p. 6) suffices for an STR. Similarly, the AMLD4's article 33 (1) *a* states that STRs need to be filed whenever an OE "knows, suspects or has reasonable grounds" to suspect ML.

Takats (2007) terms the phenomenon of overreporting "crying wolf", alluding to Äsop's tale "The Boy Who Cried Wolf" where the boy raises false alarms until he loses credibility. Applied to STRs, banks overreport due to heavy fines that loom if ML is not reported, which leads to flawed reports and diluted information for the FIUs (Takats, 2007). The author also finds that despite growing estimates of ML and although banks in the US have filed more STRs, the number of ML convictions has decreased. On the contrary, another study demonstrates that a growing number of STRs reduces the threat of ML in Italy, whereas overreporting impedes the FIU's speed in analysing the reports (Dalla Pellegrina et al., 2020). The switch in the period between 2007 and 2010 from a rules-based to a risk-based approach following the AMLD3 was a measure to mitigate overreporting by OEs (Dalla Pellegrina et al., 2022). The rationale is that OEs focus their efforts according to their identified ML risks. Dalla Pellegrina et al. (2022) analyse how the switch to a risk-based approach influenced the reporting behaviour of Italian OEs. Their findings show that the number of STRs which were false positives, i.e., STRs deemed not suspicious by the FIU, increased, while the number of suspicious ML cases not detected by the OEs decreased. Hence, their study suggests that the risk-based approach results in a trade-off between deterrence and accuracy of reports where deterrence overweighs at the cost of accuracy and OEs still overreport. The results of Dalla Pellegrina et al. can be partly explained by sanctions in Italy for OEs, which are heavy for not reporting ML and non-existent for overreporting. Gara et al. (2019), on the other hand, found that the number of STRs increased along with the quality of reports. In the Netherlands, the risk-based approach apparently fulfilled its purpose by mitigating overreporting while also improving the accuracy of reports (Unger & Van Waarden, 2009).

The banker not only criticises the so-called "all crimes" approach but also critically views the risk-based approach. The risk-based approach leads to banks' very individual and different approaches as they shall report according to their risk assessment. The prosecutor thinks that especially banks are not treated with respect and do not receive any help. Banks would not receive any feedback, which, however, would be crucial in valuing their contributions. Instead, banks are left in the dark, without knowing whether their efforts lead to anything at all. Moreover, the prosecutor opines that feedback would help justify ever-expanding compliance departments and their costs for banks. He partly blames fines and pressure exerted by the supervisory authorities on the banks, which in his opinion, are not necessary. All in all, he sympathises with banks and describes their situation as "frustrating in every way" (p. 36) and states that banks are "under enormous pressure and getting nothing in return" (p. 36).

5.2.2 The Non-Financial Sector Obliged Entities

In the non-financial sector, on the other hand, the situation is different. The problem starts with knowledge of the OE status. According to the compliance manager, many OEs are only aware of their AML obligations after being notified by the authorities and are "blindsided" (p. 3). Moreover, "there is a lack of understanding that one is obliged because they are being abused for money laundering purposes by their clients" (p. 2). Many consider only themselves and disregard the risk that criminal customers might exploit their businesses to launder money, asking, "I am not laundering money, so what do I have to do with the Money Laundering Act?" (p. 2). As a consequence, "there is little willingness to do anything" (p. 3), since AML measures are considered a costly burden these OEs did not choose and instead want to concentrate on their core business. Asked which OEs of the non-financial sector are typically unaware of their legal status, the manager lists real estate agents and goods dealers of all kinds, such as art, cars and precious metals. The interviewee is bewildered by her clients' unwillingness "to participate in the good cause (…) almost nobody is interested" (p. 4). She states that they merely cooperate because they are legally obliged to. However, there are also a few "self-confident" (p. 3) clients that – being aware of a Transparency International study (Trautvetter, 2021) which calculated that in Germany, OEs of the non-financial sector face an on-site inspection by the supervising authorities every 200 years – decide to "sit it out" (p. 3) and "wait until the authority comes"

(p. 3). The EC‘s supranational risk assessment (2022) attributes the non-financial sector ML risks in supervision and reporting behaviour. The report criticises OEs throughout the Union for reporting few STRs and thus infers that these OEs are not effectively identifying conspicuous ML cases.

According to the senior compliance manager, an important driver for the OEs' acceptance of AML regulation is the customers' acceptance. While it is widely known and accepted, she states, that bank customers have to undergo an identification process to open a bank account, in the non-financial sector, "it has simply not yet become so established that you have to play along" (p. 2) as a customer. A potential car or property buyer who refuses to identify himself translates into lost revenue if the OE is eager to comply with AML regulation and is, in that sense, "punished" (p. 2).

What about OEs' acceptance of AML measures? In this domain, the senior compliance officer identifies three problems for the non-financial sector in Germany: as previously mentioned, ignorance, i.e., the fact that OEs simply do not know they are subject to AML requirements, lack of resources and lack of know-how. Concerning the resources, she states that typically OEs of the non-financial sector are one-man or small businesses, such as real estate agencies or car dealers. The interviewee wonders how these companies are supposed to follow AML requirements. Financial institutions (of Article 3 (2) (*a*) AMLD4, which in Germany are classified and supervised as non-financial) and gambling service providers, on the other hand, are typically well aware of their AML duties. Friedrich and Quick (2019) in their study find that AML in the German non-financial sector is little standardised, lacks direction by the authorities and is thus on a "rather low level" (p. 13) and "heterogenous" (p. 13). These findings are corroborated by the already mentioned Europol study (2021), which shows that the numbers of STRs filed within the non-financial sector can greatly vary by country in contrast to the financial sector. For instance, in some countries, the gambling sector is the sector filing the most STRs, while in other countries, it is the sector filing the least STRs. The authors conclude that these discrepancies can only arise out of local differences.

5.3 The Effectiveness of Cooperation Among Financial Intellignece Units

According to Article 3 (2) of the AMLD3, the FIUs' main function is filtering the incoming STRs and only forwarding those to investigative authorities that are suspicious. This function is crucial in ensuring that authorities only receive substantial STRs worth investigating, particularly in light of the aforementioned overreporting by OEs. If another MS is involved, the

FIU is responsible for notifying its counterpart. According to the FIU official, another important task of FIUs is to keep in touch with OEs through Public-Private-Partnerships where information is shared and problems are discussed. Across the EU, there are different types of FIUs, which can be categorised as administrative, police or hybrid FIUs depending on the ministry they are allocated at (FIU official). Lanoo and Parlour (2021) criticise that EU FIUs are understaffed and lack technical equipment, focus too much on their jurisdiction and are generally swamped with STRs. Lanoo and Parlous advise developing common rules for STR templates as well as obliging FIUs to give OEs feedback on their reports.

A European Commission report (EC FIU, 2019) assesses the problems concerning the cooperation between FIUs. The results indicate that FIUs' cooperation is impeded by a lack of adequate IT equipment, varying access to national databases and repeated technical problems with FIU.net, the digital cooperation platform for FIUs. Most strikingly, the majority of FIUs have not always shared information when required to do so, and some did not share any information at all. In fact, the number of cross-border STRs exchanged by FIUs has stagnated since June 2017. Moreover, a central reception of STRs in the EU was denied by FIUs due to legal and linguistic barriers. To mitigate these problems, the report suggests legally binding standards, templates and guidance for the FIUs. (EC FIU, 2019)

The EC's impact assessment of 2021, which is part of the EC's legislative package, analysed the EU AML framework's status quo. Concerning the FIUs, the report states that FIUs use their own reporting templates and methods to analyse STRs, although there is a common template. The FIUs' different templates and approaches would hamper the comparability of information and quick response times. This feeds into an overarching problem of a lack of cooperation among FIUs, despite the fact that most major ML cases in the EU were international in nature. The analysis of international cases is left up to national FIUs, which hesitate to take up joint analyses because they lack a centrally provided design and the instruments to do so, according to the report. In summary, the report concludes that these problems impede a quick and functioning collaboration and, thus, an effective combat against ML. (EC Impact Assessment, 2021)

The two interviewees mainly concerned with FIUs, namely the FIU official and the prosecutor, have starkly different opinions of the FIUs. The prosecutor has a very critical view of the German FIU. He goes so far as to say that the FIU could shut down, as the German FIU is an administrative FIU and has claimed, according to his accounts, to have nothing to do with criminal law because they are an administrative authority. The prosecutor sees a stark paradox in the FIU claiming to have nothing to do with criminal law, considering that ML is a criminal offence and the EU's effort to fight ML on the basis of criminal law (AMLD 2018/1673). The prosecutor sees a basic problem with the FIU's mandate that it has to filter STRs and, on the other hand, it must forward any reports it considers suspicious below the threshold of initial suspicion at which prosecutors open an investigation. Consequently, the prosecutor concludes that the FIU is stuck in a dilemma. If it discards the STR, there is a substantial probability that it violates its obligation. If it filters little or nothing, its work is obsolete.

He states that cooperation is always pretended but not actually done, calling the status quo "sad" (p. 5). A typical example of cooperation with the FIU is the following: His office opens an investigation into a case where it later realises, due to the notification of the OE, that this case had already been reported to the FIU months or years ago. It often turns out that the FIU did not forward the report. However, there are exceptions of good cooperation. Asked whether he has knowledge of problems at other EU FIUs, he states that many have different troubles. For example, OEs would struggle to report to a criminal or police FIU if the respective MS the OE operates in established non-criminal criteria for filing STRs. Cooperation with foreign FIUs is not ideal either. Legal, linguistic and bureaucratic barriers would stand in the way. Even in obvious cases of ML, foreign FIUs would either request a translation of the STR filed in Germany or would not react at all. The prosecutor confirms the problems FIUs deal with identified by Lanoo and Parlour (2021) and the EC's report that FIUs lack personnel, functioning IT equipment and comprehensive access to police databases. He concludes that the collaboration with the FIU remains "tough and difficult" and is characterised by an "unbelievable number of problems" (p. 5).

The Austrian FIU official has a different standpoint. He praises FIU.net, a channel for EU FIUs where emails and information can be securely exchanged. The corresponding channel for global exchange between FIUs would be Egmont Secure Web, which is widely used and works swiftly. However, the collaboration of FIUs would always hinge on different factors, such as the resources available, how quickly reports and requests are processed, the way reports are processed, how FIUs are structured and the access to databases. Countries differ in the STRs they receive, which depend, for instance, on the local industry, in which ways and how quickly FIUs can verify the reports. According to the official, he may receive STRs from abroad for which he has no use, as the reported behaviour is irrelevant or interpreted differently in Austria. An important challenge is whether and how fast FIUs have access to police databases. In his assessment, FIU.net and the Egmont Secure Web enable a "unique […] (and) very efficient" (p. 9) cooperation without requirements of mutual legal assistance that provide adequate tools to respond to threats of ML. Overall, he states that the current cooperation among FIUs is good and direct.

5.4 The Effectiveness of Cooperation Between Law Enforcement

At the EU level, the European Union Agency for Criminal Justice Cooperation (Eurojust) is the most utilised body through which law enforcement agencies of the EU cooperate (Deleanu & Van den Broek, 2014). In addition to Eurojust, Europol is a platform for information exchange and cooperation for law enforcement agencies, sometimes in combination with Eurojust (Deleanu & Van den Broek, 2014). The objectives of Eurojust are to facilitate information exchange and cooperation between law enforcement authorities of MS in cross-border investigations (Allegrezza, 2022). In cases of ML, Eurojust provides the following types of legal and operational assistance: Judicial coordination meetings between law enforcement agencies of MS, law enforcement agencies of MS can set up joint investigation teams, and Eurojust provides coordination centres for the facilitation of such cooperation (Eurojust, 2022). The latest Eurojust report of 2022 provides statistics and insights from almost 3,000 cases of ML registered at Eurojust between 2016 and 2021. The number of cases investigating ML has been steadily increasing, starting from 315 in 2016 to 649 in 2021. In this period, the share of cases dealing with ML was 12 to 14% of all cases registered at Eurojust. The shares of coordination meetings, joint action days and joint investigation teams dealing with ML were between 20 to 30% of all Eurojust cases. The five countries most involved in Eurojust cooperations by the number of investigations were Italy, France, Spain, Germany and the Netherlands. (Eurojust, 2022)

Obstacles to international cooperation between law enforcement can be linguistic barriers, discrepancies in data protection requirements, inadequate national cooperation among authorities and delays (Deleanu & Van den Broek, 2014). The Eurojust report also identifies a number of challenges to cross-border investigations in the EU. Although article 3 (3) of the AMLD 2018/1673 allows for ML convictions without knowledge of the predicate offence, MS have diverging regulations. While in some MS it suffices if the profits derived are criminal, in other MS, prosecutors are obliged to identify the predicate offence, the report states. Therefore, prosecutors who must know the predicate offence tend to open an investigation only if they indeed know the predicate offence. This discrepancy can be a major impediment to international cooperation. Another point of discussion among MS which lacks harmonisation, and involves double criminality, is whether a crime in MS A, which is not a crime in MS B, is a predicate offence to ML in MS B. The report states that this is not the case under current EU law, meaning that ML is not a crime in the EU irrespective of the predicate offence's jurisdiction. Moreover, letterbox companies or shell companies pose a great obstacle to the identification of beneficial ownership. Finally, the report states that following money movements across the Union is "reasonably manageable" (p. 3), whereas cooperation with third countries can greatly differ from smooth to complicated. (Eurojust, 2022)

Besides challenges, the Eurojust report also lists best practices in international ML investigations. European Investigation Orders, joint investigation teams and asset recovery offices have proven successful in the fight against ML. Within the EU, cooperation with the European Public Prosecutor's Offices and FIUs is vital as well as Contact Points for Eurojust and Liaison Prosecutors with third countries. (Eurojust, 2022)

The prosecutor's description of cooperation among law enforcement authorities largely overlaps with the findings of the Eurojust report. According to him, the collaboration among EU MS is functioning. The possibilities that Eurojust provides, such as joint investigation teams, are used in matters of ML as they render cross-border investigations "super easy" (p. 13). Law enforcement agencies of different countries can split the work and investigate the crimes that are committed on their territory respectively. For instance, as the prosecutor describes, that is the case with Dutch ATM blasters who come to Germany to blow up ATMs and take the cash back to the Netherlands. The German authorities would investigate the crime committed in Germany, while the Dutch authorities would pursue the ML act committed afterwards back in their jurisdiction. Another advantage of cross-border collaboration is that agencies can make use of resources that are provided by other MS. For instance, data generated through the European toll system or simply more transparent registers that German authorities make use of if offered by foreign authorities. A famous prime example of such cooperation, the prosecutor claims, is the case of EncroChats, which are encrypted mobile phones popular among criminals that were hacked by French authorities. German authorities were not involved in the acquisition of the data, but they still utilised the material since they exposed crimes committed on German territory. In addition, measures like the European arrest warrant and the European investigation order are essential tools for the fight against ML.

However, there always are some obstacles, such as additional paperwork, translations of documents, lack of resources, different priorities and the sovereignty of MS, the prosecutor says. The basic problem, according to him, is that criminals can freely move in the single market, whereas law enforcement has to deal with 27 different and sovereign legal systems. Then there is the issue of prioritisation, whether agencies prioritise working on their domestic cases or support a MS demanding support. And while cooperation in the EU is functioning, collaborating with third countries, especially the most relevant ones, such as China, Russia and the US, "is difficult or even impossible" (p. 12). The greatest challenges to overcome in international investigations are shell companies where authorities are often unable to pursue the investigation or identify the beneficial owner. The prosecutor calls the authorities' powerlessness "bitter" (p. 13) and the existence of shell companies "totally annoying" (p. 16).

So are criminal investigations into ML effective in the EU? A crucial point is whether prosecutors are required to know or to have a rough idea of the predicate offence to open an investigation into ML. At this point, there is a gap between the EU's AML directives and some MS' judicial systems, as the Eurojust report points out. Directive 2014/42/EU Article 5 (1) on freezing and confiscation allows for so-called extended confiscation, where authorities may confiscate proceeds for which a final conviction is not necessary but for which it suffices that the court is "satisfied" or convinced that the proceeds were gained through a crime. The legal adviser in the EP puts it in a nutshell: The goal of AML is "to prevent the fact of ML, we don't care so much about the predicate offence" (p. 9). Germany, for instance, is a country that requires knowledge of the predicate offence, as the prosecutor and the researcher state. The prosecutor states that although the needed link to the predicate offence is logical since one needs a crime that renders the money dirty, it is also very limiting. A prominent case of failed ML investigations is the Wirecard scandal, where prosecutors opened an investigation when it was too late because they were not able to determine a predicate offence earlier (Trautvetter, 2021).

In the interview, the researcher explained the difficult, perhaps paradox, attempt to investigate ML with the requirement to know or have an imagination of the predicate offence. According to him, the purpose of laundering money is to conceal the money trail that links the predicate offence to the ill-gotten gains. Thus, obliging investigators to know the predicate offence while they fight ML cannot work, he states. The interviewee infers that fighting ML can only function if investigations, regardless of the predicate offence, are possible, also called "follow the money". By following the money trail, the predicate offence can be identified. The prosecutor describes an example of Hawala banking that exemplifies the difficulty of identifying the predicate offence (details on Hawala banking in chapter 4.3.1). The prosecutor stresses that not one person is identified in Hawala banking, the only data exchanged in the system are the codes and the conventional banking system is avoided. “How am I ever supposed to find a predicate offence?” (p. 19), the prosecutor asks.

The consequence of limiting prosecution to cases in which the predicate offence is known is that mainly small actors are investigated rather than the major and important actors, the prosecutor explains. The latter have the resources necessary to conceal their proceeds in a sophisticated manner for which law enforcement would need resources to decipher it does not have. The senior compliance manager claims that a vast number of the ML convictions in Germany are accounted for by money mules whose behaviours are so suspicious that prosecuting them is not too complicated – particularly because they have not been involved in the predicate offence. Money mules, the FIU official explains, are agents employed by money launderers who make their bank accounts available for transactions of dirty money. They keep a small provision as salary. The researcher even goes so far as to claim that there is no AML by law enforcement. What does exist, though, is an “auxiliary investigative duty” (p. 9) for obliged entities worldwide to enquire about the origin of the customer’s money and to alert law enforcement when ML is suspected. The prosecutor goes in a similar direction, claiming that everything law enforcement was not allowed to do was burdened on the private sector, which must “collect everything” (p. 22) for the investigative authorities.

5.5 AML Supervision in the EU

The AML supervision in the EU is MS-based and thus executed by national agencies (Kirschenbaum & Veron, 2018; EC Impact Assessment, 2021). Van den Broek (2014) maps the different supervisory architectures in the EU and classifies them into five categories. There is the FIU model, in which the FIU is in charge of supervising OEs. In the external model, the supervisory responsibility lies with government authorities, while in the internal model, it lies with professional associations. This type of supervision is coined internal because professional associations, as opposed to government authorities, typically are in contact with the supervised entities which are members of the professional associations. The researcher stresses that there is no purely internal supervision since financial and credit institutions are supervised by government authorities. So internal supervisory models are internal to the extent that professions which can be supervised by professional associations are in fact supervised by professional associations. And fourth, the hybrid model is a mixture of the three aforementioned. Of the 26 MS analysed (the United Kingdom is excluded and Croatia was not yet a MS), six have an FIU model, three an external supervision, eight have an internal model and nine have a hybrid system in place. All four models have different strengths and weaknesses. While an FIU as recipient of STRs can be considered well-informed with expertise in AML, it may lack know-how in the supervisee's sector or resources. On the other hand, government agencies may possess sector-specific knowledge, but they may have no expertise in AML or have difficulties in establishing supervisory jurisdiction over OEs. Professional agencies in the internal model have an established communication channel with the supervisees and necessary know-how, however, conflicts of interest may arise due to the proximity. Van den Broek reaches the conclusion that EU AML supervision is a patchwork, and she stresses that the effectiveness of the supervision can only be assessed at the national level. (Van den Broek, 2014)

On the contrary, Kirschenbaum and Veron (2018) very critically view the EU AML supervision, calling it "embarrassingly ineffective" (p. 14). In their opinion, this is because criminals can enter the single market via the fragmented supervisory landscape, exploiting the MS with the weakest preventive AML measures in place. In other words, the chain is only as strong as its weakest link: A loophole in one MS's supervisory framework threatens the entire Union (Kirschenbaum & Veron, 2018; EC Action Plan, 2020). In line with these findings, the EC in its supranational risk assessment (2022) finds that the application of risk-based supervision is fragmented across the Union, particularly when executed by self-regulatory bodies, which supervise the non-financial sector. This drawback, the report states, hinders effective supervision and detection of ML across the Union.

The EC's report analysing recent ML cases in the EU reveals weaknesses in the MS's supervision of AML. Although most were equipped with needed supervisory powers, the report identifies agencies that ascribed ML a low priority and were plagued by problems, such as a lack of personnel and knowledge. A "climate of trust" (p. 9) characterised the relationship between supervisor and supervisee which resulted in few on-site inspections and checks of documents provided by OEs. Often only repeated violations triggered action by the supervisors, which in many cases abstained from taking concrete measures and instead acted on informal letters and advice, resulting in a disbalance between the severity of violations and fines imposed. Moreover, the report denounces absent group-wide cross-border supervision, while agencies are only focussed on supervising local OEs. (EC ML cases, 2019)

The EC's impact assessment states that the quality and effectiveness of AML supervision varies across the Union due to varying human resources and approaches of MS. Specifically, Finland has ten members of its supervisory staff that handle the financial sector, while Austria deploys

27 officials for a comparable financial sector. In Belgium and the Netherlands, 10 officials are responsible for supervising the real estate sector, as opposed to one in Croatia. The EC expresses its dissatisfaction with the Union's national and cross-border AML supervision which, consequently, prompts it to propose AMLA which is described in chapter 3.10.1. (EC Impact Assessment, 2021)

How do the interviewed AML experts assess AML supervision in Germany? In regard to the financial sector, the prosecutor claims that the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), the financial sector supervisor, would exert "enormous pressure" (p. 37) which leads to OEs overreporting. The banker's confirmation that his institution would report rather too much than too little to avoid fines and liability, appears to support the prosecutor's assessment. The prosecutor adds that he considers the supervisor's pressure exaggerated and unnecessary from a law enforcement perspective. Moreover, the supervisor would be very quick at imposing fines and would not provide adequate support to the OEs, the prosecutor said. According to his accounts, BaFin does not act when banks consult the supervisor for advice on how to handle "nonsensical requirements" (p. 38) from the FIU.

The senior compliance manager, which deals with customers from the non-financial sector, and the official of the regional supervisory authority tasked with supervising the non-financial sector were confronted with the findings of an International Transparency study (Trautvetter, 2021) which investigated supervision in Germany. The study reports that more than 300 different federal, state and local authorities are responsible for supervising more than 1 million OEs in the non-financial sector. Moreover, the study states that in 2019, 3,448 on-site inspections were coordinated which amounts to 0.3% of the OEs and thus an inspection every 200 years. The interviewees were asked if they were in line with the author's findings that the non-financial sector supervision in Germany is fragmented, understaffed and ineffective. The supervisory official concurs, with the limitation that it is certainly the case for urban areas with a high number of OEs. In areas with less economic activity, supervision might be better functioning due to the simple fact that there are fewer OEs. She states that not all OEs have been audited yet because of the mass of OEs but also because the authorities do not have a list of OEs they are responsible for. Authorities would lack personnel and guidelines on how to supervise which OEs. Since supervisors are given statistical specifications they must comply with (details were not provided by the interviewee) easy to supervise OEs are preferred over complicated ones. She also sees issues in the prioritisation of AML and a lack of know-how in supervisors. For instance, local authorities are tasked with overseeing financial companies involved in M&A which would be a great challenge for a regional official to thoroughly understand.

As explained by the senior compliance manager and the supervisory official, deficient supervision may incentivise OEs to not follow AML rules. This has a direct repercussion on OEs not detecting ML and not filing STRs, the supervisor states. Missing STRs may lead to ML going completely undetected or do not provide FIUs and law enforcement important information and potential proof of ML. An indirect repercussion is that clients may only choose OEs that do not follow AML rules, i.e., do not ask for identification or the money's origin, the supervisor says. These clients may not necessarily be criminals, they simply may want to remain anonymous. Nevertheless, OEs unwilling to comply can lead to other OEs not complying because compliance at this point is a competitive disadvantage, which may frighten off clients who prefer conducting business with OEs that do not bother them with AML.

The supervisory official says that the Wirecard scandal exposed a "massive problem" (p. 11) in German supervision. No authority felt responsible for Wirecard, a globally active payment processor and a financial holding. Wirecard bank, a subsidiary, was supervised by BaFin, which supervises credit and financial institutions. Jurisdiction over the holding company, however, was unclear as neither BaFin nor state authorities, which supervise financial companies not supervised by BaFin, felt responsible. According to the official, the state supervisor would have been responsible.

The senior compliance officer is of a similar view. She adds that rules for OEs vary from state to state which is particularly problematic for companies conducting business nationally. OEs would have to follow different rules in different states. However, the supervisor also points out that the expectations of supervision in preventing ML should be realistic. A criminal running a business for the sole purpose of ML will not be deterred by supervision. Stopping such endeavour would be a task for law enforcement. The realistic task for supervision would be to protect honest businesses from being exploited by money launderers by ensuring that these OEs follow AML regulations. The regional supervisor concludes that although there still remains room for improvement concerning effective AML supervision, progress has been made in past years, raising awareness for ML among OEs. In addition, where OEs are indeed supervised, she states that effectiveness is given.

5.6 How Effective Is the EU Anti-Money Laundering Framework?

In order to assess whether the current EU AML framework is effective, it must be investigated whether it achieves its goals set. The EU AML framework formulates two goals. First, deterring crime, i.e. ML, and second, preventing the influx of dirty money into the EU's financial system. At the same time, achieving these goals should not be too burdensome for the OEs and incur excessive compliance costs. A response is developed by analysing the stance of the EU, chapter 5 on the effectiveness of the EU AML framework and the interviewees' opinions.

5.6.1 The European Union's Stance

The EC's legislative proposal of 2021 is essential for AML in the EU and is, until now, the most important step in strengthening the European AML effort. The package entails proposals for the next AMLD and a recast of the existing regulation on the transfer of funds. The major steps, however, are the proposals for AMLA, which is the first EU institution solely dedicated to the fight against ML, and the first AML regulation with the aim of creating an EU single rule book in AML. The importance of the EU's change of course, from a framework based mainly on directives to proposing AMLA and an AML regulation, is difficult to overestimate. Because it means that MS transfer competences to the EU for a more integrated AML approach, specifically in terms of AML supervision and legislation. What is relevant for answering the research question – whether EU AML is effective – is what prompted the EC to propose the legislative package.

The EC's impact assessment, as part of the legislative package, identifies three problem drivers that demand action. The first problem driver is the absence of clear and consistent rules, which lead MS to adopt AML rules to a varying degree, resulting in fragmentation, loopholes and in uncertainties for OEs operating cross-border. The impact assessment concludes that the diverging implementation leads to "insufficient and ineffective application of AML/CFT obligations that fails to adequately prevent criminals" (p. 19). The second problem driver is supervision. The report finds that the quality and effectiveness of supervision fluctuates across the Union, describing the supervision ultimately as "inadequate" (p. 20). Another EC report, which examined the failures in recent ML cases, reaches the conclusion that EU AML supervision is characterised by a lack of personnel and know-how, a low ML priority and a non-existence of group-wide cross-border supervision (EC ML cases, 2019). The third problem driver is deficient cooperation among FIUs. FIUs are independent and autonomous and hence very heterogenous across the Union. The heterogeneity and the fact that the initiative and coordination of international cooperation is left to FIUs and is not orchestrated at the Union level, despite assistance from Europol and Eurojust, leads to little collaboration among FIUs. This is particularly problematic since major ML cases transcend national borders. Hence, the EC states that deficient FIU cooperation stands in the way of effectively deterring ML in the EU. (EC Impact Assessment, 2021)

5.6.2 Insights from the Literature Review and the Tnterviews

Ferwerda's (2018) calculation of the costs and benefits of AML policies in the EU draws a picture of a framework that swallows horrendous sums of money (€2,157,059,590) and yields much less monetary benefit (€23,176,102). Deleanu and Ferwerda (2014) find that most MS take adequate measures against ML, compared to the risk ML poses in terms of GDP, with room for improvement left.

The analysis of the reporting behaviour of OEs in the financial sector identifies overreporting that arises due to the so-called "all crimes" approach, excessive fines for not reporting (Takats, 2007) and a very low reporting threshold. Overreporting by OEs leads to flawed reports and diluted information which complicates the FIU's analysis function (Takats, 2007). To counter overreporting, the risk-based approach was introduced (Dalla Pelelgrina et al., 2022). Studies assessing the risk-based approach's impact on overreporting present mixed results. OEs of the non-financial sector, on the other hand, are often unaware of their status as OE and the corresponding obligations and lack understanding, know-how and willingness of AML procedures (compliance manager). The situation is aggravated by the fact that clients of non-financial sector OEs are unaware and may be unwilling to adhere to AML rules as they are not as established as in the financial sector. Consequently, adhering to AML requirements may be damaging to business for OEs. Moreover, AML in the non-financial sector is fragmented, little standardised and lacks guidance by authorities (Friedrich and Quick, 2019), while Trautvetter (2021) concludes that supervision is de facto inexistent in Germany, for example.

The look at FIU cooperation in Europe reveals two different views. The FIU official interviewed praises the cooperation tools of FIU.net and Egmont Secure Web that FIUs have at hand, which enable a "unique […] (and) very efficient" (p. 9) cooperation. However, he acknowledges that the quality of such cooperation among FIUs hinges on many factors, e.g., resources, processing time and method, organisational structure and access to relevant information. The prosecutor and Lanoo and Parlou (2021) offer a different account. They concord that FIUs lack personnel, good IT equipment and comprehensive data access. The researcher also maintains that FIUs focus on domestic cases, neglect cooperation, and suffer from overreporting. The prosecutor very critically views FIUs and describes their mandate to forward and discard STRs as a dilemma. According to his experiences with the German and international FIUs, cooperation is challenging and difficult as it is characterised by multiple obstacles, such as legal, linguistic and bureaucratic barriers.

Similar challenges arise to cooperation among law enforcement authorities: linguistic barriers, discrepancies in data protection requirements, inadequate national cooperation among authorities and delays (Deleanu & Van den Broek, 2014). A main obstacle is differing legislation in MS with regard to the prerequisite to knowing the predicate offence for ML investigations (Eurojust, 2022). The researcher states that with this requirement, effective ML investigations are not possible precisely because ML conceals the connection between predicate crime and the proceeds. Both researcher and prosecutor suggest that effective detection of ML is only possible if law enforcement is able to proactively follow suspicious money trails without having to know the predicate offence. Since that rarely happens in the EU, the researcher goes on, AML would be based upon the OEs' "auxiliary investigative duty" (p. 9) to supply FIUs with STRs. The Eurojust report also mentions best practices in cross-border cooperation, such as the use of joint investigation teams, which has been increasing in past years. The prosecutor says that cross-border investigations are functioning and facilitating AML. Another advantage is that investigators utilise resource capacities generated by other MS, like the EncroChats. Nevertheless, there are hindrances too, e.g., additional paperwork, language barriers, missing resources, priority on domestic cases and the sovereignty of MS. Moreover, he mentions the core issue of EU AML: while criminals freely act in the single market, investigators are limited by 27 different and sovereign legal systems.

Concerning supervision, the analysis of the literature and the interviews reveals a fragmented supervisory landscape. Van den Broek (2014) identifies five different supervisory architectures in the EU., and while acknowledging that the EU supervision is a patchwork, she insists that the effectiveness of supervision can only be evaluated at the national level. Kirschenbaum and Veron (2018) claim that AML supervision in the EU is "embarrassingly ineffective" (p. 14) because a loophole in one MS' supervisory framework is the gateway to the entire single market. While the prosecutor laments the fines imposed and the pressure exerted by supervisors on OEs, Trautvetter (2021) concludes that supervision in the German non-financial sector is fragmented, understaffed and ineffective.

5.6.3 The Interviewees' Response

What did the interviewees respond to the question whether the EU's AML framework is effective? In the FIU official's point of view, the requirements on the OEs continue growing with ever more obligations. At the same time, he does not see the resources growing at the same pace nationally. Consequently, he sees a gap between requirements and resources that may inhibit the AML framework. The prosecutor agrees with the FIU official, explaining that the workload and the resource effort by the OEs and authority are enormous. Since the outcome is unclear, he concludes that the resources are used ineffectively. On the resources spent in AML and their impact, he says the following:

> "In Germany, we know that the offence of money laundering (…) is the most frequently amended offence. (…) And that hasn't made much difference to the prosecution situation. The money laundering law has also become more and more complex, more and more obliged entities have been included. And I would say that we do not really see the success." (pp. 33-34)

At the EU level, he says that standardisation is very helpful in practice and should be further fostered to the greatest extent possible in order to tackle the problem of fighting ML in the single market with 27 different MS and legal systems. As outlined by the Eurojust report, the requirement to know the predicate offence restrains investigations into ML. Putting this requirement aside and focusing investigations of ML into suspicious transactions and the concealment of funds would render the use of resources and AML prosecution more effective.

The prosecutor warns that one should not forget the rule of law and democratic order when assessing the effectiveness of AML. When it is said that Germany would be a target country to launder dirty money he does not consider that to be an allegation. For him, it demonstrates how appreciated the German legal system is and how protected assets and property are in Germany that also criminals want to benefit from that. The FATF would primarily assess how effective a country's prosecution is neglecting the potential political and constitutional implications. Russia and Belarus, for example, would always transpose the FATF's recommendations right away, also for political purposes, the prosecutor holds, while countries like Germany and Austria would raise concerns regarding the compatibility with their constitutions. "If I were to implement the FATF Recommendations, I would know how to do it, but then we would no longer have the free basic order that we want" (p. 27), the prosecutor adds.

The legal basis would be decent, the senior compliance manager opines, the problems lie with law enforcement, which would be in need of significant improvements. As a former FIU official, she explains that analyses oftentimes stopped because necessary information was unavailable abroad. In general, international information sharing among authorities would be slow and complicated so law enforcement would often run behind criminals. The researcher defines the goal of AML to be the fight against organised crime, and in that endeavour, AML would be "virtually ineffective" (p. 10). The current AML framework would be unable to effectively prevent ML in organised crime. The current system would make ML more complicated and expensive for criminals. Asked whether the same is the case for the EU's formulated goals of AML, namely the protection of the financial market and enhancing international collaboration, he states that the goals would coincide. Both goals aim at keeping the financial market free from criminal proceeds and lowering criminal power. Hence, his assessment of the EU's AML ineffectiveness remains unchanged.

The legal advisor in the EP states that whether AML is effective or not depends on the measurement. If one would expect AML to detect and deter ML completely, the EU AML system would be very limited. Instead, he prefers a hypothetical comparison with a system without a European approach where ML would be much easier for criminals. A perfect system of AML would only be possible under complete surveillance of citizens and by reporting every transaction to FIUs. Hence, the advisor continues, what remains in a free democratic state is attempting to continuously update the AML system according to new ML developments. What the researcher labelled ineffective is what the supervisory official and the legal advisor declare to be the realistic goal of AML: Since crime and ML will persist and cannot be completely prevented, the goal of AML must be to complicate ML and pursue a "policy of many pinpricks" (p. 7), as the official phrases it.

The EC official too holds that the complete extinction of ML has to be ruled out. Realistically, AML would prevent ML from degenerating and affecting the functioning of financial markets. She avoids giving a direct answer to the question of whether the EU AML system is effective. Instead, she insists that one cannot say it is a poor legal framework, it has merely been incomplete in the past, implementation by MS was indeed ineffective and some improvements were needed which were proposed in the legislative package. The official additionally stresses that there are no differences between the EC, the EP and the Council, particularly the latter two "were very much aligned" (p. 11) in acknowledging the necessity of the 2021 legislative package. The banker states that obligations for banks would be continuously increasing. Since banks report very much but every institution differently according to its risk analysis, he does not consider the EU's approach to ML to be effective.

The analysis of the EC reports reveals severe problems in the AML framework which triggered the proposal of the legislative package in 2021. The main problems detected are poor and ineffective transposition of AML rules by MS, faulty AML supervision and insufficient cooperation among FIUs. These three problems stand in the way of effective AML. The deficiencies in supervision and FIU cooperation are confirmed by the literature review and the interviews. The financial sector OEs tend to overreport, which, in turn, overwhelms FIUs and complicates their work. Some non-financial sector OEs lack the resources and know-how to comply with AML rules and their supervision is fragmented. Although cross-border investigations among law enforcement take place, they are far from being smooth and effective. The requirement in some MS to know the predicate offence is a major impediment to investigations into ML. Considering all these unresolved problems, the EU's fight against dirty money is not effective, the legislative package is deemed indispensable in shaping a more effective AML framework in future. Naturally, society and the financial market cannot be entirely protected from crime and ML. Realistically, the AML framework aims to make it as difficult as possible for criminals to circumvent AML rules and for money laundering not to be worth the risk of detection. Considering the second part of the EU's goal, not imposing too much burden and compliance costs on OEs, the AML framework fails. Interviewees report of OEs of the non-financial sector that fear losing business if they follow AML rules because clients refuse to cooperate and select competitors that do not bother clients with additional requirements (compliance manager and supervisory official). In addition, multiple interviewees anxiously observe ever-increasing obligations being imposed on OEs (FIU official, prosecutor, supervisory official). The prosecutor and the supervisory official wonder why people in the private sector are still active in AML, the latter speaking of an "insane challenge" (p. 13).

5.7 How can the EU's AML framework be improved?

Building on previous chapters and on the interviewee's response to the questions what measures they would take to enhance EU AML, the following suggestions are offered.

5.7.1 Obliged Entities

To tackle the bulk of STRs and the FIUs' difficulties in analysing them, the banker demands "a more centralised and synchronised approach" (p. 3) in combination with guidelines and typologies on what and when to report banks must follow. This would not only reduce the number of reports and the banks' insecurity, which ultimately contributes to overreporting but would also enable the FIU to take a more systematic look at comparable STRs, moving away from individual cases. The supervisory official suggests introducing "positive signals, positive incentives" (p. 13) for being extraordinarily compliant, for instance. OEs could get an award or small sign of appreciation to honour efforts in AML from which society benefits, she adds. For her, it is about doing something against a sometimes tense environment in AML among OEs and authorities or simply giving feedback. Furthermore, she promotes giving OEs more assistance and taking pressure off them by being more lenient and without threatening with fines or trials should they not detect a case of ML. Takats' (2007) proposal to reduce fines for not reporting ML and imposing fines on OEs for reporting too many inconspicuous STRs should be considered.

5.7.2 Financial Intelligence Units

The EC's supranational risk assessment (2022) underlines what the supervisory official and the prosecutor mentioned in their interviews: FIUs do not provide OEs with feedback on their STRs. Thus, to improve the reporting behaviour according to the FIUs' expectations, FIUs should be obliged to give OEs regular feedback. Asked which improvements the prosecutor suggests for the FIU he so harshly criticises, his answer indicates that a recommencement might be necessary because he speaks about questions of principle that one would expect to be resolved. He mentions that it should be reconsidered what ought to be reported to FIUs. Honouring the risk-based approach and mitigating the number of STRs, the prosecutor suggests that some cases should receive a lower priority. The interviewee remains vague and does not give further specifications at this point. In addition, the FIU's work should be assessed: how STRs are analysed and forwarded and what access to information it has. Taking a step, he expresses the general proposal to think of how to make use of the FIU's "treasure trove of data" (p. 7), not offering further details. While the prosecutor refers to the German FIU, the analysis of EU documents, the legislative package proposal targeting FIUs, the literature review and the interviewees have demonstrated that EU-wide problems with FIUs persist, rendering these suggestions for the German FIU relevant to EU FIUs. The EC official demands that FIUs focus on their main task: prioritising and filtering STRs and recognising ML trends.

In a Resolution of 2019, the EP prompted the EC to take action towards an EU FIU (EP, 2019). The designated function of the EU FIU would be to coordinate and facilitate information exchange and cross-border analyses of MS FIUs, the resolution suggests. An EU FIU would have the advantage of overviewing STRs filed in the EU and it could establish uniform practice among FIUs (Allegrezza, 2022). In addition, the 27 FIUs could act as one FIU internationally, increasing influence and leverage on third countries (Allegrezza, 2022). However, it appears doubtful whether an EU FIU is realistic. The national FIUs have already denied a central reception of STRs in the EU (EC FIU, 2019). And it remains questionable how an EU FIU would enhance communication between FIUs and law enforcement at the national level, as suggested by Allegrezza (2022). The AML officer and the prosecutor both point out that contact persons moving further away, such as from the national to the EU level, would render communication more difficult. There is the notion that creating an EU FIU is a more complicated and less pressing matter as opposed to a supervisor at the EU level (Kirschbaum & Vernon, 2018). The researcher interviewed, although in favour, adds that a European FIU would merely coordinate FIU supervision at the EU level which is now taken over by AMLA. The legal advisor has a similar stance. The senior compliance manager demands data protection rules to offer more possibilities, especially FIUs should collect more data for "intelligence purposes only" (p. 10). FIUs can collect information as part of their analyses without opening an investigation first.

5.7.3 Law Enforcement

The EU, as the legal advisor emphasised, attempted to give a direction to pay less attention to the predicate offence and follow the money trail. Article 3 (*b*) of AMLD 2018/1673 already allows for ML convictions without full knowledge of the predicate offence. Both the researcher and the prosecutor agree that it must be legally possible for law enforcement to proactively – with a low threshold to investigate – dig into suspicious assets or money movements without knowledge of a predicate offence. This approach would "decouple the money laundering offence from the predicate offence" (p. 21), as the prosecutor puts it. Authorities would then punish and investigate suspicious behaviour or the concealment of suspicious money, the prosecutor says. Such alarming behaviour that would trigger investigations, the researcher says, could be that assets do not align with a person's usual behaviour or wealth or capital flows being flagged because they are transferred to shadow financial centres through anonymous accounts or shell companies. The researcher adds that the greatest challenges in this regard are to provide the legal basis and the necessary personnel and equipment nationally. However, the prosecutor also warns that this focus on suspicious behaviour should not lead to overreporting but ideally to more effectively prosecuting ML. The next step, he adds, would be to think of a measure similar to the British "Suspicious Wealth Order" which imposes the burden of proof on the suspect. Meaning that if suspicious assets are detected, the owner must proof its legal origin, otherwise the authorities may confiscate. The senior compliance manager demands more rapid information exchange between authorities and more joint investigations. She states that it should be possible for authorities in one MS to directly contact the counterpart in another MS and expect a same-day response.

Both the researcher and the legal advisor propose the idea of a European FBI which would have investigative capacities. The researcher argues that cross-border crimes in the EU justify such a police authority that would go beyond Europol's mandate. The EP's legal adviser says that an EU FBI would be "tricky constitutionally" (p. 13) entering domestic criminal law of MS and thus unrealistic for the moment. Similarly, the Commissioner for Home Affairs, Ylva Johansson, said in a written statement that the Treaty on the Functioning of the European Union does not provide for an extension of Europol's mandate to include investigative capacities (Ylva Johansson, 2021).

5.7.4 AML Supervision

According to the interviewees, how can supervision of the non-financial sector be enhanced? The senior compliance officer suggests introducing uniform standards for OEs in Germany, more training for supervisors and a register where all OEs are listed. She also points to countries such as Spain or Italy which have centralised supervision at the FIU. In her opinion, it is not a coincidence that these countries performed well in the FATF audit, which would demonstrate that direct information and communication channels are advantageous to supervision. The supervisory official supports the recent proposal introduced in Germany, which provides for a federal authority to coordinate supervision of the non-financial sector to tackle the fragmentation (Greive & Hildebrand, 2022). Building upon this, she advocates central guidelines regarding personnel and size of supervisory authorities, what staff and know-how are required. She also demands more contact persons at the federal level and more communication and cooperation among other AML authorities for a more united approach to improve cooperation and communication. Moreover, MS should supervise self-regulatory bodies tasked with supervising the non-financial sector as proposed by the new AMLD in the legislative package. Additionally, AMLA will be in charge of overseeing supervisors of the non-financial sector. The EC in its risk assessment (2022) recommends conducting more surprise spot-checks while pointing out that certain OEs, e.g., art and antiquities, are not supervised at all. Hence, these OEs should be supervised too. Suggestions for mitigating pressure by supervisors that may lead OEs to overreport are detailed in chapter 5.6.1.

Supervisory authorities need to ensure that following AML rules is not a choice for OEs and must enforce compliance. Measures to do so may be more unannounced on-site inspections or higher fines for ignoring AML rules. An important aspect, as the compliance manager points out, is also acceptance among clients who must take preventive AML measures for granted and should not resist, as is the case with banks' obligation to identify new customers when opening a bank account. Fines for non-compliant customers should be considered as well.

5.7.5 Online Money Laundering

The literature review on online ML schemes has revealed a multitude of advantages that criminals benefit from. A general phenomenon of the internet that money launderers online exploit is the high degree of anonymity or acting under pseudonyms which makes identifications more difficult. It should be discussed whether anonymous payment methods should be allowed from a ML perspective, for example in online casinos. Authorities must ensure that online casinos register their websites so that supervision is possible. The literature review shows that in-game items may be exploited for ML purposes. The EC's risk assessment (2022) for the first time mentions such items or tokens and intends to classify them as equivalent to crypto assets. It should be technically possible for video game companies to differentiate between items/tokens that are legitimately bought in the game or in authorised third-party shops and items/tokens illegally exchanged between players or acquired outside the game, e.g., in the darknet, and allow only the use of such items/tokens that are legally acquired. Subjecting video game companies and social media networks to the AML framework appears premature at the moment. However, they should receive more attention in ML risk assessments and AML considerations. The EC's proposal in the AML regulation to include crowdfunding platforms as OEs in the AML framework is appropriate.

The EU has acknowledged the ML threat that emerges through cryptocurrencies and has taken suitable steps accordingly. It included more broadly virtual currencies in AMLD5 as well as incorporated in its legislative package proposal crypto-asset service providers as OE in the AML regulation and in the transfer of funds regulation. Another essential step is the proposal of the Markets in Crypto-Assets (MiCA) regulation, which deals with uniformly regulating and coordinating the supervision of crypto-asset service providers across the EU (Akin et al., 2022).

5.7.6 General Suggestions

The supervisory official advocates more intense cooperation among all parties involved in AML. That is more communication among authorities but also an enhanced exchange among OEs and authorities in order to enable a more unified approach. She maintains that AML is not comprehensive and effective if every party involved is isolated and is only concerned with its task. Instead, there should be better communication with OEs that creates mutual understanding. For instance, OEs can understand the reasoning behind legislation while authorities learn of the practical difficulties in implementing these rules, the official explains.

In line with the supervisory official, the prosecutor demands more communication among parties involved in AML, as well as keeping relevant information up to date and available, such as the land registers. In agreement with this, the researcher and the EC's risk assessment (2022) demand further linking beneficial ownership registers and company and land registers. Despite a recent CJEU judgement, this thesis argues, in line with the researcher (p. 6), that such information must remain publicly available. Land registers should also include beneficial ownership information in addition to the already available legal owner. While transparency requirements will not hinder ML, they remain an important public corrective and provide assistance to the work of law enforcement and journalists. In general, the interviewees demand centralised specifications regarding the required personnel, know-how and other resources laid down in greater detail for their respective realms; for instance, the FIU official for FIUs, the supervisory official for supervisors and the banker for banks.

At the EU level, the prosecutor advocates more standardisation that would benefit smooth cooperation and enable quick access to relevant information across the Union. He sees a great need for improvement concerning shell companies that, according to his experience, are one of the greatest challenges in investigating ML. The prosecutor expects bold actions by the EU: either a ban on shell companies, a limitation of their use or agreements with third countries that guarantee access to information with a court order on such legal constructs and their beneficial owners. The EC in its risk assessment (2022), the legal advisor to the EP, the prosecutor and the senior compliance manager all suggest to seriously consider including professional sports in the AML framework. The EC and the prosecutor single out football with its enormous sums that are spent on players, comparing trading players with art. The value of the subjects cannot be objectively determined and reasons behind acquisitions may not always be of economic nature and thus difficult to understand.

5.7.7 Legislative Package

The legislative package takes an essential role in improving the EU's AML framework in future. AMLA is expected to improve supervision at the Union level, enabling better and more effective supervision of Eu-wide operating OEs as well as more comprehensive and speedier cooperation among FIUs. The regulation is directly applicable in MS and thus will eliminate fragmentation and loopholes in the aspects covered. The cash ceiling on transactions exceeding

€10,000 is an important AML tool, especially in light of the EC's risk assessment finding that the predominant payment method of criminals is cash. Notably, all of the eight interviewees support the EU's push towards a more unified approach, in particular with AMLA and the AML regulation, despite minor concerns that a single rule book might amend currently functioning procedures in specific realms, such as in the German real estate sector, as the supervisory official observes (p. 9). This thesis supports the proposal put forward by the EC as it tackles the problems identified in AML supervision, deficient FIU cooperation and a fragmented AML landscape across MS. The researcher critically views AMLA because he fears that its compliance measures will not effectively tackle ML and he expects overarching, complex bureaucracy for OEs. Nevertheless, he considers supervision and the enforcement of AML rules to be essential. Because if the provisions are not transposed in practice as legally foreseen, they do not make an impact.

6. Summary and Conclusions

This thesis examines how effective the current EU AML framework is and how it can be improved. An in-depth analysis of the currently applicable EU AML laws is offered, including the AMLDs, other relevant legislation and the FATF's 40 recommendations as well as the EC legislative package proposal to amend the framework in future. On the basis of a qualitative analysis of an integrative and critical literature review and eight semi-structured expert interviews, the present work combines insights from theory and practice.

This thesis concludes that the EU's fight against dirty money is not effective and that plenty of room for improvement remains. The EC's impact assessment accompanying the legislative proposal identified major problems in EU AML giving impetus to change. The literature analysed and the expert interviews corroborate the EC's findings that FIU cooperation in the EU and AML supervision is insufficient. The EC further finds that transposition by MS is ineffective which leads to a fragmented landscape. Moreover, this thesis demonstrates that financial sector OEs tend to overreport impeding an effective analysis and processing of STRs by FIUs. Large parts of the non-financial sector OEs are overwhelmed by AML tasks, lack the know-how and resources to comply, resulting in poor reporting behaviour which also arises out of deficient supervision. Legal, technical and linguistic barriers stand in the way of more comprehensive cooperation among FIUs and law enforcement agencies. A major impediment in the cross-border work of law enforcement agencies is the legal requirement in some MS to know the predicate offence to open a ML investigation. Considering all these unresolved problems, the EU's fight against dirty money is not effective.

The fact that the first part of the objective –protecting society and the financial market from crime and ML – is not achieved is less due to the framework itself than due to the formulated objective. This thesis argues that, realistically viewed, the AML framework should aim to make it as difficult as possible for criminals to circumvent AML rules and for money laundering not to be worth the risk of detection. Also in reaching the second part of the goal – not imposing too much burden and compliance costs on OEs – the framework fails. For some non-financial sector OEs, adhering to AML rules can represent a damaging business decision that alienates customers who prefer OEs not asking too many questions. Multiple interviewees warn that more and more AML rules may become overburdening for OEs.

The AML legislative package plays an important role in improving the EU's approach to AML as it entails numerous adequate measures. AMLA tackles the issue of defective supervision of

EU-wide operating OEs and is expected to advance FIU communication and cooperation. Furthermore, an AML regulation ensures a single rule book across the Union, eliminating loopholes and fragmentations that criminals can exploit. Calls for an EU FIU and EU FBI would potentially enhance cooperation across the Union, however, both proposals, especially the EU FBI, remain distant. It remains to be seen to what extent AMLA will in fact better cooperation among FIUs. Should significant improvement fail to appear, an EU FIU would be the logical next step. A measure that could immediately spur cooperation among AML competent authorities would be the EU-wide removal of knowledge of the predicate offence as a prerequisite to ML investigations. This would allow proactive investigations into suspicious capital flows after the “follow the money” principle. The rationale is that following the money trail ideally leads investigators to the predicate offence. In addition, this thesis argues to introduce a "Suspicious Wealth Order" that would put the burden of proving the legitimacy of suspicious assets on suspects.

The EU, in cooperation with its MS, must regularly assess the ML risk in the EU in order to identify new developments of ML and to detect new loopholes or fragmentations. The challenge will remain to rapidly update AML legislation and keep pace with criminals, hence continuously improving the AML framework to make it increasingly difficult for criminals to launder their money in the EU.

What challenges and dangers may arise out of this continuous improvement is fittingly described by the prosecutor:

> “As you can see from the changes in the Money Laundering Act, it is becoming more and more, more and more, because there is always a loophole that can or must be filled. And in this logic, at some point everything will be completely monitored and then I can pick out my accusation of a crime. That is... that is so completely senseless. And it's not a free society, you have to see it that way.” (p. 37)

In addition, there is no doubt that a more effective fight against dirty money in the EU is necessary but not sufficient on a global scale. The prosecutor states that the US, Russia and China as well as offshore financial centres are highly relevant for ML. The problems that persist in an integrated EU with a common approach to ML, persist magnified on a global level.

Future research is needed which develops solutions of how an ever-expanding AML framework does not overwhelm OEs and competent authorities and does not lead to the scenario described by the prosecutor above. A continuous analysis of the EU’s AML effectiveness should be conducted, especially examining whether the legislative package will improve the framework in the coming years. Future work should also focus on the global AML fight, focusing more on international organisations such as the FATF and less on single states only.

Finally, several limitations need to be considered. Eight interviews were conducted, out of which five were with German experts, one with an Austrian expert and two experts working at EU institutions. More experts from other MS and with EU officials would have been beneficial to an analysis covering the EU. The interviews with the five German experts certainly caused a higher focus on Germany than on other MS. Hence, the interviews, and to some extent, the thesis did not evenly cover the EU MS.

7. Literature

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