

As an additional institutional player in the area of anti-money laundering, the AMLA has the potential to water down the FATF standard

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ABSTRACT

With the establishment of the European Anti-Money Laundering Authority (AMLA), the European Union aims to address long-standing shortcomings in the implementation of Financial Action Task Force (FATF) standards across its member states. This paper examines the legal motives behind AMLA's creation, its operating mechanisms, and its relationship with FATF. It argues that AMLA does not undermine FATF standards but rather functions as a regional complement to strengthen their implementation within the EU. The analysis highlights the challenges AMLA faces, including jurisdictional limits, operational capacity, and resource constraints. It further explores the prospects of cooperation between AMLA and FATF, suggesting the development of coordinated mechanisms such as joint assessments, information sharing, and cross-border supervision. Ultimately, the coexistence of AMLA and FATF may enhance global anti-money laundering governance, despite some regulatory and coordination challenges.

1. Introduction

With the acceleration of globalization and the rapid advancement of financial technology, cross-border financial transactions have become increasingly complex. This growing complexity has significantly amplified the risks associated with money laundering, terrorist financing, and corruption. In response to these global challenges, the Financial Action Task Force (FATF) has developed a comprehensive set of international standards for anti-money laundering (AML). However, the implementation of these standards has remained uneven across jurisdictions—particularly within the European Union (EU), where fragmented enforcement mechanisms have exposed systemic vulnerabilities, most notably in the Danske Bank scandal.

In light of these deficiencies, the European Commission proposed the establishment of the European Anti-Money Laundering Authority (AMLA) in 2021. The primary objective of AMLA is to strengthen the EU's capacity to combat money laundering and terrorist financing through more coordinated and centralized oversight.

This article investigates the legal rationale behind the creation of AMLA, assesses its relationship with the FATF framework, analyzes its institutional and operational limitations, and highlights the necessity of enhanced international cooperation between AMLA and FATF.

The study adopts a doctrinal legal research methodology, supported by comparative institutional analysis. It systematically examines relevant EU legislation and policy documents related to

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AMLA, alongside the applicable FATF standards. Additionally, the paper applies Elinor Ostrom's Institutional Analysis and Development (IAD) framework to the Danske Bank case, providing a structured lens for analyzing institutional deficiencies in AML enforcement. This interdisciplinary approach enables a comprehensive legal and structural assessment of AMLA's role within the EU's multi-level governance system and its evolving interaction with global AML norms.

2. Legal Motives and Background Analysis of the Establishment of AMLA

2.1. Implementation challenges and shortcomings of FATF standards

2.1.1. Differences in the implementation of anti-money laundering policies among member states / Limitations of FATF standards in implementation within the EU

The EU has adopted Directives requiring member states to implement FATF standards through domestic legislation. However, the absence of uniform regulations and a central enforcing authority, combined with the complexity of FATF standards, has led to inconsistent implementation. Some member states, like Malta and Cyprus, have faced criticism for weak anti-money laundering measures, with loopholes making them high-

risk areas for financial crimes. Additionally, the uniform implementation of FATF standards across the EU is challenged by factors such as inadequate technical and anti-money laundering capabilities within the financial sectors and the restrictions on exchanging information between national authorities due to the General Data Protection Regulation (GDPR)'s strict rules on cross-border data sharing.¹ Despite improving assessment methods, implementing the AML/CFT² The framework still presents difficulties. Many countries face challenges identifying and assessing money laundering and terrorist financing risks.³

2.1.2. Analysis of the unique risks faced by the EU in money laundering activities from the Danske Bank incident

The Danske Bank money laundering incident highlights risks to the EU single market and challenges global anti-money laundering trends. Using Elinor Ostrom, the first female recipient of the Nobel Prize in Economic Sciences, and her Institutional Analysis and Development (IAD) framework, my analysis reveals the EU's vulnerabilities. The framework examines action fields, institutional arrangements, external variables, interaction patterns, and outcomes, showing how money laundering exploits loopholes. It aids in developing effective policies to optimize rules, enhance interactions, and safeguard financial stability.

The design of the IAD framework is as follows:⁴

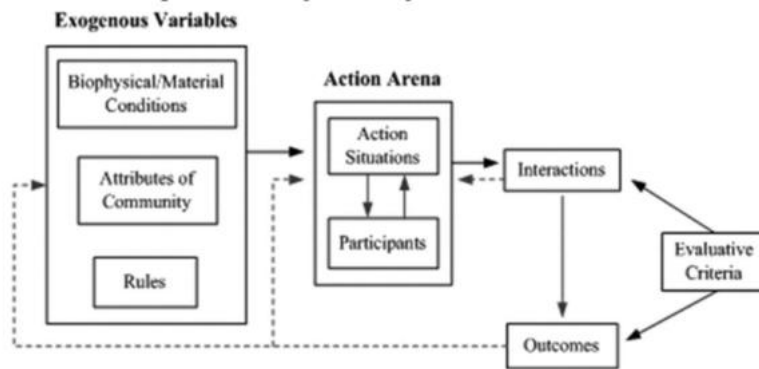


Fig. 1. Essential components of the IAD framework. Source: Ostrom (2010, 646).

The Danske Bank incident, one of the largest money laundering scandals, saw its Estonian branch process €200 billion in suspicious transactions from 2007 to 2015. Despite warnings from employees, whistleblowers, media, and institutions, management ignored or downplayed critical information, leading to the scandal and exposing compliance risks linked to non-resident customers.⁵ Using the IAD framework, the Estonian branch became a money laundering hub. Cross-border flows obscured fund origins via fake accounts, and poor interactions among criminals, executives, and regulators delayed risk detection.

At the institutional level, this incident substantially resulted from the discrepancies in implementing EU anti-money laundering rules between member states and Estonia's relatively loose supervision. In addition, the bank's due diligence and monitoring system failed to fulfill its supervision responsibilities, and the cross-border information-sharing mechanism needed to be revised. This scandal highlights moral hazard, free-riding problems, poor cooperation, and ineffective information exchange models.⁶ External factors contribute to this incident. While the openness of the EU single market promotes capital flows, the

¹ Bygrave, L. A., Docksey, C., & Kuner, C. (Eds.). (2020). Chapter V: Transfers of personal data to third countries or international organisations (Articles 44–50). In *The EU General Data Protection Regulation (GDPR): A commentary*. Oxford University Press.

² CFT is Combating the Financing of Terrorism.

³ Nanyun, N. M., & Nasiri, A. (2021). Role of FATF on financial systems of countries: successes and challenges. *Journal of Money Laundering Control*, 24(2), 234–245. <https://doi.org/10.1108/JMLC-06-2020-0070>

⁴ Charlotte Hess/Elinor Ostrom (eds.), *Understanding Knowledge as a Commons: From Theory to Practice*, 2007; Elinor Ostrom, "Beyond Markets

and States: Polycentric Governance of Complex Economic Systems," *The American Economic Review* 100 (2010), 641–646.

⁵ Minto, A., & Skovmand Rasmussen, N. (2022). Approaching the Danske Bank Scandal in a "Tragedy of the Commons" Perspective: Implications for Anti-Money Laundering Institutional Design and Regulatory Reforms in Europe. *European Company and Financial Law Review*, 19(2), 305–338. <https://doi.org/10.1515/ecfr-2022-0010>

⁶ Andrea Minto, "Enlisting Internal and External Financial Gatekeepers: Problems of Multiple Centers of Knowledge Construction", *European Journal of Risk Regulation* 9 (2018), 283–309.

absence of unified regulatory standards creates an environment conducive to financial crimes.

The Danske Bank scandal exposed significant flaws in EU anti-money laundering supervision, adversely affecting the financial system's resilience. Such technical, regulatory issues in several small member states eventually led to an important political problem for the EU regulatory framework.⁷ As a key player in the EU's anti-money laundering framework, the European Banking Authority (EBA), established under the Treaty on the Functioning of the European Union, has a legal personality.⁸

Moreover, it conducts banking supervision. While national authorities retain day-to-day supervisory responsibilities, the EBA was intended to be a standard and consistent supervision system that ensures coordinated responses in critical situations.

2.2. The reasons for the establishment of AMLA - legal motivation and background

2.2.1. Limitations of the current AMLD9 and the complementary role of AMLA

Over the past three decades, the EU has aligned with FATF standards to combat money laundering and terrorist financing through prevention and enforcement. Since Directive 91/308/EEC¹⁰ In 1991, the EU expanded anti-money laundering regulations to non-financial sectors, notably through Directive 2001/97/EC, which extends oversight to serious criminal proceeds.

In June 2003, the Financial Action Task Force (FATF)¹¹ Revised its recommendations¹² To address terrorist financing and introduce stricter customer identification requirements. Directive 2005/60/EC and Commission Directive 2006/70/EC incorporated

these changes, emphasizing stronger measures¹³ While allowing relaxed controls for reduced risks.

The EU framework now includes Directives 2015/849 (4th AMLD), 2018/843 (5th AMLD), 2024/1640 (6th AMLD), and Regulation 2015/847 on fund transfer information.

1) Limitations of the current AMLD framework

The current AMLD framework struggles with emerging technologies and financial instruments, requiring legislation to adapt to prevent the exploitation of vulnerabilities. The Fourth AMLD marks a key step for the EU, strengthening anti-money laundering efforts with a risk-based approach aligned with FATF recommendations.¹⁴ Under the Fourth Anti-Money Laundering Directive, Member States and obliged entities should analyze money laundering and terrorist financing risks and take simplified or enhanced measures to reduce or prevent these risks. In addition, the European Commission¹⁵ And European Supervisory Authorities (ESAs)¹⁶ They should jointly analyze money laundering and terrorist financing risks.¹⁷ The Fourth Anti-Money Laundering Directive requires Member States to establish a central register to record beneficial ownership information of companies and trust structures and strengthen Customer Due Diligence (CDD). However, it fails to cover emerging financial technology like virtual currencies fully. In response, in July 2016, the European Commission issued a proposal (Proposal)¹⁸ To amend the Fourth Anti-Money Laundering Directive and Directive 2009/101/EC by the Commission's Action Plan.¹⁹ The Fourth Anti-Money Laundering Directive revisions aim to close loopholes related to emerging financing means such as virtual currencies and prepaid cards and increase transparency to combat money laundering more effectively.

⁷ European Commission, *Proposal for the reform of the European System of Financial Supervision* (September 2018), adopted by the co-legislators in December 2019; European Commission, *Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing* (May 2020).

⁸ European Parliament & Council of the European Union, *Regulation (EU) No 1093/2010 of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC*, OJ L331, 12–47 (2010).

⁹ AMLD refers to the Anti-Money Laundering Directive.

¹⁰ EEC refers to the European Economic Community.

¹¹ The Financial Action Task Force (FATF) is an intergovernmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote the effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system.

¹² FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*. The FATF Recommendations, February 2012 (updated October 2016) (FATF Recommendations). Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

¹³ Silva, P. G. (2019). Recent developments in EU legislation on anti-money laundering and terrorist financing. *New Journal of European Criminal Law*, 10 (1), 57–67. <https://doi.org/10.1177/2032284419840442>

¹⁴ FATF Recommendations, R.1: "Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks and apply resources to ensure the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation for the efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measure

s for some of the FATF Recommendations under certain conditions. Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess, and effectively mitigate their money laundering and terrorist financing risks."

¹⁵ The EU Commission shall conduct an assessment and draw up a report identifying the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities every 2 years, or more frequently if appropriate, and will send its findings and its recommendations based on this analysis to the Member States and the obliged entities under the Directive so that the Member States can better understand and counteract such risks more effectively.

¹⁶ Namely, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

¹⁷ Joint Committee of the European Supervisory Authorities. (2019). Joint opinion of the European Supervisory Authorities on the risks of money laundering and terrorist financing affecting the European Union's financial sector (JC, 2019, p. 59). Published on 4 October 2019. Retrieved from <https://register.eiopa.europa.eu/Publications/Joint%20Opinion%20on%20the%20risks%20on%20ML%20and%20TF%20affecting%20the%20EUs%20financial%20sector.pdf>

¹⁸ COM/2016/0450 final of 5 July 2016. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016PC0450&from=EN> (accessed 29 January 2019).

¹⁹ Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on the coordination of safeguards which, for the protection of the interests of members and third parties, are required by the Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, to make such safeguards equivalent, OJ L 258, 1 October 2009, p. 1. The proposed amendments to Directive 2009/101/EC created a new set of rules applicable to a clearly defined category of companies and trusts that reflected and complemented the rules in the revised 4th AML Directive to ensure enhanced corporate transparency. In the meantime, Directive 2009/101/EC was repealed by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, OJ L 169, 30 June 2017, pp. 46–127. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017L1132>, which has embodied those amendments.

Directive (EU) 2018/843, the fifth Anti-Money Laundering Directive (AMLD5), explicitly addresses the anti-money laundering risks of cryptocurrencies.²⁰ Member states must also incorporate relevant provisions into national law by January 2020.²¹ However, the wording of the 5th Anti-Money Laundering Directive needs to be clarified,²² leading to legal uncertainty. For example, the definition of virtual currency in the 5th AMLD only covers currency tokens, ignoring Non-Fungible Tokens (NFTs) and other forms of crypto assets.

EU law emphasizes the principle of proportionality; public policy measures should balance achieving legitimate goals (such as anti-money laundering) and restricting individual rights; however, the current AMLD framework conflicts with the principle of proportionality and privacy protection. For example, the AMLD requires financial institutions and other obliged entities (such as lawyers and real estate agents) to collect many customer data and conduct due diligence, which may excessively restrict citizens' privacy rights. The call for transparency in the FATF Recommendations R.24²³ and R.25²⁴, together with their respective explanatory notes²⁵ and the specific instructions in the FATF's "Transparency and Beneficial Ownership Guidelines"²⁶ conflicts and contradicts the principle of proportionality.²⁷ It is contained in Article 52(1) of the Charter of Fundamental Rights of the European Union, especially in personal privacy protection. The current EU AMLD also faces the problem of insufficient cross-border coordination and enforcement efficiency. Because it relies on the transformation of member state laws, it leads to inconsistent enforcement standards and makes it difficult to deal effectively with cross-border money laundering activities.

2) AMLA complements the existing AMLD framework

Regulatory fragmentation and differences in the enforcement between national authorities are the main reasons for the defects in the current anti-money laundering and counter-terrorist financing framework in the EU.²⁸ The EU has agreed to establish AMLA to implement partially centralized supervision and support the

AMLD framework through oversight, technical assistance, and information sharing. AMLD, as a regional adaptation of FATF standards, inherits core requirements like customer due diligence, transparency, and reporting obligations. AMLA's role will reinforce AMLD within the EU and support global FATF standard implementation.

2.2.2. Legal Basis of AMLA

The establishment of AMLA is based on the EU's current legal framework for anti-money laundering and anti-terrorist financing. Specifically, the European Commission's reports in recent years and the European Court of Auditors' evaluation reports have revealed the problems of inconsistent enforcement and poor coordination of the current anti-money laundering regulations in member states, emphasizing the need for a unified regulatory agency, which laid the foundation for the establishment of AMLA.

Article 114 of the Treaty on the Functioning of the European Union²⁹ Provides a legal basis for establishing AMLA, allowing it to achieve unified supervision in the EU internal market and coordinate supervision and law enforcement actions among member states. The 2021 Anti-Money Laundering Legislation Proposal includes several relevant documents, such as the Regulatory Proposal on the Establishment of AMLA (COM/2021/421 final), which clarifies the structure, responsibilities, and direct supervisory powers of AMLA.³⁰

AMLA is positioned in the EU legal framework as a direct supervisory and coordination agency to address the existing problems of decentralized supervision and inconsistent law enforcement at the national level. Regarding direct supervision and coordination, AMLA has direct supervisory power over specific high-risk financial entities within the EU, can implement administrative orders, restrict business activities, and impose fines for violations. Its regulatory framework ensures unified and effective supervision of multinational institutions.³¹

²⁰ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (hereinafter AMLD5).

²¹ Haffke, L., Fromberger, M., & Zimmermann, P. (2020). Cryptocurrencies and anti-money Laundering: the shortcomings of the fifth AML Directive (EU) and how to address them. *Journal of Banking Regulation*, 21(2), 125–138. <https://doi.org/10.1057/s41261-019-00101-4>

²² This situation has not changed since the Directive's proposal was first issued; see Vandezande, N. (n 52) at 10–13 criticizes the Directive's imprecise scope

²³ FATF Recommendations, cit., R.24, p. 22: 'Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure adequate, accurate, and timely information on the beneficial ownership and control of legal persons that competent authorities can obtain or access promptly. In particular, countries with legal persons that can issue bearer shares or bearer share warrants or allow nominee shareholders or directors should take effective measures to ensure they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements in Recommendations 10 and 22.'

²⁴ FATF Recommendations, R.25: 'Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate, and timely information on express trusts, including information on the settlor, trustee, and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements in Recommendations 10 and 22.'

²⁵ FATF Recommendations, R.25, p. 85 et seq.; see also the features of an effective system mentioned in Immediate Outcome 5, in the FATF Methodology for

or Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, adopted in February 2013 (updated on 20 October), p. 105 et seq. Available at: <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

²⁶ Issued in October 2014. Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparencybeneficial-ownership.pdf>.

²⁷ Article 52(1) CFREU: 'Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognized by The Union or the need to protect the rights and freedoms of others.'

²⁸ Allegranza, S. (2022). *The proposed Anti-Money Laundering Authority, FIU cooperation, powers, and information exchanges: a critical assessment*. European Parliament. P14.

²⁹ Treaty on the Functioning of the European Union, Article 114. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT>

³⁰ Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for money laundering or terrorist financing' (COM(2021) 420 final — 2021/0239 (COD)), 'Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets (recast)' (COM(2021) 422 final — 2021/0241 (COD)) and 'Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for money laundering or terrorist financing and repealing Directive (EU) 2015/849' (COM(2021) 423 final — 2021/0250 (COD)). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021AE2524>

³¹ Thomas Wahl (2024). Tasks, Powers, and Structures of the New EU Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA). <https://eucrim.eu/news/tasks-powers-and-structures-of-aml/>

3. The operating mechanism and limitations of AMLA

3.1. AMLA's collaboration with other EU institutions

AMLA will play a crucial role in promoting cooperation and information sharing among national financial intelligence units, improving the effectiveness of AML/CFT.³² According to Articles 33 to 37 of the proposal, the agency will serve as a support center to assist Financial Intelligence Units (FIUs) in conducting joint analyses, managing the FIU.net platform, developing mandatory reporting templates, and promoting cooperation through staff delegation.³³

3.2. AMLA's supervision and enforcement mechanisms

The European Anti-Money Laundering Authority (AMLA) regulates financial institutions in three ways:

1. **Regular screening:** Financial institutions active in at least six EU member states with high risk will be selected based on cross-border activities and risks. The list will be reviewed every three years. Starting in 2028, direct supervision will be implemented in selected institutions.
2. **Supervision in exceptional circumstances:** For institutions that fail to fulfill their AML/CFT obligations and for which national supervision is ineffective, AMLA can request a European Commission resolution or accept a request from a national regulator to take over supervision temporarily.
3. **Joint Supervisory Teams (JSTs):** AMLA and national supervisors form teams that draw on the Single Supervisory Mechanism (SSM) prudential supervision model for banks.³⁴

3.3. AMLA's risk assessment framework and implementation mechanism

AMLA has a chairman and an executive director. The executive director is responsible for day-to-day management, including budget, resources, personnel, and procurement; the Chairman represents the organization and manages two collegial management bodies:

1. **Executive Committee:** This committee comprises the Chairman and five independent members. It is responsible for decisions regarding individual obligated entities or regulators and decisions on budgetary and operational matters.
2. **The General Committee** is comprised of the head of the anti-money laundering supervisory authority or the financial intelligence unit. It is responsible for regulating supervisory instruments and providing advice on direct supervisory decisions.

The General Committee oversees the work of the Joint Supervisory Group, and the Executive Committee adopts the final decision.³⁵

3.4. AMLA's disciplinary measures and accountability mechanisms

³² Pavlidis, G. (2020). "Financial information in the context of anti-money laundering: broadening the access of law enforcement and facilitating information exchanges", *Journal of Money Laundering Control*, Vol. 23 No. 2, pp. 369–378.

³³ Pavlidis, G. (2024). The birth of the new anti-money laundering authority: harnessing the power of EU-wide supervision. *Journal of Financial Crimes*, 31(2), 322–330. <https://doi.org/10.1108/JFC-03-2023-0059>

³⁴ Questions and Answers: The new EU Anti-Money Laundering Authority (AMLA) Brussels, 24 April 2024.

The negotiation results have enabled the EU to achieve coordination between anti-money laundering/anti-terrorist financing rules and sanctions regimes, making it more difficult to enforce sanctions. The Anti-Money Laundering Authority will serve as a direct supervisory agency to check compliance with sanctions measures by high-risk cross-border groups, promote unified supervisory methods, and provide key advice on mitigating the risk of sanctions evasion.

3.5. Overview of the Limitations of AMLA

3.5.1. Geographical scope and legal hierarchy limitations

Globally, AMLA's authority is limited to EU member states, reducing its influence compared to FATF standards. It may struggle to regulate multinational financial institutions' international operations, limiting its global impact.

Within the EU, AMLA's effectiveness may be constrained by differing domestic laws and member state sovereignty. While it has direct supervisory powers, enforcement relies on national laws and systems, which vary in priorities and resources. Additionally, aligning AMLA's requirements with existing national laws may require time and legislative adjustments, further weakening its impact.

3.5.2. Initial operational capacity limitations

As a newly established institution, AMLA needs to establish and optimize its internal structure, and its influence may be limited in the short term. First, in terms of resources and human resources, AMLA may face problems such as a shortage of professional talents, insufficient funds, or inadequate technical support in the initial stage of its launch; second, in terms of the institutional adaptation period, AMLA needs a certain amount of time to form stable supervision and coordination capabilities before it can fully exert its influence within the EU. Third, AMLA needs to face external doubts about its capabilities. Financial market participants and other regulatory agencies may take a wait-and-see attitude towards the actual implementation effect of AMLA, which will affect its deterrent effect.

3.5.3. Budgetary limitations

AMLA's budget mainly comes from two sources: about 30% of the EU budget and 70% of contributions from obligated entities in the financial industry. Financial institutions that are not directly regulated do not have to pay, leading to problems such as unbalanced funding sources, poor sustainability, and insufficient indirect regulatory resources. Reliance on donations from the financial industry may affect AMLA's independence and objectivity, and fluctuations in funds during economic instability may affect regulatory capacity and efficiency.

4. The legal basis for AMLA to challenge the FATF standards

The author believes that AMLA is unlikely to weaken FATF standards and that the European AMLA will unlikely become an alternative or regional countervailing force to the FATF. Although

https://finance.ec.europa.eu/document/download/61cf5a0d-0e5d-43e2-876a8e68e45c7f1f_en?filename=240424-anti-money-laundering-faqs_en_0.pdf

³⁵ Questions and Answers: The new EU Anti-Money Laundering Authority (AMLA) Brussels, 24 April 2024.

https://finance.ec.europa.eu/document/download/61cf5a0d-0e5d-43e2-876a8e68e45c7f1f_en?filename=240424-anti-money-laundering-faqs_en_0.pdf

AMLA was established to enhance the EU's capabilities in AML and CFT, its functions and roles fundamentally differ from those of the FATF. The two work goals are complementary rather than confrontational. The author will analyze the key reasons from the perspective of AMLA's international influence:

4.1. Functional supplement principle

The principle of functional complementarity is one of the core theories in coordinating international organization law and regional law. It emphasizes that international rules and regional mechanisms jointly achieve governance goals through functional division and collaboration. At the same time, it is neither the absolute autonomy of the national and international criminal justice systems nor the strict subordination of one system to another.³⁶ At the same time, the European Court of Human Rights (ECtHR) recognizes that functional complementarity applies to the relationship between the state and European or technical international organizations.³⁷ Therefore, this principle applies to the collaboration between the FATF and the European AMLA.

The collaboration between the FATF and the European AMLA embodies the theoretical basis of the principle of functional complementarity - that is, the abstraction and universality of international rules and the specificity and flexibility of regional mechanisms. The FATF is the first intergovernmental organization operating at the international level to approve and promote the effective implementation of standards related to AML and CFT.³⁸ These standards are intended to minimize threats to the financial system's integrity at the national, regional, and international levels.³⁹ The FATF standards are global and are committed to AML/CFT cooperation on a global scale. In contrast, AMLA will be a decentralized EU agency because it is not entirely a centralized decision-making and enforcement authority but a supervisory and coordination center for cross-border and cross-institutional cooperation. AMLA is responsible for coordinating national authorities to ensure the correct and consistent application of EU rules.⁴⁰ Rather than setting global standards, AMLA aims to change the EU's AML/CFT supervision and strengthen cooperation between financial intelligence agencies. It is more about enforcing and supervising internal compliance than competing with FATF, so it is an integral part of the global anti-money laundering system rather than an independent alternative force.

4.2. Principle of Proportionality

The principle of proportionality originates from the demand for justice in concept, and its value orientation is consistent with the development trend of criminal law in the era. The principle of

proportionality consists of four sub-principles: legitimacy, appropriateness, necessity, and balance.⁴¹ The principle of proportionality is embodied in modern European criminal law and law enforcement. An exercise of legislative, administrative, or judicial power must serve a legitimate purpose. It must be an appropriate and necessary means of achieving the objective. Reviews must be conducted to prevent national authorities from disguising the illegitimate purposes of exercising administrative power. A measure is optional to determine the necessity of alternative measures that cause less damage to citizens, and are available. In the balance review, the balance of legal interests between the degree of restriction on fundamental rights and the public benefits achieved by the measures should be reviewed leniently.⁴²

The European AMLA aims to enhance AML/CFT enforcement and address inconsistencies in FATF standards among EU member states. The "appropriateness" principle is reflected in AMLA's role in strengthening FATF standards through supervision, coordination, and detailed regional rules. The "necessity" principle highlights AMLA's establishment as essential to addressing FATF implementation challenges, ensuring consistent and efficient enforcement. FATF's 2022 "Fourth Round Mutual Evaluation Report" shows some member states' insufficient compliance, underscoring AMLA's necessity.⁴³ AMLA complements FATF by avoiding duplication and promoting consistency in international standards, aligning global and regional interests under the "narrow proportionality principle."

4.3. Coordination between substantive criminal law and procedural criminal law

Substantive and procedural criminal laws should complement each other, promote each other, and develop together. Under the premise of ensuring procedural fairness, substantive law should be applied to the maximum extent. In the case of procedural violations, the choice between substantive and procedural fairness should be divided into four situations. First, when illegal acts lead to the infringement of procedural fairness, they should be adopted in principle if there are still procedural means that may change this unfair state. Second, only when possible procedural means are exhausted, procedural fairness cannot be restored, or the application of procedural means will cause unreasonable losses to the realization of substantive law, can substantive mitigation be considered. Third, the application of substantive mitigation is a prerequisite for the restoration of procedural fairness. Fourth, when neither procedural means nor substantive mitigation can compensate for the damage caused by procedural violations, the lawsuit should be terminated.⁴⁴

³⁶ GIOIA, F. (2006). State Sovereignty, Jurisdiction, and 'Modern' International Law: The Principle of Complementarity in the International Criminal Court. *Leiden Journal of International Law*, 19(4), 1095–1123. doi:10.1017/S0922156506003761

³⁷ Obata, K. (2018). The Emerging Principle of Functional Complementarity for Coordination Among National and International Jurisdictions: Intellectual Hegemony and Heterogeneous World. In T. Suami, A. Peters, D. Vanoverbeke, & M. Kumm (Eds.), *Global Constitutionalism from European and East Asian Perspectives* (pp. 451–469). Chapter, Cambridge: Cambridge University Press.

³⁸ Murrar, F., & Barakat, K. (2021). The role of FATF is to spearhead AML and CFT. *Journal of Money Laundering Control*, 24(1), 77–90. <https://doi.org/10.1108/JMLC-01-2020-0010>

³⁹ Elsobki, H. (2015). Money Laundering, a Study in the Light of Islamic Law and Some International, Regional and National Legislation, Culture House for Publishing and Distribution, Amman, p. 196.

⁴⁰ "EU approves new anti-money laundering regulator (AMLA)" June 2024. <https://www.boringcompliance.com/post/%E6%AC%A7%E7%9B%9F%E6%89%B9%E5%87%86%E6%88%90%E7%AB%8B%E6%96%B0%E7%9A>

%84%E5%8F%8D%E6%B4%97%E9%92%B1%E7%9B%91%E7%AE%A1%E6%9C%BA%E6%9E%84-aml

(《欧盟批准成立新的反洗钱监管机构 (AMLA)》 June 2024.

<https://www.boringcompliance.com/post/%E6%AC%A7%E7%9B%9F%E6%89%B9%E5%87%86%E6%88%90%E7%9A>

⁴¹ Alexy, R. (2017). Proportionality and Rationality. In VC Jackson & M. Tushnet (Eds.), *Proportionality: New Frontiers, New Challenges* (pp. 11–12). Chapter, Cambridge: Cambridge University Press.

⁴² Xie Libin. (2024). Scope of application and review criteria of the proportionality principle. *Contemporary Jurisprudence* (05), 87–98.(谢立斌.(2024). 比例原则的适用范围与审查基准. *当代法学*(05), 87-98.)

⁴³ FATF (2022). Anti-money laundering and counter-terrorist financing measures –Germany, Fourth Round Mutual Evaluation Report, FATF, Paris <http://www.fatf.gafi.org/publications/mutualevaluations/documents/mer-germany-2022.html>

⁴⁴ Sun Yuan (2023). A new perspective on the relationship between criminal law and criminal procedure law. Xi Mingna, Cross-application of criminal law and criminal procedure.

<https://mp.weixin.qq.com/s/jHUCT3k4PCQyAa0RJUunug>

Establishing the European Anti-Money Laundering Authority can promote the coordination of substantive and procedural criminal laws. AMLA's cross-border collaboration and information-sharing mechanism can facilitate the automatic exchange of anti-money laundering-related data between member states and improve the efficiency of cross-border investigations. On the other hand, AMLA can ensure that member states can balance the implementation of substantive and procedural criminal laws through legal and technical support: first, it can improve procedural investigation capabilities through training programs for member state law enforcement agencies; second, it can promote data standardization so that evidence of money laundering crimes has universal applicability among member states.

4.4. Multi-level governance system

The European Union is widely considered to be a unique multi-level governance system.⁴⁵ It is characterized by several different forms of governance, covering the entire range from market to hierarchy. It can use mechanisms such as the EU in making policies if its supranational institutions adopt and implement legally binding decisions without the consent of individual member states. Member state governments share power with the European Commission, the European Parliament, and other supranational and intergovernmental actors (such as regulatory

agencies).⁴⁶ In general, theories of multi-level governance in the EU emphasize that the various levels of institutions (international, regional, national) do not compete but cooperate to achieve their goals through the division of labor.

The Financial Action Task Force (FATF) ensures the implementation of anti-money laundering and counter-terrorist financing standards worldwide through nine regional bodies (FSRBs⁴⁷). The framework of its implementation procedures is shown in the figure below.⁴⁸ Regional organizations have done much work encouraging countries to implement the Financial Action Task Force standards on anti-money laundering and counter-terrorist financing measures within their jurisdictions.⁴⁹ AMLA's functions are regional, aiming to enhance the EU's supervision and enforcement in anti-money laundering and counter-terrorist financing, ensure that member states comply with international standards such as FATF, and strengthen cooperation among member states to enhance the EU's position in combating financial crimes. It complements the global functions of FATF and will form a vertical division of labor and horizontal cooperation. AMLA can make the FATF framework more adaptable to the diverse legal systems of EU member states through regionalized practices.

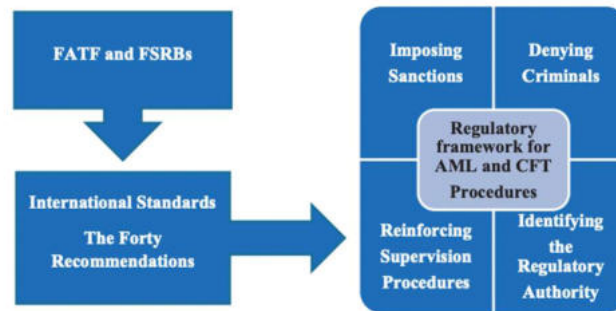


Fig. 2. Source: Murrar, F., & Barakat, K. (2021).

5. Challenges faced by AMLA as a potential counterforce to FATF and prospects for global anti-money laundering cooperation

5.1. Challenges faced by AMLA as a potential counterforce to FATF

If AMLA attempts to become a regional counterforce to FATF, it will face many challenges. First, it will need more technical and resource capabilities. FATF has a complex mutual evaluation mechanism and a global database network, such as the AML system, which requires the support of technical and information

resources from member countries.⁵⁰ AMLA will find it challenging to build a similar technical framework in the short term. As mentioned earlier, providing financial support and expertise will also be challenging. Second, if AMLA attempts to impact the authority of FATF, since many FATF member countries, such as the United States, regard maintaining the authority of FATF as part of their financial strategy,⁵¹ They may resist AMLA's confrontation efforts through diplomatic and economic means. Regional confrontation may also trigger geopolitical competition, further exacerbating the instability of global financial governance.⁵²

(孙远 (2023) 刑法与刑事诉讼法关系的新视角. 刑法与刑诉交错适用. 席明纳)

⁴⁵ Caparaso JA (1996). The European Union and forms of state: Westphalian, regulatory or post-modern? *Journal of Common Market Studies*, 34, 1, 29–52.

⁴⁶ Börzel, TA, & Heard-Lauréote, K. (2009). Networks in EU Multi-level Governance: Concepts and Contributions. *Journal of Public Policy*, 29 (2), 135–151. doi:10.1017/S0143814X09001044

⁴⁷ FSRBs refer to FATF-Style Regional Bodies.

⁴⁸ Murrar, F., & Barakat, K. (2021). Role of FATF in spearheading AML and CFT. *Journal of Money Laundering Control*, 24(1), 77–90. <https://doi.org/10.1108/JMLC-01-2020-0010>

⁴⁹ Murrar, F., & Barakat, K. (2021). Role of FATF in spearheading AML and CFT. *Journal of Money Laundering Control*, 24(1), 77–90. <https://doi.org/10.1108/JMLC-01-2020-0010>

⁵⁰ Levi, M., & Reuter, P. (2006). Money Laundering. *Crime and Justice* (Chicago, Ill.), 34(1), 289–375. <https://doi.org/10.1086/501508>

⁵¹ Sciurba, M. (2019). 2. Developing a Global Anti-Money Laundering Framework: The Pioneering Role of the United States. In *The Incompatibility of Global Anti-Money Laundering Regimes with Human and Civil Rights* (1. Aufl., S. 41–54). Nomos Verlagsgesellschaft mbH & Co. KG. <https://doi.org/10.5771/9783748903086-41>

⁵² Dobbin, F. (2012). *The Money Laundry: Regulating Criminal Finance in the Global Economy*. By J. C. Sharman. Ithaca, N.Y.: Cornell University

On the other hand, the FATF blacklist mechanism is deeply rooted in the hearts of the people with its "naming, shaming and punishing" approach. It puts money laundering, a criminal offense under international law, in the spotlight of global attention by clearly pointing out countries that facilitate money laundering. It is accompanied by severe "countermeasures" that FATF may take. These measures include strengthening the due diligence of the international banking system on transactions with entities related to blocked countries and even completely prohibiting these countries from participating in the operation of the global financial system, thereby further consolidating the influence of the mechanism in international economic governance.⁵³ The author argues that if AMLA's policies conflict with FATF standards, the private sector may continue following FATF rules for cross-border compliance. FATF's global effectiveness relies on international cooperation and standardized AML/CFT measures, while AMLA's influence is limited to the EU. Therefore, AMLA cannot compete with FATF globally. Instead, AMLA's role is to enhance EU cooperation and compliance, while FATF's international leadership remains irreplaceable. The functions of both institutions complement each other rather than conflict.

5.2. Prospects for global anti-money laundering cooperation: the establishment of a coordination mechanism between FATF and AMLA

The author believes that AMLA may prompt FATF to implement reforms and innovations. AMLA adopts a centralized and multi-level regulatory framework, especially direct supervision of high-risk financial institutions, which has significantly improved compliance in the EU. This approach provides FATF with valuable experience, especially in accurately regulating multinational financial institutions and high-risk areas.⁵⁴ AMLA aims to strengthen EU AML/CFT compliance enforcement, while FATF is committed to global standard development. Based on the above discussion, the author believes that the collaborative path between the FATF standard and AMLA is mainly reflected in the three fields of information sharing, cross-border cooperation, and joint assessment, and this collaborative path is constructed from the perspective of combining theory and practice.

1) Information sharing mechanism

The two can enhance global anti-money laundering compliance through information sharing and collaborative work. For example, AMLA can provide FATF with specific data and trends on financial crimes in Europe, and FATF can help AMLA understand compliance challenges and progress in other regions through its global network.⁵⁵ AMLA's direct supervision mechanism may also provide FATF with best practices on cross-border regulatory cooperation and information sharing, thereby promoting the construction of a global anti-money laundering cooperation network.⁵⁶

2) Cross-border cooperation mechanism

AMLA and FATF can jointly conduct cross-border regulatory cooperation and supervise cross-border financial institutions and high-risk areas, primarily through unified actions on cross-border information transmission and international compliance issues. For example, AMLA's strong regulatory capabilities in the EU can complement FATF's global network to achieve more substantial supervision of the global financial system. In response to

international financial crime threats, AMLA and FATF can jointly formulate and implement cross-regional action plans, especially in identifying high-risk financial activities, financial institutions, and high-risk countries, and carry out joint investigations and tracking through cooperation.

3) Joint Assessment and Monitoring Mechanism

FATF can work with AMLA to develop globally unified AML/CFT assessment standards, especially in transnational financial crimes supervision, to unify assessment methods and procedures to ensure fairness and transparency. AMLA can provide specific data from the EU region to help FATF improve its global assessment process. In contrast, FATF can provide AMLA with references to policy and legal evolution worldwide.

5.3. Analysis of the advantages and challenges of the coexistence of AMLA and FATF on global anti-money laundering governance

The coexistence of AMLA and FATF brings advantages and challenges, especially in cooperation at the regional and global levels. The two need to strengthen coordination to avoid duplication and conflict and ensure the consistency and effectiveness of international anti-money laundering policies.

5.3.1. The advantages of the coexistence of AMLA and FATF for global anti-money laundering governance are mainly reflected in the following aspects

1) Dual coverage of regionalization and globalization

As a European institution, AMLA can focus on specific issues and challenges within the EU, such as cross-border financial crimes and compliance assessments. At the same time, FATF, as a global institution, can ensure the uniformity of AML and CFT measures worldwide. The coexistence of the two can provide dual protection at the global and regional levels to avoid regulatory loopholes in a particular region.

2) Strengthen regional cooperation

AMLA provides a strong anti-money laundering regulatory framework for EU member states, which can promote information sharing and cooperation among them. This in-depth regional cooperation helps improve member states' consistency in cross-border financial supervision. It also strengthens the implementation of the risk-based approach advocated by the FATF. Through AMLA, the FATF can obtain specific regulatory data from the EU and enhance the accuracy of global supervision.

3) Flexible response to regional challenges

AMLA can flexibly regulate regional risks unique to the EU and design anti-money laundering measures that align with the EU's economic and financial environment. The FATF provides countries with a global unified framework to ensure consistency in compliance standards. The coexistence of the two can better respond to specific issues in different regions.

5.3.2. The coexistence of AMLA and FATF will also challenge global anti-money laundering governance.

1) Regulatory duplication and waste of resources

AMLA and FATF partially overlap in their functions, which may waste resources in the global anti-money laundering system.

Press, 2011. Pp. xiv+200. \$29.95. *The American Journal of Sociology*, 118(3), 850–852. <https://doi.org/10.1086/667602>

⁵³ Eggenberger, K. (2018). When is blacklisting effective? Stigma, sanctions, and legitimacy: the reputational and financial costs of being blocked. *Review of International Political Economy*, 25(4), 483–504.

<https://www.jstor.org/stable/26786543>

⁵⁴ European Commission. (2022). Proposal for a Regulation establishing a European Anti-Money Laundering Authority. [<https://ec.europa.eu/>]

⁵⁵ FATF. (2020). FATF Recommendations. [<https://www.fatf-gafi.org/>]

⁵⁶ Zohra, S., & Szmigiera, M. (2023). The Role of Regional Bodies in Global Anti-Money Laundering Efforts. *Journal of Financial Regulation*, 9(2), 214–237.

The establishment of AMLA may increase the regulatory burden on the EU, while the FATF has already implemented anti-money laundering standards worldwide. The overlap between the two in certain areas may lead to inefficiency and increase the burden on countries regarding compliance.

2) Increased coordination complexity

Although AMLA and FATF play their roles at the regional and global levels, coordination between the two may need help, especially regarding information sharing, policy coordination, and regulatory compliance. AMLA may implement measures within its regulatory scope that are only partially consistent with FATF recommendations, which may lead to the fragmentation of the global anti-money laundering governance system.

3) Potential conflicts of law and policy

There may be inconsistencies or conflicts between AMLA's policies and the FATF's global standards, especially in the applicability and strength of anti-money laundering measures. Differences in legislation between countries and regions may also make cooperation between AMLA and the FATF challenging, especially when reconciling conflicts between local and international laws.

6. Conclusion

6.1. Summary of findings

AMLA has a complex impact on FATF standards. It may have a supplementary effect, lead to partial weakening, or have a neutral impact. Overall, AMLA enhances coordination and enforcement within the EU and promotes the unification of European anti-money laundering mechanisms.

Overall, establishing an anti-money laundering authority and developing a comprehensive single rulebook are necessary.⁵⁷ One key step in combating money laundering and terrorist financing in Europe is AMLA. AMLA enhances the EU's ability to fight financial crimes through supranational supervision and integration of national AML/CFT regulatory agencies and financial intelligence units. The benefits remain significant despite funding, functional autonomy, and collaboration challenges. AMLA will promote cooperation within the EU to ensure that it maintains a leading position in the fight against financial crimes and will work closely with institutions such as the European Commission to formulate and implement policies.⁵⁸

6.2. Policy recommendations and further research directions

We believe that the future development of AMLA needs to focus on the following key points:

Strengthening legal and technical support: AMLA must enhance its legal, technical, and data analysis capabilities to address emerging money laundering methods and terrorist financing activities. It also needs to improve its employees' professional capabilities and technical infrastructure. Effective, efficient, and technologically advanced cooperation and coordination among member states are crucial for conducting criminal investigations and making arrests in this highly covert financial crime arena.

Funding and resource allocation: AMLA's operational efficiency is affected by its funding and resource allocation, and a combination of the EU budget and financial industry donations may determine its sustainability and regulatory scope.

Impact and promotion to non-EU countries: AMLA may expand. Cooperation with non-EU countries plays an essential role in the global anti-money laundering system. Whether it can become a reference for other regions is key.

Cross-border cooperation and information sharing: AMLA must establish a substantial information-sharing mechanism and collaborate with FIUs and regulators in various countries to address cross-border money laundering and terrorist financing risks and ensure consistency with FATF standards.

Author Contribution

The author solely conceptualized the study, conducted the legal and doctrinal analysis, collected and analyzed the relevant materials, and drafted the manuscript. The author also reviewed and approved the final version of the paper.

Compliance with Ethical Standards

Not Required

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Competing Interest declaration

The author declare that, to their knowledge, they have no financial, personal, or professional relationships that could be construed as a potential competing interest regarding the work described in this manuscript.

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⁵⁷ Schlarb, D. (2022). "Rethinking anti-money laundering supervision: the single supervisory mechanism – a model for a European anti-money laundering supervisor?" *New Journal of European Criminal Law*, Vol. 13 No. 1, pp. 69–90.

⁵⁸ Egeberg, M., Trondal, J. & Vestlund, N. (2015). "The quest for order: Unravelling the relationship between the European Commission and European Union agencies," *Journal of European Public Policy*, Vol. 22 No. 5, pp. 609–629.

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Appendix

Abbreviation	Definition
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Authority
AMLD	Anti-Money Laundering Directive
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
EBA	European Banking Authority
ECtHR	European Court of Human Rights
EEC	European Economic Community
ESAs	European Supervisory Authorities
FATF	Financial Action Task Force
FIUs	Financial Intelligence Units
FSRBs	FATF-Style Regional Bodies
GDPR	General Data Protection Regulation
IAD	Institutional Analysis and Development
JSTs	Joint Supervisory Teams
NFTs	Non-Fungible Tokens
SSM	Single Supervisory Mechanism