

Money Laundering through Cryptocurrencies

*An Analysis of the Anti-Money Laundering Framework of the European Union and the Legislative
Process Leading to the Adoption of the AMLD6*

Bachelor Thesis

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Abstract

As cryptocurrencies allow for anonymous transactions between users, they are well suited for criminal activities such as money laundering. The EU is currently adopting new legislation on the prevention of money laundering. This thesis aims to answer the question: *How fit for purpose is the EU's AML framework regarding the prevention of criminal activity through cryptocurrencies?* Firstly the effectiveness of the current and proposed legislation will be evaluated. While the current framework cannot sufficiently prevent money laundering through cryptocurrencies the new legislation will effectively close these loopholes. Secondly, based on theories of European integration, the method of process tracing will be used to analyze whether the adoption process of the new legislation rather follows a neo-functional or intergovernmental dynamic and how that affected the outcome of the negotiations. The results indicate that while the negotiations are mostly driven by neo-functional dynamics with the European Commission in a central role, final decisions are still subject to intergovernmental dynamics as member states try to preserve their interests and autonomy. Subsequently, the effectiveness of the new legislative framework will depend on whether member states are willing to give competences to the EU to fight money laundering on a supranational level.

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List of Abbreviations

AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Authority
AMLD5	5 th Anti-Money Laundering Directive
AMLD6	6 th Anti-Money Laundering Directive
AMLR	Anti-Money Laundering Regulation
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
EBA	European Banking Authority
EBF	European Banking Federation
EC	European Commission
ECON	Committee on Economic and Monetary Affairs
EDPS	European Data Protection Supervisor
EESC	European Economic and Social Committee
EFAMA	European Funds and Asset Management Association
EP	European Parliament
ESMA	European Securities and Markets Authority
EU	European Union
LI	Liberal Intergovernmentalism
LIBE	Committee on Civil Liberties, Justice and Home Affairs
ML	Money Laundering
NF	Neo-Functionalism
NIG	New Intergovernmentalism
TFEU	Treaty on the Functioning of the European Union
TFR	Regulation on Transfer of Funds
VASP	Virtual Asset Service Provider

Introduction

Money laundering (ML) is a severe problem for societies that national governments and international actors have long been concerned with to preserve the integrity and stability of the financial system. ML is defined as an activity that entails the “processing of [...] criminal proceeds to disguise their illegal origin” (FATF, n.d.-b). It is estimated that ML accounts for 2-5% of the global economy (Taylor, 2020). The negative effects of ML are far-reaching. If a business is only set up for the purpose of ML, then it can offer its services at an uncompetitively low price, thus putting legitimate businesses at a disadvantage (Taylor, 2020). Moreover, ML leads to lower tax revenues for the governments and slows down economic growth. Finally, fighting ML is a costly and time-consuming activity (Taylor, 2020). Thus, governments and society have an interest in effective regulation.

The traditional ML process is composed of the three stages (i) placement, (ii) layering, and (iii) integration (Teichmann & Falker, 2020). In the placement stage, the illegally acquired profits are injected into the financial system. This is often done by splitting up the initial amount into smaller chunks or by using strawmen to disguise the identity of the money launderer (Schneider & Windischbauer, 2008). This stage is then followed by the layering stage in which the money is transferred back and forth between different accounts to disguise its origin (Schneider & Windischbauer, 2008). In the final stage, the placement, the money is transferred back into the legal financial system by purchasing assets such as stocks, property, or business ventures (Schneider & Windischbauer, 2008). Anti-Money Laundering (AML) comprises legislation, tools, and processes that are set up in order to tackle the problem of criminal ML activities (IDnow, n.d.). According to Vitvitskiy et al. (2021) effective legislation, the analysis of financial transactions, the continuous training of analysts, and the establishment of a central information system are essential components to fight ML. For that purpose, the cooperation between relevant authorities and especially international cooperation and regulation is extremely important as financial systems expand beyond national borders (S. Vitvitskiy et al., 2021). The fight against ML is a collective action problem.

Recognizing that in the year 1990, the first Directive against ML has been adopted by the European Community (European Commission, n.d.-a). Thus, the fight against ML has formed an integral part of the EU’s policy portfolio for more than 30 years. The rise of cryptocurrencies and the absence of traditional banking institutions entails a new need for regulation. Cryptocurrencies are very suitable for ML processes because they provide anonymity for their users and are predominantly organized in a decentralized manner, which makes them hard to regulate. (Teichmann & Falker, 2020). Over the years, the European Union’s (EU) AML directives have been updated numerous times to respond to these changes. In 2018, the EU adopted the 5th Anti-Money Laundering Directive (AMLD5) to respond to the threats posed by cryptocurrencies. In 2021, the EU proposed an ambitious legislative package on AML

regulation and Countering the Financing of Terrorism (CFT), which includes a 6th Anti-Money-Laundering Directive (AMLD6), a regulation on AML and CFT (AMLR) a regulation for the creation of an EU AML Authority (AMLA) and a regulation on the Transfer of Funds (TFR) (European Commission, n.d.-b).

In light of these changes, this thesis aims to investigate how AML regulation works in the EU by analysing the actor landscape and assessing how far cryptocurrencies are covered by the legislation. For that purpose, the situation under the AMLD5 will be compared to the situation under the new AMLD6, which forms part of the “Legislative Package”, adding an important perspective to the existing literature on ML. Secondly, it will be studied how the EU legislative process influences the outcome of the adoption of the new legislative package. More specifically, hypothesis testing will be conducted, under consideration of EU integration theories and the EU legislative process, to determine the extent to which the objectives of the proposal will be reached after it has been adopted. This is highly relevant to determining the feasibility, efficiency, and effectiveness of the new regulatory framework. As this specific situation has not been studied yet, this thesis will aim to address this research gap.

Research Questions

The general objective of this thesis is to assess to what extent the proposed regulatory framework of the EU can prevent ML through cryptocurrencies. This question will be broken down into three sub-questions. The first part of the thesis will explore how EU AML regulation is working right now and how it is coordinated (Sub-Question1). Moreover, it will be investigated in how far institutions that are dealing with crypto assets are covered by the current legislation through the AMLD5 (Sub-Question 2). The same two questions will also be answered with respect to the situation under the new AMLD6 to point out the improvements that have been made. In a second part, an analysis will be conducted to trace and explain the process of the adoption of the AMLD6 to answer sub-question 3.

Overall RQ: How fit for purpose is the EU's AML framework regarding the prevention of criminal activity through cryptocurrencies?

SQ1: How does AML regulation work within the European Union?

SQ2: In how far are those institutions that deal with crypto assets covered by the regulation?

SQ3: How is the EU's legislative process affecting the outcome of the proposal adoption?

Theoretical Framework

The fight against ML represents a collective action problem. It arises when collective action would lead to the best outcome, but individual actors decide not to engage in collective action due to conflicting interests (Smith, 2010). The EU, with its institutions and processes, can serve as a vehicle for dialogue and reconciliation between conflicting interests. The theories of Neofunctionalism, Liberal Intergovernmentalism, and New Intergovernmentalism, which will be presented in the subsequent paragraphs, assume different dynamics and outcomes from this process. They will be used to analyse and explain the adoption of the new legislative proposals. Furthermore, this section will explain the EU legislative process as well as the recommendations of the Financial Action Task Force (FATF) for good AML regulation, which will be used as a benchmark against which the EU measures will be evaluated.

Neofunctionalism

Central to the theory of Neofunctionalism (NF) is the assumption that the process of European integration is driven by functional and political spillover effects (Buonanno & Nugent, 2021). Functional spillover refers to the development, that institutions become increasingly interconnected so that common policies are more likely to be adopted, which leads to more integration (Buonanno & Nugent, 2021). Political spillover entails, that actors come to identify and pursue common political interests, which subsequently strengthens the supranational institutions at the cost of national actors and their respective institutions (Buonanno & Nugent, 2021). Integration is seen as an incremental and pluralistic process with rational actors (Niemann, 2021). At some point, the integration is mainly driven forward by supranational institutions in an autonomous way (Hooghe & Marks, 2019). So, if the policy process is mainly driven forward by the European Commission (EC) while harnessing the expertise and input of EU agencies as well as international organizations, interest groups and NGO's, this would support the theory of NF. In recent years NF has undergone some modifications. It has been argued that spillover is not always automatic and that it depends on plausible and qualitative argumentations, which thus leads to a larger role of intergovernmental bargaining within neo-functionalist theory (Niemann, 2021). Supranational rules are adopted in an interplay between testing the limits of the current legal framework and the intensity of demands for new rules (Niemann, 2021).

Liberal Intergovernmentalism

Contrary to NF, Liberal Intergovernmentalism (LI) assumes that the process of European integration is primarily determined by domestic interests and thus national governments (Schimmelfennig, 2021). Moreover, large member states are assumed to impose their preferences on smaller less powerful member states (Slapin, 2008). In the context of the EU this, assumes a prevalence of the interest of the Council. Furthermore, governments are expected to decide rationally and are mainly driven by the economic advantages that integration offers them (Buonanno & Nugent, 2021). The process is divided

into three stages: First, there is a formation of domestic preferences. Secondly, there is a negotiation stage with hard bargaining about benefits and problems which is then followed in a third step by the establishment of supranational institutions that preserve the agreements (Schimmelfennig, 2021). The process is driven by demand for integration as negotiations can only be successful if there is a convergence of interests among the national actors (Buonanno & Nugent, 2021). LI assumes that the created institutions cannot develop autonomous agency (Schimmelfennig, 2021), which leads to the criticism that it downplays the power of supranational actors (Buonanno & Nugent, 2021; Schimmelfennig, 2021). Furthermore, it has been criticized for not paying particular attention to the policy process and all its actors but rather to high-profile decisions and final outcomes (Buonanno & Nugent, 2021).

New Intergovernmentalism

The theory of New Intergovernmentalism (NIG) counters some of the criticism against LI. It argues that consensual decision-making has become the modus operandi in EU policy-making, even in institutions that are explicitly intergovernmental such as the Council of the EU (Bickerton, Hodson, & Puetter, 2015). Then, partly in contrast to both NF and LI, the theory of NIG assumes that supranational institutions do not just push for more supranational powers but engage in strategic behavior through which they can incrementally increase their powers (Bickerton et al., 2015). For the EU this would mean that the EC uses strategic behavior to advance its powers. Another assumption of NIG is that national crises of identity and Euroscepticism, as opposed to clear domestic interests, put pressure on governments as they create doubt and turmoil (Bickerton et al., 2015). Subsequently, they fear delegation as it might be hard to justify (Bickerton et al., 2015). Following that, NIG argues that nation-states favour the creation of so called ‘de novo institutions’ which are built on an intergovernmental logic, as opposed to supranational institutions, giving them the power to considerably influence the decision-making in line with national interests (Bickerton et al., 2015). The final assumption insists that due to the aforementioned problems the EU is currently in a state of tumultuous instability (Bickerton et al., 2015).

The EU Legislative Process

All legislation must have a legal basis in the Treaties which gives the EU the right to legislate in a given area. Only those competences that have been explicitly transferred to the EU, through the principle of conferral specified in Articles 4(1) and 5(1) TEU, can be exercised by the EU (EUR-Lex, n.d.-a). The legal basis defines the legislative procedure that has to be used and thus determines the power relations between the EU institutions (University of Plymouth, n.d.). The AML/CFT regulatory regime of the EU is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU). This Article defines that the ordinary legislative procedure has to be used in order to attain the objectives set out in Article 26 TFEU. Article 26 TFEU defines that the “Union shall adopt measures with the aim of

establishing or ensuring the functioning of the internal market” (EUR-Lex, 2012, Art. 26). Thus, the framework is based on an article that refers to the functioning of the internal market rather than to one that aims at the prevention of criminal activity. The EU justifies this by referring to “the significant threat to the internal market caused by money laundering and terrorist financing, and the economic losses and disruption on a cross-border level which it can create.” (European Commission, 2021b, p. 4).

The main actors in the legislative process are the EC, the Council, and the European Parliament (EP) (Buonanno & Nugent, 2021). The relevant committees of the EP are the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE). They write reports to assess legislative proposals, give their opinion or might even propose amendments to the proposals of the EC (European Parliament, n.d.-a). The right to initiate a legislative process lies with the European Commission (Article 17(2) TEU) but it can also be asked to propose legislation after a request from the Council or the European Parliament (Cabral, 2020). The EP and the Council are fully authorized co-decision makers and thus their approval is necessary to adopt legislation (Buonanno & Nugent, 2021). The European Parliament is the body representing the citizens of the EU while the governments of the member states are represented in the Council through one of their governmental ministers according to the policy field that the policy is located in (Buonanno & Nugent, 2021). For AML the Council is composed of economic and finance ministers (Council of the EU, 2022a). Following a neo-functional logic, the EC is seen as the main driver of the policy process while following an intergovernmental logic more power is assumed to lay with the Council (Buonanno & Nugent, 2021).

The proposal can be adopted in the first reading, if both the EP and the Council give their approval, but it might also be that the EP makes amendments to the EC’s proposal which must be approved by the Council through a vote of qualified majority (Cabral, 2020) which entails that 55% of the countries representing 65% of the population vote in favour of the proposal (EUR-Lex, n.d.-b). If the Council adopts its own position and sends the proposal back to the EP, then the second reading starts. In case that does not lead to an agreement, a conciliation committee composed of members from the EC, EP and the Council is created to try to reach a common position (Cabral, 2020). Problems to reach an agreement would confirm the intergovernmental logic, while a neo-functional logic would be exemplified by a low-conflict adoption process (Schimmelfennig, 2021). And indeed, a vast majority of the legislative proposals are already adopted during the first reading because the EC, EP and the Council are engaged in informal dialogues prior to the legislative process to avert conflicts (Buonanno & Nugent, 2021).

Other actors that have an influence on the policy process are EU agencies. The European Securities and Markets Authority (ESMA) is not only assessing market risks and supervising certain entities, but it is also advising EU policymakers, drafting legislation and cooperating with national competent authorities (ESMA, n.d.). This often occurs after consultation with interest groups, making it

likely that policies become biased towards business interests (Joosen, 2020). Through networking, agencies can exert more influence (Levi-Faur, 2011). Another organization that the EC considers is the FATF which develops international standards and recommendations for the fight against ML (European Commission, n.d.-a). They publish reports, recommendations, guidance and public consultation documents (FATF, n.d.-a). Generally, the influence of international organizations on the EU policy process can either happen through technical advice that alters the preferences of the actors or through the creation of a narrative that underpins the societally desirable implications of a certain course of action (Costa & Jørgensen, 2012).

FATF Recommendations for Anti Money Laundering Regulation

The FATF Recommendations define international standards for CFT/AML measures which should be implemented by countries (FATF, n.d.-c). The recommendations are not legally binding, but countries that do not implement them risk being added to the FATF 'Blacklist' which can harm opportunities for international trade (Sygna, 2020). In total there are 40 recommendations from which the most important ones will be presented here. They will be used as the benchmark against which the EU AML framework will be evaluated. Essentially, the FATF recommends applying a risk-based approach to AML which entails that countries assess the different risks of non-compliance and distribute their resources in a way that mirrors those risks (FATF, n.d.-c). Furthermore, effective cooperation between Financial Intelligence Units (FIUs), law enforcement and policy-makers is seen as essential (FATF, n.d.-c). Legally, ML needs to be declared a criminal activity based on the Vienna Convention and authorities need to have the power to seize or freeze assets if necessary (FATF, n.d.-c).

Preventive Measures

Financial institutions are obliged to conduct customer due diligence (CDD) which entails knowing the identity of the customer and the beneficial owner as well as understanding the nature of the business relationship (FATF, n.d.-c). There should also be a country-wide register on beneficial ownership (FATF, n.d.-c). The requirement of CDD and record-keeping might also be extended to designated non-financial businesses and professions (DNFBPs) such as casinos, real estate agents, dealers, lawyers or trust and company service providers (FATF, n.d.-c). They can use third parties to perform CDD, they must however ensure that those do so with the necessary rigidity (FATF, n.d.-c). If a financial institution suspects criminal activity, then it is obliged to report this to the FIU (FATF, n.d.-c). Bank secrecy laws should not inhibit reporting and employees have to be protected by law from civil liability (FATF, n.d.-c).

Powers and Responsibilities of Authorities

Financial institutions as well as DNFBPs need to be licensed and subject to adequate regulation and supervision (FATF, n.d.-c). Supervisors should be able to conduct inspections and have the power to impose administrative or financial sanctions in cases of non-compliance (FATF, n.d.-c). Every country

should have an FIU that serves as a centre for the receipt and analysis of suspicious activities. The FIU must have the power to obtain all the necessary information that is required to perform these analyses (FATF, n.d.-c). In the same way, law enforcement authorities need to have the power to obtain all the necessary information for their investigations from the relevant entities (FATF, n.d.-c). If financial institutions or DNFBPs fail to comply with the regulatory AML/CFT requirements, then there need to be effective and proportionate administrative, civil, or criminal sanctions (FATF, n.d.-c).

International Cooperation

If necessary, countries should offer each other swift mutual legal assistance without undue delay (FATF, n.d.-c). There should be institutionalized channels to ensure professional and confidential communication between authorities (FATF, n.d.-c). Countries must ensure that they have the legal power to execute freezes, confiscations and extraditions upon request from another country (FATF, n.d.-c). Should this cooperation need multilateral agreements, these should be negotiated and adopted (FATF, n.d.-c).

Hypotheses

H1: *“The process is expert-driven with the European Commission taking the initiative to ascend to international standards”*

H2: *“The process is driven by national governments and the search for loopholes to protect domestic interests”*

Methodology

Research Design

To answer the research question a single case study research design will be utilized. A case study design enables to study a process and its mechanisms within a specific context, especially when it is hard to demarcate the boundaries between the process that is being studied and the context (Yin, 2018). This is a suitable research design to study how the system of AML supervision works within the EU. This study explains the expected outcomes in terms of tools and coordination arising from the adoption process of the AMLD6 and determines the likeliness that the legislative proposals will be adopted in their current form. The AMLD6 will be studied in the context of the EU's "Legislative Package" (European Commission, n.d.-b). Sub-Question 1 "*How does AML regulation work within the European Union?*" and Sub-Question 2 "*In how far are those institutions that deal with crypto assets covered by the regulation?*" will be answered using two different perspectives. The first perspective will take the AMLD5 as a point of departure whereas a second perspective will answer the same questions under consideration of the implications that the new AMLD6 would bring. Sub-Question 3 "*How is the EU's legislative process affecting the outcome of the proposal adoption?*" will be answered through process tracing. The two hypotheses specified in the theory section will serve as expectations regarding the policy outcomes, under consideration of the policymaking process of the EU and the EU theories of integration. Subsequently, the results of the analysis will be used to determine the nature of the legislative process as well as the likeliness that the proposals are adopted.

Method of Data Collection

This study will use secondary data in the form of academic and non-academic literature, as collecting primary data such as interviews would be too time-consuming and would not serve the purpose of attaining an overview of the adoption process of the new AMLD6. The academic literature will primarily be used to develop the analytical framework for the analysis by providing an understanding of the theories of European integration, the EU legislative process and the components that form an effective AML regulatory framework. To gain an understanding of the current regulation under the AMLD5 as well as of the proposed AMLD6 and its adoption process various documents need to be consulted. These include legislative proposals of the EC, drafts and reports of the EP and documents on Council conclusions. Moreover, consultation and opinion documents from rapporteurs, EU agencies, national governments, and their regulatory agencies as well as think tanks and industry interest groups will be considered. Finally, newspaper articles will be included to become aware of contextual developments that could have an influence on the political process (George & Bennett, 2005).

Method of Data Analysis:

The analysis will test the relative importance of Neo-Functionalism against the importance of Intergovernmentalism and the resulting effects on the outcome of the proposal adoption. To do so, two hypotheses have been defined: Hypothesis 1: *“The process is expert-driven with the European Commission taking the initiative to ascend to international standards”* assumes a neo-functional approach to the policy process with the EC as an influential actor. Hypothesis 2: *“The process is driven by national governments and the search for loopholes to protect domestic interests”* assumes an intergovernmental approach in which domestic interests play a much larger role. The hypothesis will be tested using the method of process tracing, which entails tracing the EU’s legislative process through its different stages by analysing documents for indicators supporting either of the two hypotheses. Process tracing is well suited for testing hypotheses in contexts where multiple interaction effects can be expected (George & Bennett, 2005).

The process will be analysed in three stages. Stage one concerns the dynamics before the announcement of the Action Plan in 2020 and stage two concerns the period after the announcement of the EC’s Action Plan. Documents that will be analysed include reports and opinions from the Council, the EP, and its committees such as ECON and LIBE, and EU-affiliated institutions and agencies such as the European Data Protection Supervisor (EDPS), European Central Bank (ECB), European Banking Authority (EBA) and ESMA. Apart from that, opinions and reports from member states and their authorities, as well as think tanks and industry interest groups will be considered. The third stage of the analysis starts after the publication of the legislative proposals by the EC in July 2021. The scope of analysed documents will in this stage additionally include the amendment reports that the EP has adopted for either the AMLD6, AMLR, AMLA or TFR. Throughout the analysis, attention will also be given to EU member states that catalyse or impede the legislative process. For that purpose, newspaper articles can become relevant as they often arise if there is conflict among EU member states or institutions. Finally, the question will be answered whether the results fall in line with the objectives set out by the European Commission and whether the regulation is living up to the standards set out by the FATF recommendations and can thus be deemed to be effective in fighting ML in the advent of cryptocurrencies.

Analysis

Part I: Anti-Money Laundering Regulation in the EU

In the first part of the analysis, the AML regulatory regime of the EU will be assessed using two different perspectives. One perspective will focus on the current situation under the AMLD5 whereas the other perspective will assess the situation that is expected under the AMLD6 in the context of the “Financial Package”. In order to answer SQ1 and SQ2 the actor landscape, the institutional responsibilities, as well as the general scope of the regulation will be analysed. In this context, the FATF recommendations will be used as a benchmark to assess whether there are any substantial shortcomings in the ML regulation of the EU.

Regulation under AMLD5

The 5th Anti-Money Laundering Directive (AMLD5) (2018/843) was published on 19th June 2018 and is practically an amendment to the 4th Anti-Money Laundering Directive (2015/849) which was published on 5th June 2015 (Koster, 2020). The AMLD5 employs a risk-based approach to AML/CFT, which includes that the member states and their financial institutions perform an assessment of the risks to ML and distribute the regulatory resources in a way that they mirror the presumed risks, instead of following a rule-based approach where regulatory loopholes are more frequent (Koster, 2020). In this way, the EU adheres to Recommendation 1 of the FATF (FATF, n.d.-c). The highest supervisory authority in the EU is the EBA which sets the guidelines for the supervision of financial institutions (European Commission, 2021a). Through a change in its founding regulation at the start of 2020, the EBA has been empowered to assess the AML supervisors’ approaches to AML supervision as well as to manage information exchange between authorities (European Banking Authority, 2020a). Contrary, competences of the ECB regarding AML supervision are limited. By its mandate, the ECB is neither able to engage in direct supervision nor is it able to impose sanctions as those competences lie with the national AML supervisory and law enforcement authorities (European Central Bank, 2018).

A substantial part of the supervisory activities against ML is outsourced to ‘obliged entities’ that serve as intermediaries for financial transactions (Covolo, 2020). These include among others financial institutions, auditors, legal professionals, trust or company providers, real estate agents and gambling service providers (EUR-Lex, 2018). When dealing with cryptocurrencies it becomes very hard to define such intermediaries, and thus the EU is putting obligations on those institutions that function as entry and exit points to the cryptocurrency system (Covolo, 2020). Article 2(1) of the AMLD5 adds institutions that provide exchange services between fiat currencies and virtual currencies as well as custodian wallet providers to the list of obliged entities (EUR-Lex, 2018). The obliged entities have to perform CDD checks which include obtaining knowledge about the identity of the customer, the beneficiary, and the nature of the transaction to minimize criminal activities (FATF, n.d.-c). Finally, exchange service

providers that exchange fiat currencies for virtual currencies and custodian wallet providers are required to obtain a license, which falls in line with the FATF Recommendation 15 (FATF, n.d.-c). The national AML supervisory authority makes sure that these obliged entities comply with their obligations (European Commission, 2021a).

According to Article 32 of the AMLD5, every member state needs to establish a central FIU that acts as a central coordination centre for the efforts against ML (EUR-Lex, 2018). Sometimes, but not necessarily, the FIU is integrated into the national AML authority (European Commission, 2021a). Obligated entities must report any suspicious activity to the competent FIU (Covolo, 2020). If the FIU finds enough evidence to suspect ML activities, they can redirect the information to the competent law enforcement authority (European Commission, 2021a). The AMLD5 also makes advancements when it comes to limiting anonymous transactions. Article 32 defines that member states need to set up a centralized register of payment or bank account holders which fulfils the FATF's Recommendation number 10 that there should be no anonymous accounts (FATF, n.d.-c; Koster, 2020). Furthermore, Articles 30 and 31 of the AMLD5 require that a central register on beneficial ownership of companies and trusts is set up and that the information can be easily and timely accessed by the relevant authorities, obliged entities and even the general public (EUR-Lex, 2018). However, the public access to beneficial owners of trusts is restricted and thus it does not fully comply with FATF Recommendations 24 and 25 (EUR-Lex, 2018; FATF, n.d.-c)

The AMLD5 strengthens the powers of, and cooperation between the competent authorities. Article 48 of the AMLD5 requires that competent authorities can obtain all the necessary information for their investigations and that they have adequate human and technical resources to do so (EUR-Lex, 2018). Moreover, Article 50 insists that member states should not place unjustified restrictions on the exchange of information between the authorities of different member states (EUR-Lex, 2018) which falls in line with the FATF Recommendation 37 (FATF, n.d.-c).

Shortcomings of the AMLD5

Notwithstanding these efforts, there are considerable regulatory shortcomings, especially regarding the regulation of different types of virtual assets and their virtual asset service providers (VASP). In the impact assessment accompanying the AMLD6, the EC points out that under the AMLD5 regulatory framework the rules are unclear and inconsistent, and that the supervision is also conducted with varying rigidity within different member states of the EU (European Commission, 2021a). That is an inherent consequence of directives as they only provide a benchmark that has to be achieved while the way how it is achieved is up to the member states (European Union, n.d.).

To understand the first shortcoming of the AMLD5 it is important to note that there are different types of cryptocurrencies. On the one hand, there are currency tokens which are assigned to represent a certain value in the same way as traditional money (Haffke, Fromberger, & Zimmermann, 2020). On the other hand, there are investment and utility tokens which function more like securities or vouchers and represent a stake in the investment of the issuer and thus also a participation in its returns (Haffke et al., 2020). Article 3(18) of the AMLD5 defines virtual currencies as “a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically” (EUR-Lex, 2018, p. 54). Virtual currencies are thus clearly demarcated from E-money which is a digital representation of a fiat currency (Covolo, 2020). If ‘means of exchange’ is interpreted using an economic perspective, then it represents a function of money and would mean that utility and investment tokens are not covered by the regulation (Haffke et al., 2020). It is however essential to include all types of tokens as they can be used for ML in the same way as currency tokens (Haffke et al., 2020).

As mentioned above, Article 2(1) of the AMLD5 added “[...] providers engaged in exchange services between virtual currencies and fiat currencies; [...] [and] custodian wallet providers;” to the list of obliged entities (EUR-Lex, 2018, p. 53). This entails that any change from one cryptocurrency to another is not regulated under the AMLD5 which creates a large gap in the AML regulation. Similarly, every transaction that does not make use of a custodian wallet provider is not regulated under the AMLD5. The FATF’s definition of VASPs is much broader than that of the EU and does also include crypto-to-crypto transfers as well as non-custodian wallet providers (FATF, n.d.-c, p. 133). Thus the EU fails to comply with FATF Recommendation 15 (FATF, n.d.-c). In recital 9 of the AMLD5, the lawmakers do even admit that a lot of transactions happen completely anonymously without the help of providers and that the AMLD5 does not cover them (EUR-Lex, 2018). The only remedy they offer is the potential introduction of a voluntary self-declaration of transactions (Covolo, 2020).

Recommendation 16 of the FATF requires that transfers of money are accompanied by information about the originator and the beneficiary to make it harder for criminals to distribute their money (FATF, n.d.-c). Those aspects are regulated through the TFR instead of the AMLD5 (Covolo, 2020). However, the current regulation does not extend to VASPs, which creates a loophole that enables unregulated ML activities (Covolo, 2020; Iff, 2015).

In the AMLD5, there are issues regarding the jurisdictional applicability. They arise as the regulation of an entity through one member state would not exclude the possibility of regulation of the same entity through another member state (Covolo, 2020). Additionally, the AMLD5 does not contain a provision that extends the applicability of the AMLD5 beyond the borders of the EU which is problematic

in the virtual world that does not have borders (De Vido, 2019). Thus, some VASPs fall outside of the scope of the AMLD5 even though they are offering services for EU citizens. Finally, reports by the EC indicate that a substantial amount of compliance departments in financial institutions are understaffed and while AML rules were formally in place, assessments were not conducted in an appropriate manner (Koster, 2020). In the same way, many public AML supervisory authorities were found to be critically understaffed while the remaining staff was often found to be lacking the expertise to conduct the supervisions appropriately (Koster, 2020).

Combating Money Laundering Through Criminal Law

In order to enforce the AMLD5 more efficiently on 23rd October 2018, the EU adopted the directive (EU) 2018/1673 on combating ML through criminal law. Other than the AMLD5, which is based on Article 114 TFEU (EUR-Lex, 2018), this directive is based on Article 83 TFEU enabling the EU to set minimum standards for criminal offences (EUR-Lex, 2012). Article 3 of the Directive requires that the transfer of any property to disguise its origin or ownership while being aware that it originates from criminal activity is recognized as a punishable criminal offence (EUR-Lex, 2018). Article 5 defines that any attempt, incitement, or involvement in ML activities is punished through proportionate measures which may include up to 4 years of imprisonment (EUR-Lex, 2018). Moreover, the Directive makes it possible for legal persons, for example obliged entities, to be punished for enabling or committing ML (EUR-Lex, 2018) and thus contributes to more rigorous and efficient enforcement of the AMLD5.

Regulation under AMLD6 within the “Financial Package”

The proposed regulatory landscape under the AMLD6 is going to be analysed in the context of the ‘Financial Package’ which also includes proposals for a regulation on an Anti-Money Laundering Authority (AMLA), a Regulation on AML (AMLR), and a revised TFR (European Commission, n.d.-b). This package aims at establishing a comprehensive framework to overcome the problems of regulatory fragmentation and coordination between different authorities that exist under the AMLD5 (European Commission, 2021a).

One improvement to that end is the creation of an AMLA which will take over the AML/CFT responsibilities from the EBA and will directly supervise cross-border obliged entities that have a high-risk profile according to the criteria defined in the AMLA Regulation (European Commission, 2021c). At the same time, the AMLA will indirectly supervise other obliged entities as well as national AML supervisors and will be empowered by Articles 21 and 22 to impose administrative sanctions or periodic penalty payments on non-compliant entities (European Commission, 2021c). The AMLA will also manage a support and coordination mechanism through which it can issue recommendations, guidelines, and technical standards to obliged entities and national AML supervisors. Moreover, the regulation defines uniform templates for the exchange of information between FIUs, and the AMLA will also manage the central coordination platform “FIU.net” (European Commission, 2021c).

To avoid unclear rules and regulatory fragmentation some parts of the AMLD5 are going to be transferred into an Anti-Money Laundering Regulation (AMLR) that serves as a directly applicable single rulebook that does not require transposition into national law (European Commission, n.d.-c). In Article 2(14) the definition of VASPs is among others extended to crypto-to-crypto transfers and is thus aligned with FATF Recommendation 15 (European Commission, 2021e; FATF, n.d.-c). That change entails that now all kinds of VASPs fall into the list of obliged entities. Additionally, there will be a total prohibition of anonymous accounts established through Article 58 of the AMLR (European Commission, 2021e) and the requirement in the revised TFR that VASPs have to accompany all transfers of funds with appropriate information about the originator and beneficiary (European Commission, 2021d). Although this means that the EU framework now complies with FATF Recommendations 10 and 16 this poses huge technical challenges for VASPs and might even put their entire business model at risk (FATF, n.d.-c). The list of obliged entities will also be transferred into this regulation and will be extended by crowdfunding providers, traders, holders of works of art, mortgage creditors and investment migration officials as new obliged entities (European Commission, 2021e). In the same way, the CDD requirements for obliged entities are transferred and clarified for example through Article 18 which defines all the information that has to be collected by obliged entities (European Commission, 2021e). The new regulation also includes a third country risk categorization among three categories, specified in Articles 23, 24 and 25, to clarify to

obliged entities whether or not they have to conduct extended CDD (European Commission, 2021e). Additionally, Articles 38 to 41 define that if CDD is outsourced to a third party the obliged entity has to ensure that the checks are conducted appropriately, and can moreover be held liable for misconduct by the third party entity (European Commission, 2021e). Finally, the AMLR clarifies the identification of beneficial owners and specifies the data that needs to be collected in that regard (European Commission, 2021e)

Those provisions that have not been transferred to the AMLR will remain in the AMLD6 and will be complemented through additions and clarifications. First of all, Article 31(1), specifically emphasizes that a risk-based approach has to be used for the AML supervision (European Commission, 2021b). In Articles 7 and 8, it is defined that the EC as well as the member states are obliged to conduct a risk assessment at least every four years (European Commission, 2021b). To ensure a better interconnectedness of the central registers on beneficial ownership and on bank account holders, the EC is now empowered to adopt technical specifications to that end (European Commission, 2021b). The AMLD6 also includes some new provisions for FIUs. On the one hand, Article 18 defines the types of information that FIUs must have access to in order to carry out their supervision appropriately (European Commission, 2021b). On the other hand, the AMLD6 expands on the way in which FIUs should cooperate with each other. The FIUs are expected to use 'FIU.net', which is managed by the AMLA, for any exchange of information to account for the high sensitivity of the data and the AMLD6 also specifies what data has to be provided to other entities in which time frame (European Commission, 2021b). Finally, FIUs should also be able to conduct joint analysis facilitated through the support and coordination mechanism of the AMLA (European Commission, 2021b). In this way, the EU adheres to FATF Recommendations 37 and 40 which refer to international cooperation between competent authorities (FATF, n.d.-c). The EDPS and the European Banking Federation (EBF) have both voiced concerns over data protection issues in the new AML framework. The EBF considers the delineation between the data collection competences for AML purposes and the protection of privacy under the General Data Protection Regulation (GDPR) to be too vaguely defined (EBF, 2022). The EDPS is concerned about the proportionality of the data that is collected, stored, and transferred between competent authorities (EDPS, 2021). Particularly regarding the exchange of data on criminal offences and convictions of persons as well as the necessity of public access to beneficial ownership registers (EDPS, 2021).

Apart from that, the AMLD6 provides more specific explanations of the tasks and powers of national supervisory authorities than it was done in the AMLD5 (European Commission, 2021b). An important addition is, that through Article 36, national supervisors can establish so-called 'supervisory colleges' for the investigation of entities that operate across different member states (European Commission, 2021b). Finally, the AMLD6 defines sanctions that can be imposed on the obliged entities in

cases of non-compliance. The administrative sanctions defined under Article 40 either amount to (i) two times the benefit derived from the illicit transaction; (ii) up to 10% of the annual turnover if it includes a legal person; (iii) or up to 5 million euros if the breach includes a natural person (European Commission, 2021b). If administrative sanctions are seen as too harsh Article 41 enables for the imposition of administrative measures which can include the issuing of orders to comply or the ban of responsible persons (European Commission, 2021b).

Part II: The Adoption Process of the AMLD6 in the Context of the “Financial Package”

In the second part of the analysis, the adoption process of the AMLD6 will be investigated in the context of the ‘Financial Package’ which also comprises the AMLR, AMLA and TFR. The process will be traced through three stages. The first stage concerns the time before the announcement of the EC’s AML Action Plan. The second stage spans from the announcement of the Action Plan to the publication of the EC’s legislative proposals. The final stage will cover the dynamics that can be observed in the legislative process. To guide this process, two hypotheses have been defined that contain expectations regarding the nature and outcome of this process.

H1: “The process is expert-driven with the European Commission taking the initiative to ascend to international standards”

H2: “The process is driven by national governments and the search for loopholes to protect domestic interests”

The analysis will help to determine the nature of the adoption process and answer the question of whether the objectives of the EC are likely to be achieved especially in the light of the FATF recommendations that serve as the international standard for rigidity and effectiveness of AML frameworks.

Stage I: Before the Announcement of the Action Plan

Generally, it is assumed that the legislative process follows a neo-functional dynamic in which the EC is acting as a pacesetter to advance the legislation based on technocratic reasons as defined in Hypothesis 1 (Buonanno & Nugent, 2021; Niemann, 2021). It was the EC itself which initiated a discussion on possible changes to the AML legislative framework almost two years before the legislative process formally started. On 24th July 2019, the EC published a Communication to the EP and the Council on how the AML framework could be improved after assessments had shown that many EU credit institutions failed to implement fundamental AML requirements of the AMLD5 and were thus exposed to huge ML risks (European Commission, 2019). Other findings indicated that there was insufficient cooperation between member states’ FIUs, particularly due to the absence of a uniform template for the exchange of information (European Commission, 2019). In the Communication, the EC stated that it considers the transposition of parts of the directive into a regulation or the creation of a central EU AML supervisory authority to overcome these shortcomings (European Commission, 2019). On 19th September 2019, the EP adopted a resolution asking the EC to investigate whether an AML Regulation would be a suitable instrument to overcome fragmentation (Binder, 2021). Then, in November 2019, finance ministers from Germany, France, Italy, Spain, the Netherlands, and Latvia adopted a position paper asking the EC to explore options on how to establish an EU AMLA, insisting that such an authority would be

necessary to efficiently fight ML (Finke, 2019; Ministry of Finance Germany, 2020). It can be observed that the EC took a central role in pushing for tougher AML legislation and in doing so received support from the EP. Supranational institutions pushing for more supranational integration is clearly a neo-functional dynamic (Buonanno & Nugent, 2021). Moreover, member states pushing for supranational integration because they view it as a necessity can be attributed to LI but can also be seen as political spillover which is attributed to NF (Buonanno & Nugent, 2021).

Stage II: After the Announcement of the Action Plan

On May 7th 2020, the EC adopted its Action Plan on a comprehensive AML/CFT policy (European Commission, 2020b). It comprises the need for implementation of the current directives, the necessity of common rules through a regulation, the establishment of an AMLA and the strengthening of the international dimension of AML (European Commission, 2020a). The EC considered these changes to the framework inevitable to ensure the integrity of the internal market (European Commission, 2020a). Moreover, the EC emphasized that the EU must implement the standards set by the FATF and proposed that the EC could represent the interests of the EU members at the FATF as a single voice (European Commission, 2020a). The EC pushed for more supranational integration and voiced the need to adhere to standards set by the FATF, which falls in line with the theory of NF and the expectation in Hypothesis 1 (Buonanno & Nugent, 2021). After the announcement, a consultation period was opened in which, apart from the EP, Council, EBA, and EDPS, feedback and opinions were provided by governments of member states as well as industry representatives.

On 10th July 2020, the EP adopted a resolution lending its full support to the Action Plan. The EP supported the creation of a single rulebook through a regulation which comprises the list of obliged entities, CDD requirements, beneficial ownership requirements, the standards of supervision for obliged entities and the FIU support and coordination mechanism (European Parliament, 2020). While preferring an EU-FIU, the EP supported the coordination mechanism between FIUs and welcomed the idea that the EC could represent the EU at the FATF (European Parliament, 2020). Sven Giegold, at that time EP spokesperson of the Greens for economic and financial policy, even proposed his own 10-point plan against ML, which specifically called for infringement proceedings against non-compliant member states, the introduction of an EU-FIU and an EU financial police (Giegold, 2020). On 5th November 2020, the Council adopted a conclusion to support the EC's Action Plan thereby also supporting the transposition of the same aspects into a regulation as proposed by the EP (Council of the EU, 2020). In addition to that, the Council urged the EC to expand the list of obliged entities to VASPs to comply with FATF Recommendations 15 and 16 and recommended that the AMLA's direct supervision should initially only comprise a limited scope of entities to avoid overwork (Council of the EU, 2020). The European

Economic and Social Committee (EESC) expressed its full support for the EC's Action Plan (Binder, 2021) and the EDPS also approved of the Action Plan while insisting that compliance with the GDPR must be a key priority (EDPS, 2020). The EDPS welcomed the resulting uniform interpretation of the legislative framework by the European Court of Justice and the idea that the EC could represent the member states at the FATF (EDPS, 2020). This is a moderate push for increasing supranational powers following a neo-functional dynamic (Buonanno & Nugent, 2021; Niemann, 2021). In general, the discourse between the EC, EP, EESC and EDPS can be described as neo-functional as it develops a dynamic on the EU level without much interference by member states which is a clear feature of NF (Hooghe & Marks, 2019). Functional and political spillovers have over time led to more supranational integration in the field of AML/CFT and a lot of the shortcomings can only be addressed by even more supranational integration (Buonanno & Nugent, 2021). Interestingly, even the Council, which is an intergovernmental body, unanimously supported the Action Plan which is an indication of NIG's dynamics (Bickerton et al., 2015).

The EC also requested technical advice from the EBA. On 19th August 2020, the EBA provided its opinion on the EC's Action Plan. They asserted that harmonization through a regulation is needed to overcome regulatory fragmentation and that the AMLA supervision must be built on cooperation between EU and national supervisors to deal with heterogeneity among the member states' obliged entities (European Banking Authority, 2020a). The scope should first include financial entities and should then be carefully extended to DNFBPs (European Banking Authority, 2020a). They recommended that the AMLA should have the powers to define and directly supervise certain obliged entities, and to intervene in the activity of certain entities to ensure compliance (European Banking Authority, 2020a). On 10th September 2020, the EBA released a technical report in response to the EC's call for advice, recommending extending the list of obliged entities to VASPs, crowdfunding providers and investment firms (European Banking Authority, 2020b). They insisted, that the AMLD6 should provide clarification on the powers and duties of the national supervisory authorities (European Banking Authority, 2020b). Regarding the aspects that should be transferred from the Directive into the AMLR, the EBA's recommendations were identical to those of the EP and the Council (European Banking Authority, 2020b). Finally, the EBA urged the EC to define in the AMLR what constitutes a 'serious breach' and would thus lead to the imposition of a sanction (European Banking Authority, 2020b). Overall, the EC was actively seeking advice on technical aspects of the legislation by using the expertise of an EU-level institution. As of that moment, the process was largely taking place at the EU level without substantial interference from the member states, thus clearly indicating neo-functionalist dynamics (Hooghe & Marks, 2019).

The Expert Group on Money Laundering and Terrorist Financing is an informal advisory group, that is composed of representatives from national supervisors and institutions such as ECB and Europol,

and which advises the EC on matters regarding AML/CFT (European Commission, n.d.-d). Due to its intergovernmental composition, it is expected that members will try to push the EC to adopt positions according to their interests which falls in line with the LI assumptions under Hypothesis 2 (Schimmelfennig, 2021). In a meeting on 19th May 2020, the EC presented the Action Plan to the expert group explaining that the proposed steps are necessary to protect the integrity of the European internal market (EGMLTF, 2020a). Apart from that, a questionnaire was distributed in which member states could state their opinions and advice on various components of the Action Plan (EGMLTF, 2020a). In a subsequent expert group meeting on 7th September 2020, the EBA presented some follow-ups on their opinion from 19th August 2020 and presented the aforementioned report on the aspects to be harmonized in a regulation (EGMLTF, 2020b; European Banking Authority, 2020b). The EC presented the results of the questionnaire and concluded that they indicate that a comprehensive legal framework was needed, which multiple member states approved of (EGMLTF, 2020b). The member states were also assured that, under certain conditions, they would be able to adopt stricter rules than those defined in the legislation (EGMLTF, 2020b). Then, there were two other meetings in 2021 in which various aspects of the new framework were discussed. While member states agreed to limit malicious transactions, questions arose whether a 10000 Euro cash limit would infringe too much on the freedoms of citizens (EGMLTF, 2021a). There was broad support for an AMLA but member states were disjointed regarding the governance structure and powers of such an authority, especially in relation to the powers that would remain with the national authorities (EGMLTF, 2021a). Then the EC explained, that it aimed to add VASPs to the list of obliged entities as well as to include detailed CDD and beneficial ownership requirements into a regulation, which were broadly supported by the member states (EGMLTF, 2021b). Finally, the EC explained that the new AMLD6 will provide more clarity on provisions for FIUs and denied concerns of some member states regarding data protection in the FIUs (EGMLTF, 2021b). Overall, the discussions in the meetings were very technical, but there was also a political dimension. The fact that the EC was considerate about member states' demands reflected the EC's awareness of the heterogeneity of the institutions, but even more so the fact, that completely taking away member states' powers and regulatory discretion might lead some of them to disapprove of the legislation. This reflects some dynamics of NIG where states while agreeing that measures need to be taken, are not willing to confer powers to the supranational level (Bickerton et al., 2015).

Apart from political entities, the EC also requested opinions from industry representatives such as the EBF, which represents the European banking sector. The EBF welcomed the EC's plan to obtain more harmonization on the EU level and was of the opinion that rule-based requirements and national measures should be reduced to a minimum and instead EU-wide standards should be adopted (EBF, 2020). Finally, the EBF pledged for the inclusion of any institution that poses an ML risk in the list of obliged entities as

well as for clear rules on data protection when using new technologies to ensure compliance (EBF, 2020). Clearly formulated rules that are applicable within the entire EU would significantly reduce the compliance costs of multi-nationally operating financial institutions and thus it is understandable that the EBF pushed for an EU-wide approach to AML. Due to this, the EBF is supporting supranational action according to a neo-functional dynamic driven by functional spillover (Buonanno & Nugent, 2021).

Then, on 17th May, the Commissioner for financial affairs, Mairead McGuinness, gave a speech in which she reinstated that in order to fight ML a strategic overhaul was needed which the EC was going to start with the publication of the legislative proposals in July 2021 (European Commission, 2021f). The speech was an attempt to unify the member states by mentioning common goals. She used the single market paradigm to justify the need for common rules in line with the FATF standards and attributed a central role to the AMLA (European Commission, 2021f). She explained that the AMLA will be set up in a similar way to the Single Supervisory Mechanism, as proposed in the technical report by the EBA (European Commission, 2021f). Finally, she declared that a 10000 Euro cash limit is absolutely necessary and proportionate (European Commission, 2021f). The speech highlighted the EC's desire for more supranational integration by referring to the single market paradigm. The EC also included recommendations from the EBA. The role of the member states seemed to be marginal while neo-functional dynamics dominated. Intergovernmental dynamics could however be activated by the EC's declaration on the 10000 cash limit as such is clearly opposed by Germany (Diesteldorf, 2021).

Stage III: After the Publication of the Legislative Proposals

On 21st July 2021, the EC published the legislative proposals for the AMLD6, AMLR, AMLA and TFR (European Commission, n.d.-b). Again, various actors provided their opinions on the package before the interinstitutional negotiations started.

The EDPS criticized that Article 18(1) of the AMLD6 grants FIUs access to a disproportionate amount of information and that Recital 51 makes the 'FIU.net' seem to become a data mining platform instead of a tool for investigative cooperation, which is concerning considering the high sensitivity of personal data (EDPS, 2021). Moreover, the EDPS questioned the necessity and benefits of granting general public access to beneficial ownership registers (EDPS, 2021). The EESC provided an opinion on 8th December 2021. For them, it was important that the AMLA makes use of the existing relationships between supervisory authorities and that it has sufficient resources to perform its tasks (EESC, 2021). Furthermore, they held that the AMLA should cooperate with Europol and should be fully operational before 2026 (EESC, 2021). Finally, the EESC asked the EC to consider including NFT providers as obliged entities under the AMLD6 and to introduce an even lower cash limit than 10000 Euros (EESC, 2021).

When it comes to industry interests the European Fund and Asset Management Association (EFAMA) and the EBF both published an opinion on 16th and 17th November 2021 respectively. The fact that industry organizations were excessively targeting the EC through their lobbying activities can be seen as an indication of the central role of the EC in the legislative process and thus supports the expectations under Hypothesis 1 (Niemann & Ioannou, 2015). It remains to be seen whether their lobbying will be fruitful. Both welcomed the clarity of the proposals in regards to the competences of the national supervisors as well as the obligations for obliged entities (EBF, 2022; EFAMA, 2021). In particular, they liked that national supervisors have to give feedback to obliged entities on the reports they send (EBF, 2022; EFAMA, 2021). The EFAMA reminded the EC that the AMLA staff should be composed of experts from all sectors of the financial industry (EFAMA, 2021). Finally, both stressed that the definition of obliged entities and extended CDD requirements should follow a risk-based approach and that overlaps in supervision and double-checks should be strictly avoided as this would be burdensome for obliged entities (EBF, 2022; EFAMA, 2021). The EFAMA said that forcing all obliged entities to appoint a compliance officer might constrain the resources of smaller entities (EFAMA, 2021). Additionally, the EBF insisted that the member states have to cater for the interconnectedness of the beneficial ownership registers as this task would otherwise become a burden for obliged entities (EBF, 2022). Thus, while traditional banking institutions were trying to lobby for their interests, they were no obstacle to the EC's plans and the neo-functional dynamics assumed under Hypothesis 1 (Niemann, 2021). The crypto industry on the other hand called the ban on anonymous accounts and the obligation to accompany any crypto transfer with information about the originator and beneficiary an unattainable burden which would put many companies out of business (Bertuzzi, 2022; Haegen, 2022). They claimed that the EU has limited expertise on how to regulate cryptos (Schickler, 2022). The influence of the crypto industry on the proposals will depend on whether they manage to lobby successfully. The Centre for European Policy Studies published a paper with touches upon some issues raised by the crypto industry. It questioned the practicability of the interinstitutional cooperation envisioned by the EC and the capacity of the AMLA to perform all assigned actions (Lanoo, 2022). The author also questioned whether Article 114 TFEU is an appropriate legal basis for sharing data on criminal offences between institutions (Lanoo, 2022). Overall, these contributions from interest groups and think tanks can be attributed to a neo-functional dynamic as assumed under Hypothesis 1.

On 7th December 2021, the Council presented a progress report of the working group meetings (Council of the EU, 2021). As the working groups are comprised of officials from the member states, intergovernmental dynamics as defined in Hypothesis 2 can be expected (Council of the EU, 2022b). Member states generally asked for more clarity in various parts of the proposals and many of them supported the idea to push for a faster adoption of the TFR (Council of the EU, 2021). Some member

states are more inclined to adopt new AML rules than others. Estonia and Lithuania for example have already implemented the ban on anonymous accounts in anticipation of the upcoming EU regulation (Carreras, 2022; Tammik & Eglitis, 2022). France, which holds the presidency of the Council from January to June 2022, and Germany were generally very supportive of the EU's proposal with France insisting that it will push for the legislation without lowering its ambitions (French Government, 2022). On the contrary, Malta and Cyprus, while not directly opposing the AML package, have a long history of not implementing AML legislation on time, also due to the EU's reluctance to launch infringement proceedings (Chigrina, 2021; Kiliaris, 2020). Overall, whenever there was disagreement on substantial issues this gave rise to intergovernmental dynamics (Schimmelfennig, 2021). Firstly, there was a lot of discussion on the 10000 Euro cash limit, which Austria and Germany categorically oppose (Council of the EU, 2021; Diesteldorf, 2021; tagesschau.de, 2021), while others such as France and Italy favoured its implementation since they already have much lower limits in place (European Consumer Centre, 2020). Secondly, some member states asked whether the AMLD6 would allow governments to impose stricter measures (Council of the EU, 2021). These two issues are however unlikely to have a direct effect on the effectiveness of the AML framework. Thirdly, many member states criticized that the AMLA would become too powerful in issuing guidelines and imposing binding instructions and sanctions and insisted that member states' authorities should have more discretionary power in taking their own decisions (Council of the EU, 2021). That member states seek to preserve their power is an indication of LI and falls in line with the expectation formulated in Hypothesis 2 (Schimmelfennig, 2021; Slapin, 2008) while member states trying to design institutions following an intergovernmental logic would indicate NIG (Bickerton et al., 2015). An AMLA with limited powers would contradict the FATF's recommendations and would have negative consequences on the effectiveness of the regulatory framework (FATF, n.d.-c).

It was also only in mid-December 2021, that the proposals were referred to the joint committee of LIBE and ECON. As the ECON is part of the EP it is thus a supranational institution. In a draft report on the TFR from 7th February 2022, the ECON suggested that there should be no 1000 Euro limit for transactions with crypto assets but that information about the originator and beneficiary should always be provided (ECON, 2022a). Most importantly, the ECON, just as the Council, pushed for the TFR to be detached from the AML package to adopt it as soon as possible to mitigate the risks that crypto transfers pose (ECON, 2022a).

On 16th February 2022, the ECB presented its opinion on the AMLD6 and AMLR and proposed some amendments to the EC's version. Concerning the AMLD6, the ECB asked for clarification on sanctions that can be imposed on non-compliant entities as some administrative measures seemed to be more severe than administrative sanctions while the wording suggested that it should be the other way around (European Central Bank, 2022a). The ECB also explained that the AML supervisor does not have

powers to impose certain sanctions such as the withdrawal of the banking license and can only suggest it (European Central Bank, 2022a). Regarding the AMLR the ECB urged the EC to specifically explain why the introduction of a limit on cash payments would not constitute a violation of Article 17 of the Charter of Fundamental Rights of the EU (European Central Bank, 2022a). The ECB was thus providing technical advice to the EC in an attempt to avert LI dynamics, because it is known that some member states, such as Germany or Austria categorically oppose such a cash limit, and thus supports supranational dynamics as assumed under Hypothesis 1 (Schimmelfennig, 2021; Slapin, 2008).

On 31st March 2022, the ECON of the EP adopted the amended TFR and on 4th April 2022, it was decided to table the TFR in the plenary, which happened two days later on 6th April 2022 (European Parliament, n.d.-b). This course of action falls in line with the suggestion of the ECON and the Council of adopting the TFR faster than the AML package due to the persistent risks that are posed by unregulated transfers of crypto assets (Council of the EU, 2021; ECON, 2022a). Also, on 31st March 2022, the ECON tabled a draft report on the AMLR including a long list of possible amendments. These include the expansion of the list of obliged entities by wealth and asset managers, sports agents and football clubs (ECON, 2022b). They also advocate for the creation of a public register on shell banks and non-compliant crypto-asset providers as well as for a prohibition of establishing business relationships with those entities (ECON, 2022b). Moreover, ECON finally proposed a cash payment limit of 5000 Euros as well as a 5% stake instead of a 25% stake as a requirement for the obligatory disclosure of beneficial ownership (ECON, 2022b). Finally, they have changed the start of applicability of this regulation from three years to two years after entry into force (ECON, 2022b). Concludingly, it becomes visible that the EP was pushing for a swift and fast adoption which indicates neo-functional dynamics as stated in Hypothesis 1.

The EC tried to build on this momentum. On 25th April 2022, Fabio Panetta, a member of the executive board of the ECB, gave a speech labelling crypto assets as volatile and risky Ponzi schemes that are used by criminals and are detrimental to the environment (European Central Bank & Panetta, 2022). This assessment was partly confirmed by the ECB's financial stability review for May 2022 which concluded that as the interconnectedness between cryptos and the traditional financial system rises, so do potential risks for the financial stability (European Central Bank, 2022b). Following that, Panetta called on the actors to engage in swift negotiations (European Central Bank & Panetta, 2022). As previously, the ECB tried to avert liberal intergovernmentalist dynamics that could inhibit the adoption by framing all the issues as very urgent in an attempt to unify the member states and succeed with a swift adoption of the proposals (Costa & Jørgensen, 2012; Schimmelfennig, 2021).

Conclusion

This thesis aimed to answer the research question: *'How fit for purpose is the EU's AML framework regarding the prevention of criminal activity through cryptocurrencies?'* This question has been broken down into three sub-questions.

Sub-Question 1: *'How does AML regulation work within the European Union?'* and Sub-Question 2: *'In how far are those institutions that deal with crypto assets covered by the regulation?'* have been answered with respect to the AMLD5 and the proposed legislation through the AMLD6. Under the AMLD5 a substantial part of the supervision is outsourced to obliged entities that must conduct CDD and report suspicious transactions to the national FIU. Substantial shortcomings arise from the fact that a directive is not directly applicable in the member states, which creates many loopholes. Furthermore, due to an unexhaustive definition of virtual assets, transfers of utility and investment tokens are not covered by the AMLD5. Moreover, the AMLD5 does not require CDD checks for crypto-to-crypto transfers even though these bear the highest risk for ML activities. In the same way, the TFR does not require VASPs to obtain information about the originator and beneficiary of a transaction which thus creates risks for ML. Finally, the cooperation between FIUs to fight transnational crime is very inefficient under the AMLD5. With the proposed AMLD6 and the accompanied proposals for the AMLA, AMLR and TFR significant improvements are envisioned. First of all, there will be an AMLA which will directly supervise certain obliged entities, is able to impose sanctions on non-compliant entities, and will also manage a cooperation mechanism for the FIUs. Some aspects are transferred from the directive into the AMLR which makes them directly applicable in the member states. It contains the list of obliged entities which now includes VASPs and thus complies with FATF recommendation 15. Furthermore, the AMLR will prohibit anonymous accounts, thus complying with FATF Recommendations 10 and 16. The AMLD6 will provide additional clarifications and will equip FIUs and national supervisors with new powers and obligations to increase their operational effectiveness. For the first time, the AMLD6 will also specify a list of sanctions that can be imposed in cases of non-compliance. One area of the AMLD6 and the other legislative proposals that still needs to be improved is that of GDPR compliance. Right now, a lot of issues are not yet sufficiently addressed. In line with that, the question remains whether Article 114 TFEU is an appropriate legal basis for the processing of data on criminal records.

To answer Sub-Question 3: *'How is the EU's legislative process affecting the outcome of the proposal adoption?'* the theories of Neo-Functionalism, Liberal Intergovernmentalism and New Intergovernmentalism have been used to establish two hypotheses that contain expectations regarding the legislative process. Generally, the proposals of the EC improve on the weaknesses that existed under the AMLD5 and thus produce a rigid legislative framework that is aligned with the standards set by the FATF. It could be observed that the EC had a central role throughout the entire process and was

continuously pushing for common rules. In doing so it received crucial support from the EP, EESC and EDPS. The EP and the EESC also proposed to adopt even more restrictive rules such as a cash limit of 5000 Euros. Thus, there is a predominance of neo-functional dynamics as assumed under Hypothesis 1. The neo-functional dynamics were also supported by supranational institutions such as the EBA or ECB that provided technical advice to the EC. The aforementioned institutions seem to drive the process forward and advance their positions in a way that is largely autonomous from member states' influences. This picture is reinforced because industry interest groups such as the EFAMA or the EBF seem to excessively targeted EU-level institutions with their lobbying activities. Generally, neo-functional dynamics are important to start legislative initiatives as it is highly unlikely that this would happen through a convergence of member states' interests as assumed in liberal intergovernmentalist theory. Though, this is not to say that intergovernmental dynamics were absent. Both in the Council's working group and in the Expert Group on Money Laundering and Terrorist Financing, member states tried to preserve their national interests following the intergovernmental expectation in Hypothesis 2. Germany and Austria categorically oppose a 10000 Euro cash limit. On the other hand, member states asked whether they could adopt stronger measures than defined in the AMLD6. These two points will however not pose significant threats to the general effectiveness of the new AML regulatory framework. What could largely inhibit its effectiveness is the fact that member states were critical of the supranational powers of the AMLA to impose sanctions or binding instructions on entities in the member states. They called for more national discretion and autonomy. These are dynamics that can be attributed to LI and NIG. So, it appears that intergovernmental dynamics are becoming more prevalent in the latter stages of the legislative process when decisions over specific details need to be made. Should the member states succeed with their demands, then this would create a weakened AMLA that is not able to act autonomously on the basis of legal and technical reasons. This would subsequently weaken the entire AML framework and put compliance with the FATF standards at risk. The crypto industry has also claimed that the legislative proposals impose a disproportionate burden on VASPs. Indeed, the EU should be careful not to overregulate cryptos as this could inhibit innovation and competitiveness of European crypto businesses. In the end, it remains to be seen whether their lobbying activities will bring substantial changes to the proposals.

The aim of this thesis was to gain an understanding of the underlying dynamics of the EU legislative process and the potential impact on the adopted legislation. This was successful. It highlighted a predominantly neo-functionalist dynamic, especially in the primary stages of the process, while intergovernmental dynamics became visible when decisions needed to be taken and states sought to protect their national interests. Crypto is a technology that is becoming increasingly popular but has substantial inherent risks. This research helped to understand how the EU is planning to regulate the

crypto space and whether this is on par with international standards. The evidence was obtained from secondary sources such as government reports and opinions, drafts, reports, conclusions, and resolutions from EU bodies as well as newspaper articles. While being suitable, this research design does also have some weaknesses. Since the discussions on the legislative proposals are still ongoing there is a lot of undisclosed information. That issue could be partly salvaged by complementing the available information with newspaper articles that were published while the legislative process progressed through the different stages. Finally, due to time constraints, this study only focused on the most important actors. Nonetheless, this thesis contributes to the ongoing scientific debate on the explanatory power of the theories of European integration. It can also be taken as a point of departure for future research. Since the legislative process has not been concluded yet the research could be repeated once the new framework has been adopted.

Bibliography

- Bertuzzi, L. (2022, March 30). Crypto community mobilises against MEPs' transfer transparency rules. Retrieved 18 May 2022, from Www.euractiv.com website: <https://www.euractiv.com/section/digital/news/crypto-community-mobilises-against-meps-transfer-transparency-rules/>
- Bickerton, C. J., Hodson, D., & Puetter, U. (2015). The New Intergovernmentalism: European Integration in the Post-Maastricht Era. *JCMS: Journal of Common Market Studies*, 53(4), 703–722. <https://doi.org/10.1111/jcms.12212>
- Binder, E. (2021). *Anti-money-laundering package 2021—Strengthening the framework*. European Parliamentary Research Service. Retrieved from [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/662624/EPRS_BRI\(2021\)662624_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/662624/EPRS_BRI(2021)662624_EN.pdf)
- Buonanno, L., & Nugent, N. (2021). *Policies and policy processes of the European Union* (Second edition). London: Red Globe Press.
- Cabral, T. (2020). *A Short Guide to the Legislative Procedure in the European Union* (SSRN Scholarly Paper No. 3962953). Rochester, NY: Social Science Research Network. Retrieved from Social Science Research Network website: <https://papers.ssrn.com/abstract=3962953>
- Carreras, T. (2022, June 9). Lithuania to Ban Anonymous Wallets Following EU Regulation. Retrieved 10 June 2022, from Crypto Briefing website: <https://cryptobriefing.com/lithuania-to-ban-anonymous-wallets-following-eu-regulation/>
- Chigrina, M. (2021, April 7). Cyprus enacts the 5th Anti Money Laundering Directive Introducing Crypto Assets. Retrieved 10 June 2022, from <https://www.harriskyriakides.law/insights/news/cyprus-enacts-the-5th-anti-money-laundering-directive-introducing-crypto-assets>
- Costa, O., & Jørgensen, K. E. (2012). The Influence of International Institutions on the EU: A Framework for Analysis. In O. Costa & K. E. Jørgensen (Eds.), *The Influence of International Institutions on the EU: When Multilateralism hits Brussels* (pp. 1–22). London: Palgrave Macmillan UK. https://doi.org/10.1057/9780230369894_1
- Council of the EU. (2020, November 5). Council Conclusions on anti-money laundering and countering the financing of terrorism. Retrieved 18 May 2022, from European Council—Documents & Publications website: <https://data.consilium.europa.eu/doc/document/ST-12608-2020-INIT/en/pdf>
- Council of the EU. (2021, November 29). Presidency progress report on the AML package under the Slovenian Presidency. Retrieved 10 June 2022, from <https://data.consilium.europa.eu/doc/document/ST-14331-2021-INIT/en/pdf>
- Council of the EU. (2022a, January 1). Economic and Financial Affairs Council configuration (Ecofin). Retrieved 22 June 2022, from <https://www.consilium.europa.eu/en/council-eu/configurations/ecofin/>

- Council of the EU. (2022b, April 5). The decision-making process in the Council. Retrieved 14 June 2022, from <https://www.consilium.europa.eu/en/council-eu/decision-making/>
- Covolo, V. (2020). The EU Response to Criminal Misuse of Cryptocurrencies: The Young, already Outdated 5th Anti-Money Laundering Directive. *European Journal of Crime, Criminal Law and Criminal Justice*, 28(3), 217–251. <https://doi.org/10.1163/15718174-bja10003>
- De Vido, S. (2019). All that Glitters is not Gold: The Regulation of Virtual Currencies in the New EU V Anti-Money Laundering Directive. *DPCE Online*, 38(1). Retrieved from <http://www.dpceonline.it/index.php/dpceonline/article/view/643>
- Diesteldorf, J. (2021, June 20). Geldwäsche: So will die EU Kriminellen das Geschäft vermiesen. *Süddeutsche.de*. Retrieved from <https://www.sueddeutsche.de/wirtschaft/geldwaesche-eu-gesetz-1.5357994>
- EBF. (2020, August 25). Preventing money laundering and terrorist financing—EBF response to EU consultation. Retrieved 22 May 2022, from European Banking Federation website: <https://www.ebf.eu/anti-money-laundering/preventing-money-laundering-and-terrorist-financing-ebf-response-to-eu-consultation/>
- EBF. (2022, January 10). EBF feedback to the European Commission’s proposed AML Package. Retrieved 12 May 2022, from EBF website: <https://www.ebf.eu/anti-money-laundering/ebf-feedback-to-the-european-commissions-proposed-aml-package/>
- ECON. (2022a, February 7). DRAFT REPORT on the 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)0422 – C9-0341/2021 – 2021/0241(COD)) Committee on Economic and Monetary Affairs ;Committee on Civil Liberties, Justice and Home Affairs. Retrieved 18 May 2022, from European Parliament—EMeeting for Committees website: https://emeeting.europarl.europa.eu/emeeting/committee/en/agenda/202203/ECON?meeting=CJ12-2022-0331_1&session=03-31-13-45
- ECON. (2022b, March 15). DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (COM(2021)0420 –C9 -0339/2021 –2021/0239 (COD)) ECON - Economic and Monetary Affairs. Retrieved 18 May 2022, from European Parliament—EMeeting for Committees website: https://emeeting.europarl.europa.eu/emeeting/committee/en/agenda/202203/ECON?meeting=CJ12-2022-0331_1&session=03-31-13-45
- EDPS. (2020). *Comprehensive Union policy on preventing money laundering and terrorism financing | European Data Protection Supervisor*. Retrieved from https://edps.europa.eu/data-protection/our-work/publications/opinions/comprehensive-union-policy-preventing-money_en
- EDPS. (2021). *Anti-money laundering and countering the financing of terrorism | European Data Protection Supervisor*. Retrieved from https://edps.europa.eu/data-protection/our-work/publications/opinions/anti-money-laundering-and-countering-financing_en

- EESC. (2021). *Opinion European Economic and Social Committee on Anti-Money Laundering Legislative Package* (No. 555). European Economic and Social Committee. Retrieved from European Economic and Social Committee website: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/anti-money-laundering-legislative-package>
- EFAMA. (2021, November 16). EFAMA's Views on the Anti-Money Laundering Package. Retrieved 3 May 2022, from <https://www.efama.org/newsroom/news/efama-s-views-anti-money-laundering-package>
- EGMLTF. (2020a, May 19). 24th Meeting of the expert group on Money Laundering and Terrorist Financing. Retrieved 5 June 2022, from <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=20920&fromExpertGroups=true>
- EGMLTF. (2020b, September 7). 26th Meeting of the expert group on Money Laundering and Terrorist Financing. Retrieved 5 June 2022, from <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=22155&fromExpertGroups=true>
- EGMLTF. (2021a, January 22). 28th Meeting of the expert group on Money Laundering and Terrorist Financing. Retrieved 10 May 2022, from <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=23534&fromExpertGroups=true>
- EGMLTF. (2021b, March 2). 30th Meeting of the expert group on Money Laundering and Terrorist Financing. Retrieved 5 June 2022, from <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=24082&fromExpertGroups=true>
- ESMA. (n.d.). ESMA IN BRIEF. Retrieved 29 April 2022, from European Securities and Markets Authority website: <https://www.esma.europa.eu/about-esma/esma-in-brief>
- EUR-Lex. (2012). *Consolidated version of the TFEU*. Retrieved from http://data.europa.eu/eli/treaty/tfeu_2012/oj/eng
- EUR-Lex. (2018). *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 (Text with EEA relevance)*. Retrieved from <http://data.europa.eu/eli/dir/2018/843/oj/eng>
- EUR-Lex. (2018). *Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law*. Retrieved from <http://data.europa.eu/eli/dir/2018/1673/oj/eng>
- EUR-Lex. (n.d.-a). Glossary of summaries—Conferral. Retrieved 2 May 2022, from <https://eur-lex.europa.eu/EN/legal-content/glossary/conferral.html>
- EUR-Lex. (n.d.-b). Glossary of summaries—Qualified majority. Retrieved 2 May 2022, from <https://eur-lex.europa.eu/EN/legal-content/glossary/qualified-majority.html>

- European Banking Authority. (2019, April 17). EBA closes investigation into possible breach of Union law by the Danish and Estonian supervisory authorities. Retrieved 31 May 2022, from European Banking Authority website: <https://www.eba.europa.eu/eba-closes-investigation-into-possible-breach-of-union-law-by-the-danish-and-estonian-supervisory-authorities>
- European Banking Authority. (2020a, August 19). EBA supports the EU Commission's call for a more efficient and effective framework to tackle money laundering and terrorism financing. Retrieved 11 May 2022, from European Banking Authority website: <https://www.eba.europa.eu/eba-supports-eu-commission%E2%80%99s-call-more-efficient-and-effective-framework-tackle-money-laundering-and>
- European Banking Authority. (2020b, September 10). EBA Report on European Commission's call for advice on the future EU legal framework on AML/CFT. Retrieved 22 May 2022, from European Banking Authority website: <https://www.eba.europa.eu/eba-calls-eu-commission-establish-single-rulebook-fighting-money-laundering-and-terrorist-financing>
- European Central Bank. (2018, May 16). The ECB and anti-money laundering: What we can and cannot do. Retrieved 3 May 2022, from European Central Bank—Banking supervision website: https://www.bankingsupervision.europa.eu/press/publications/newsletter/2018/html/ssm.nl180516_2.en.html
- European Central Bank. (2022a). *Opinion of the European Central Bank of 16 February 2022 on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (CON/2022/5)*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022AB0005&home=ecb?0747dd114f0107799ad0b6fcb202233f>
- European Central Bank. (2022b, May 25). Financial Stability Review, May 2022. Retrieved 31 May 2022, from <https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr202205~f207f46ea0.en.html>
- European Central Bank, & Panetta, F. (2022, April 25). For a few cryptos more: The Wild West of crypto finance [Speech]. Retrieved 10 May 2022, from <https://www.ecb.europa.eu/press/key/date/2022/html/ecb.sp220425~6436006db0.en.html>
- European Commission. (2019). *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Towards better implementation of the EU's anti-money laundering and countering the financing of terrorism framework*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0360>
- European Commission. (2020a). *Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing*. Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0513\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0513(03))
- European Commission. (2020b, May 7). Action plan for a comprehensive Union policy on preventing money laundering and terrorism financing [Text]. Retrieved 19 May 2022, from European

Commission—Home—Publications website: https://ec.europa.eu/info/publications/200507-anti-money-laundering-terrorism-financing-action-plan_en

European Commission. (2021a). *COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the Anti-money laundering package: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU)2015/849 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Authority for Countering Money Laundering and Financing of Terrorism, amending Regulations (EU) No 1093/2010, (EU) 1094/2010 and (EU) 1095/2010 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021SC0190>

European Commission. (2021b). *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0423>

European Commission. (2021c). *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0421>

European Commission. (2021d). *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on information accompanying transfers of funds and certain crypto-assets (recast)*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0422>

European Commission. (2021e). *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0420>

European Commission. (2021f, May 17). Mairead McGuinness Speech at the AML Intelligence Boardroom Series [Text]. Retrieved 20 May 2022, from European Commission website: https://ec.europa.eu/commission/commissioners/2019-2024/mcguinness/announcements/speech-aml-intelligence-boardroom-series_en

European Commission. (n.d.-a). Anti-money laundering and countering the financing of terrorism [Text]. Retrieved 29 April 2022, from European Commission—European Commission website:

https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-countermeasures-financing-terrorism_en

European Commission. (n.d.-b). Anti-money laundering and countering the financing of terrorism legislative package [Text]. Retrieved 29 April 2022, from European Commission—European Commission website: https://ec.europa.eu/info/publications/210720-anti-money-laundering-countermeasures-financing-terrorism_en

European Commission. (n.d.-c). Questions and Answers: AML/CFT [Text]. Retrieved 13 May 2022, from European Commission—European Commission website: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3689

European Commission. (n.d.-d). Register of Commission expert groups and other similar entities. Retrieved 5 June 2022, from <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=2914>

European Consumer Centre. (2020, December 15). Cash payment limitations. Retrieved 14 June 2022, from <https://www.europe-consommateurs.eu/en/shopping-internet/cash-payment-limitations.html>

European Parliament. (2020, July 10). European Parliament resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing – the Commission’s Action Plan and other recent developments (2020/2686(RSP)). Retrieved 3 June 2022, from https://www.europarl.europa.eu/doceo/document/TA-9-2020-0204_EN.html

European Parliament. (n.d.-a). European Parliament | Committees | About | Introduction. Retrieved 29 April 2022, from <https://www.europarl.europa.eu/committees/en/about/introduction>

European Parliament. (n.d.-b). Procedure File: 2021/0241(COD) | Legislative Observatory | European Parliament. Retrieved 28 June 2022, from [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0241\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0241(COD)&l=en)

European Union. (n.d.). Types of legislation. Retrieved 17 May 2022, from https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en

FATF. (n.d.-a). All Publications. Retrieved 29 April 2022, from All Publications website: [https://www.fatf-gafi.org/publications/?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/?hf=10&b=0&s=desc(fatf_releasedate))

FATF. (n.d.-b). Money Laundering. Retrieved 29 April 2022, from Financial Action Task Force—FAQ website: <https://www.fatf-gafi.org/faq/moneylaundering/>

FATF. (n.d.-c). The FATF Recommendations. Retrieved 29 April 2022, from <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

Finke, B. (2019, November 12). Geldwäsche: Finanzminister fordern EU-Behörde. Retrieved 21 May 2022, from Süddeutsche.de website: <https://www.sueddeutsche.de/wirtschaft/geldwaesche-eu-richtlinie-1.4676996>

- French Government. (2022, January 19). Protecting EU Citizens from Financial Crime and Terrorist Financing—French Presidency of the Council of the European Union 2022. Retrieved 1 June 2022, from French Presidency of the Council of the European Union website: <https://presidence-francaise.consilium.europa.eu/en/news/protecting-eu-citizens-from-financial-crime-and-terrorist-financing/>
- George, A. L., & Bennett, A. (2005). *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA, USA: MIT Press.
- Giegold, S. (2020, May 7). EU anti-money-laundering action plan: Fight against money laundering is in times of coronavirus more important than ever before. Retrieved 2 June 2022, from Sven Giegold website: <https://sven-giegold.de/en/eu-anti-money-laundering-plan/>
- Haegen, J. V. der. (2022, March 7). European Parliament Proposes Expanding ‘Travel Rule’ to Every Single Crypto Transaction. Retrieved 14 June 2022, from CoinDesk website: <https://www.coindesk.com/policy/2022/03/07/european-parliament-proposes-expanding-travel-rule-to-every-single-crypto-transaction/>
- 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>
- Hermans, L., Ianiro, A., Kochanska, U., Törmälehto, V.-M., van der Kraaij, A., & Simón, J. M. V. (2022, May 24). Decrypting financial stability risks in crypto-asset markets. Retrieved 31 May 2022, from https://www.ecb.europa.eu/pub/financial-stability/fsr/special/html/ecb.fsrart202205_02~1cc6b111b4.en.html
- Hooghe, L., & Marks, G. (2019). Grand theories of European integration in the twenty-first century. *Journal of European Public Policy*, 26(8), 1113–1133. <https://doi.org/10.1080/13501763.2019.1569711>
- IDnow. (n.d.). Anti-Money Laundering (AML): Definition | IDnow. Retrieved 29 April 2022, from <https://www.idnow.io/glossary/anti-money-laundering-aml/>
- Joosen, R. (2020). The tip of the iceberg – interest group behaviour in rule drafting and consultations during EU agency rulemaking. *Journal of European Public Policy*, 27(11), 1677–1697. <https://doi.org/10.1080/13501763.2020.1817131>
- Kiliaris, K. (2020, November 8). Cyprus in trouble over EU anti-money laundering directive. Retrieved 10 June 2022, from Financial Mirror website: <https://www.financialmirror.com/2020/11/08/cyprus-in-trouble-over-eu-anti-money-laundering-directive/>
- Koster, H. (2020). Towards better implementation of the European Union’s anti-money laundering and countering the financing of terrorism framework. *Journal of Money Laundering Control*, 23(2), 379–386. <https://doi.org/10.1108/JMLC-09-2019-0073>

- Lanoo, K. (2022). *The EU is homing in on dirty money*. Centre for European Policy Studies. Retrieved from <https://www.ceps.eu/ceps-publications/the-eu-is-homing-in-on-dirty-money/>
- Levi-Faur, D. (2011). Regulatory networks and regulatory agencification: Towards a Single European Regulatory Space. *Journal of European Public Policy*, 18(6), 810–829. <https://doi.org/10.1080/13501763.2011.593309>
- ltf. (2015). *Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (Text with EEA relevance)*. Retrieved from <http://data.europa.eu/eli/reg/2015/847/oj/eng>
- Ministry of Finance Germany. (2020, September 24). Wirksam im Kampf gegen Geldwäsche in Deutschland und auf internationaler Ebene—Bundesfinanzministerium—Themen. Retrieved 11 May 2022, from Bundesministerium der Finanzen website: <https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Schlaglichter/Geldwaesche-bekaempfen/2020-09-24-wirksamer-kampf-gegen-geldwaesche-in-deutschland-und-internationaler-ebene.html>
- Niemann, A. (2021). Neofunctionalism. In M. Riddervold, J. Trondal, & A. Newsome (Eds.), *The Palgrave Handbook of EU Crises* (pp. 115–133). Cham: Springer International Publishing. https://doi.org/10.1007/978-3-030-51791-5_6
- Niemann, A., & Ioannou, D. (2015). European economic integration in times of crisis: A case of neofunctionalism? *Journal of European Public Policy*, 22(2), 196–218. <https://doi.org/10.1080/13501763.2014.994021>
- S. Vitvitskiy, S., N. Kurakin, O., S. Pokataev, P., M. Skriabin, O., & B. Sanakoiev, D. (2021). Formation of a new paradigm of anti-money laundering: The experience of Ukraine. *Problems and Perspectives in Management*, 19(1), 354–363. [https://doi.org/10.21511/ppm.19\(1\).2021.30](https://doi.org/10.21511/ppm.19(1).2021.30)
- Schickler, J. (2022, March 28). Crypto Privacy Positions Harden Ahead of Crunch EU Vote. Retrieved 14 June 2022, from CoinDesk website: <https://www.coindesk.com/policy/2022/03/28/crypto-privacy-positions-harden-ahead-of-crunch-eu-vote/>
- Schimmelfennig, F. (2021). Liberal Intergovernmentalism. In M. Riddervold, J. Trondal, & A. Newsome (Eds.), *The Palgrave Handbook of EU Crises* (pp. 61–78). Cham: Springer International Publishing. https://doi.org/10.1007/978-3-030-51791-5_3
- Schneider, F., & Windischbauer, U. (2008). Money laundering: Some facts. *European Journal of Law and Economics*, 26(3), 387–404. <https://doi.org/10.1007/s10657-008-9070-x>
- Slapin, J. B. (2008). Bargaining Power at Europe’s Intergovernmental Conferences: Testing Institutional and Intergovernmental Theories. *International Organization*, 62(1), 131–162.
- Smith, E. A. (2010). Communication and collective action: Language and the evolution of human cooperation. *Evolution and Human Behavior*, 31(4), 231–245. <https://doi.org/10.1016/j.evolhumbehav.2010.03.001>

- Sygna. (2020, February 4). What are the FATF's 40+9 Recommendations and Standards? Retrieved 1 May 2022, from Sygna website: <https://www.sygna.io/zh-hant/blog/what-are-the-fatfs-409-recommendations-and-standards/>
- tagesschau.de. (2021, July 26). Österreich wehrt sich gegen EU-Pläne für Bargeldobergrenze. Retrieved 10 June 2022, from Tagesschau.de website: <https://www.tagesschau.de/wirtschaft/finanzen/bargeld-obergrenze-eu-streit-101.html>
- Tammik, O., & Eglitis, A. (2022, May 25). Once a Crypto Trailblazer, Estonia Is Cracking Down on Risk. *Bloomberg.Com*. Retrieved from <https://www.bloomberg.com/news/articles/2022-05-25/once-a-crypto-trailblazer-estonia-is-cracking-down-on-risk>
- Taylor, D. (2020, October 11). Why is Money Laundering Bad? Retrieved 29 April 2022, from Infinity Financial Solutions website: <https://www.infinitysolutions.com/blog/money-laundering-why-it-s-bad-for-society-business-and-the-economy/>
- Teichmann, F., & Falker, M.-C. (2020). Money Laundering Through Cryptocurrencies. In E. G. Popkova & B. S. Sergi (Eds.), *Artificial Intelligence: Anthropogenic Nature vs. Social Origin* (pp. 500–511). Cham: Springer International Publishing. https://doi.org/10.1007/978-3-030-39319-9_57
- University of Plymouth. (n.d.). The Legal Base. Retrieved 4 May 2022, from European Studies Hub website: <http://hum.port.ac.uk/europeanstudieshub/learning/module-2-understanding-eu-policy-making/the-legal-base/>
- Yin, R. K. (2018). *Case study research and applications: Design and methods* (Sixth edition). Los Angeles: SAGE.

Appendix

Information Collected from the Documents

Table 1. Phase I: Before the announcement of the Action Plan

Source	Findings
<p>“EBA closes investigation into possible breach of Union law by the Danish and Estonian supervisory authorities” (17.04.2019) (European Banking Authority, 2019)</p>	<ul style="list-style-type: none"> • Voting of Board of Supervisors (which also includes representatives from Estonia and Denmark) decided that no proceeding into a possible breach of Union law will be started • EBA closed formal investigations
<p>Commission Communication: “Towards better implementation of the EU’s anti-money laundering and countering the financing of terrorism framework.” (24.07.2019); (European Commission, 2019)</p>	<ul style="list-style-type: none"> • Findings are intended to inform the debate on how to improve the legislative framework • Accompanied by assessment reports • Report one: On EU credit institutions <ul style="list-style-type: none"> • Many of them did not respond appropriately to ML risks • Report two: On Financial Intelligence Units <ul style="list-style-type: none"> • Many FIU’s did not sufficiently communicate with OE’s • Coordination between FIU’s • Report three: On interconnectedness of bank account registers <ul style="list-style-type: none"> • is technically feasible
<p>“Geldwäsche: Finanzminister fordern EU-Behörde” (12.11.2019); (Finke, 2019)</p>	<ul style="list-style-type: none"> • Germany, France, Italy, Spain, Netherlands, Latvia demand central AML Authority • They sent a request to the EU to explore options to establish such an authority

Table 2. Phase II: After the Announcement of the Action Plan in May 2020

Source	Findings
<p>“Communication from the Commission on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing” (13.05.2020); (European Commission, 2020a)</p>	<ul style="list-style-type: none"> • Insists that the efforts of the EU go way beyond the requirements of the FATF -> FAFT as the nonplus ultra • In its July 2019 communication the Commission set out ways on how to enhance the existing network • AMLA has the power to adopt delegated or implementing acts • “Cannot wait any longer”

Source	Findings
	<ul style="list-style-type: none"> • Better delegate the tasks to the AMLA as the EBA would need significant restructuring • Say that the EU must do more to live up to the FATF standards • Idea that the EU can speak with one voice at the FATF
<p>“24th Meeting of the expert group on Money Laundering and Terrorist Financing” (19.05.2020); (EGMLTF, 2020a)</p>	<ul style="list-style-type: none"> • EC presented the action plan and explained that it was important to harmonize the actions in order to protect the integrity of the internal market • They handed out a questionnaire that is supposed to be answered by the MS’s and clarified some points
<p>“Comprehensive Union policy on preventing money laundering and terrorism financing” (23.07.2020); (EDPS, 2020)</p>	<ul style="list-style-type: none"> • Ensure balance between GDPR and fight against money laundering • Proposals would lead to uniform interpretation of the framework by the European Court of Justice • EDPS welcomes the idea of the EC to represent the EU MSs at the FATF
<p>“EBA supports the EU Commission’s call for a more efficient and effective framework to tackle money laundering and terrorism financing” (19.08.2020); (European Banking Authority, 2020a)</p>	<ul style="list-style-type: none"> • Fragmentation is a big problem; regulation in certain aspects is needed • AMLA: hub and spoke model like EBA and SSM <ul style="list-style-type: none"> • entails cooperation between central and national supervisors; draw on existing relationships to be flexible • The shortcomings in DNFBP’s regulation have to be addressed • Competences of the AMLA <ul style="list-style-type: none"> • Leading coordinating and supervising role • Take over direct supervision of certain entities • Robust framework for cooperation with FIU’s • The rules that determine which entities should be directly supervised should be put down in law
<p>“EBA Report on European Commission’s call for advice on the future EU legal framework on AML/CFT” (10.09.2020); (European Banking Authority, 2020b)</p>	<ul style="list-style-type: none"> • Parts that should be transferred into a regulation <ul style="list-style-type: none"> • CDD • Occasional transactions (definition and threshold) • AML/CFT systems and control • Supervisory ML/TF risk assessments

Source	Findings
	<ul style="list-style-type: none"> • Cooperation • Sanctions and other measures (because there are currently neither a set of sanctions nor is there anything that defines what constitutes a “serious” breach) <p>What should be strengthened in the AMLD</p> <ul style="list-style-type: none"> • Powers and obligations of competent authorities • Crowdfunding, investment firms and funds, insurance and mortgage intermediaries, account information service providers, virtual asset service providers should be added to the list of obliged entities
<p>“<i>Preventing money laundering and terrorist financing—EBF response to EU consultation</i>” (25.08.2020); (EBF, 2020)</p>	<ul style="list-style-type: none"> • Tick the box culture has proven to be inefficient • Commission should promote public private partnerships • More action on the EU and international level seen as effective • Action plan is almost silent on the use of new technologies • The EBF supports to transfer as many aspects into a regulation as possible • Rule based requirements and national measures should be reduced to a minimum • All entities that pose a ML risk should become obliged entities • Definitions on data protection are really important • All entities should fall into the scope of AMLA supervision, however in a gradual process • Support the coordination mechanism • Like the idea that the commission takes a stronger role in the FATF
<p>“<i>26th Meeting of the expert group on Money Laundering and Terrorist Financing</i>” (07.09.2020); (EGMLTF, 2020b)</p>	<ul style="list-style-type: none"> • MS thanked the Commission for the detailed questionnaire and said that the results reflect the need for further harmonization • EC expressed that it would always be possible for MSs to go beyond the rules set by the legislation
<p>“<i>Wirksam im Kampf gegen Geldwäsche in Deutschland und auf internationaler Ebene</i>”</p>	<ul style="list-style-type: none"> • National efforts against ML have significantly increased

Source	Findings
(24.09.2020); (Ministry of Finance Germany, 2020)	<ul style="list-style-type: none"> • From 2020 to 2022 Germany has the presidency of the FATF and wants to push forward the ML prevention, especially in the banking sector
<p>“<i>Council Conclusions on anti-money laundering and countering the financing of terrorism</i>” (05.11.2020); (Council of the EU, 2020)</p>	<ul style="list-style-type: none"> • The unanimously support the EC’s Action Plan • Support the single rulebook • Support transfer of some aspects from the directive to the regulation • Urges the EC to expand obliged entities to VASP’s to comply with FATF Recommendation 15 and 16 • The EC should define in detail what data can be collected and how that can be reconciled with the GDPR • Acknowledges the added value of an AMLA • Supervisory scope should start rather narrow and could be extended in the future, also to non-financial institutions • AMLA powers: supervision, information requests, imposing sanctions <ul style="list-style-type: none"> • Should have an autonomous governance structure • All AML/CFT competences should be bundled in there • EC should provide a long-term solution for the FIU.net
<p>“<i>28th Meeting of the expert group on Money Laundering and Terrorist Financing</i>” (22.01.2021); (EGMLTF, 2021a)</p>	<ul style="list-style-type: none"> • Discussion on the 10000 cash threshold <ul style="list-style-type: none"> • MS expressed that there needs to be something done but that they were not entirely sure how to do it (trade-off between transaction limit and freedom) • MS favor the introduction of AMLA, but questions remain regarding governance and supervisory powers • New ideas regarding high risk third countries assessment (better countermeasures, risk-based approach, AMLA provides guidance) • EC says it would be less politicized • 3 MS had issues regarding their own competences but were assured that there are no problems • Question raised whether BO provisions (article 30 and 31 of AMLD) will be put into the regulation-> EC doesn’t know yet
<p>“<i>30th Meeting of the expert group on Money Laundering and Terrorist Financing</i>” (02.03.2021); (EGMLTF, 2021b)</p>	<ul style="list-style-type: none"> • EC explained intention to add VASP to the list of obliged entities -> MSs liked that idea

Source	Findings
	<ul style="list-style-type: none"> • One MS said that the regulation proposal should first and foremost focus on AML risks • EC said that there will be harmonization regarding CDD measures -> MSs support that idea <ul style="list-style-type: none"> ➔ EC also said it would respect risk-based approach and technological neutrality • EC: Beneficial ownership provisions will be harmonized under consideration of the feedback of the member states • EC: AMLD: more rules and more clarity • Regarding the FIU MS's expressed concerns regarding data protection but EC said they would not have to worry
<p>“Anti-money-laundering package 2021— Strengthening the framework” (EPRS March 2021); (Binder, 2021)</p>	<ul style="list-style-type: none"> • 19.09.19: EP resolution mentions the shortcomings in AML regulation and asks the EC to consider whether a regulation would be a more suited regulatory instrument • In EGMLTF meeting on 6-7 February 2020 the plans were largely supported however divergence came up on the question whether the regulation / AMLA should also cover the non-financial sector; most MS rejected EBA as host for supervisor • 10.02.2020: FIUs reject an EU-FIU • 18.09.2020 EESC supported all measures of the Action Plan • 05.11.2020: Council Conclusions: the list of aspects that should be covered by a regulation converge between Council and EP resolution of 10 July 2020 -> OE, CDD requirements and BO/ FIU cooperation framework • 25.01.2021: Member of Executive Board of the ECB welcomes EU single supervisor and the other aspects • Public consultation on Action Plan: General request is for the AMLA to cover all obliged entities (also non-financial) ; majority wants FIU support mechanism to be located at AMLA
<p>“Mairead McGuinness Speech at the AML Intelligence Boardroom Series” (17.05.2021); (European Commission, 2021f)</p>	<ul style="list-style-type: none"> • In order to win the fight against AML crime we have to rethink our strategy -> that is what the EC will do • Common rules, application, and supervision -> as it should be in a single market

Source	Findings
	<ul style="list-style-type: none"> • End fragmentation; align with FATF standards • Tracing virtual assets • EU wide 10000 Euro cash limit • AMLA: direct supervision with supervisory committees + indirect supervisions; FIU coordination, technical standards and guidelines; advise to EC (start in 2024, operational 2025, supervision start 2026) • Other things <ul style="list-style-type: none"> • Public Private Partnerships • International co-ordination with FATF • Ensuring that the current directives are appropriately implemented

Table 3. Phase III: After the Publication of the Proposal in July 2021

Source	Findings
<p>“Geldwäsche: So will die EU Kriminellen das Geschäft vermiesen” (20.07.2021) (Diesteldorf, 2021)</p>	<ul style="list-style-type: none"> • Scandals like that of the Danske Bank in 2018 have shown that national supervision does often not suffice • There are questions about where the AMLA should be located • Germany does not like the 10000 Euro cash payment limit
<p>“Anti-money laundering and countering the financing of terrorism European Data Protection Supervisor” (22.09.2021); (EDPS, 2021)</p>	<ul style="list-style-type: none"> • Welcomes the package • It has to be further specified what data can be collected, special limits and conditions for processing of confidential personal data • Questions the need for a general right to public access to beneficial ownership information • The rights of the FIU to access the information specified in article 18(1) of the AMLD6 should be reassessed • Recital 51 of the AMLD6 indicates that the FIU.net is planned to be designed as a data mining platform rather than an investigation platform, questionable design
<p>“EFAMA’s Views on the Anti-Money Laundering Package” (16.11.2021); (EFAMA, 2021)</p>	<ul style="list-style-type: none"> • Welcomes the idea of an AMLA • The staff of the AMLA should be comprised of experts from the entire financial industry • Agrees with the proposal that the AMLA should have power over all obliged entities and could also interfere

Source	Findings
	<ul style="list-style-type: none"> • Oppose to articles 16 to 20 of AMLA regulation: direct supervision should be exercised by supervisory team instead of the AMLA only • Welcome risk-based supervision and the development of guidelines and technical standards under consideration of public consultation • FIU.net -> good • Welcome that the FIU's have to give feedback to the reports that are filed by the FIU's (AMLD6) • Like the clarity of the AMLR in regard to policies, controls and procedures of the obliged entities • Suggest that not every entity should be forced to appoint their own compliance officer as that might strain their resources • Ensure that there are no instances where there is a double CDD check as that only consumes resources • Enhanced CDD should not automatically apply to all Politically Exposed Persons but should be based on individual risk
<p><i>“Presidency progress report on the AML package under the Slovenian Presidency” (29.11.2021); (Council of the EU, 2021)</i></p>	<ul style="list-style-type: none"> • Major issue: a lot of provisions are lacking detail and are thus unclear • Member states favour faster application of TFR • Member states expressed support for harmonization • National measures should remain in place where they are stronger than EU provisions • “Possibility to adopt further measures for CDD” • Some member favour exhaustive list of obliged entities while others want the possibility to extend it • Many member states raised the issue of proportionality for small, obliged entities; some consider the prohibition of outsourcing for some activities to be disproportionate, especially for smaller OE's • A lot of discussion on 1000 Euro CDD threshold • Very different views on data processing: some say it is necessary and others say it should be limited to a minimum

Source	Findings
	<ul style="list-style-type: none"> • Cash limit: some want it lower, some want to decide nationally, some will not accept the limit • AMLD: proposal to include Article allowing for stricter provision through national law • MSs agree on Beneficial Ownership register and access to FIU's, but have diverging opinions when it comes to what should be included there • Concerns by MSs on the power of FIU's to access information • Some member states expressed concerns about the lack of discretion of national authorities when imposing sanctions • Guidelines on cooperation: the national supervisors should also have their say • Some member states consider the power of the AMLA to impose binding instructions on MSs authorities as disproportionate • MSs think that selection of directly supervised entities should be based on residual risks and not on presumed inherent risk
<p>“<i>Opinion European Economic and Social Committee on Anti-Money Laundering Legislative Package</i>” (08.12.2021); (EESC, 2021)</p>	<ul style="list-style-type: none"> • Fully supports the legislative package • Proposes the creation of a civil society advisory body within the AMLA or with AMLA participation <ul style="list-style-type: none"> • AMLA needs enough funding and staff to effectively participate in the fight against ML: financed by EU budget • Europol must also constitute an important part of the enforcement network • Whistle-blower Directive 2019/1937 has to be transposed as quickly as possible • It should be attempted to make the AMLA fully operational before 2026 • Like, that the AMLD6 defines time periods for the response time for competent authorities • MiCA regulation should enter into force with absolute urgency • Use existing relationships between supervisory authorities • NFT providers need to be included in list of obliged entities • The EC should consider setting the cash level even lower than 10,000 Euros

Source	Findings
<p>“EBF feedback to the European Commission’s proposed AML Package” (10.01.2022); (EBF, 2022)</p>	<ul style="list-style-type: none"> • There needs to be a paradigm shift • National and supranational risk assessments should maybe be every 2 years instead of the proposed 4 years • The implementing act on Ultimate Beneficial Owners needs to be very detailed <ul style="list-style-type: none"> • The data collection has in many countries led to an increase in workload due to insufficient interconnectedness and standardization • MS’s should not carry the burden of ensuring interconnectedness • Welcomes that the FIU’s need to prepare yearly reports and yearly feedback to obliged entities
<p>“The EU is homing in on dirty money” (February 2022); (Lanoo, 2022)</p>	<ul style="list-style-type: none"> • AMLA seems to be just like the SSM • Will a central agency be helpful in assessing national and heterogenous fields? • On what criteria will financial institutions be identified • How will ‘close cooperation’ work between the AMLA and national supervisors? • Will the support network for FIU’s be sufficient to coordinate heterogenous FIU’s? • Does the AMLA have the capacity to complete all the tasks? • Is the legal basis (114 TFEU) sufficient for information sharing of data related to criminal offenses? • How will the transition from EBA to AMLA work, and why is there not really any cooperation with the ECB? • Is enhanced CDD still risk based?
<p>“For a few cryptos more: The Wild West of crypto finance” (25.04.2022); (European Central Bank & Panetta, 2022)</p>	<ul style="list-style-type: none"> • Cryptos are bringing instability -> wild west • Without adequate controls it leads to speculation without customer protection; it is all based on greed • Public policy and financial stability concerns • Crypto is like a Ponzi scheme • Unbacked crypto is too volatile to perform basic functions of money • Crypto can be used for criminal activities, to circumvent sanctions, to avoid taxes and it is also bad for the environment • Problems for financial stability: a fall in value could diminish the wealth of investors having negative effects on the financial system; loss

Source	Findings
	<p>of faith in the asset could also spill over to the broader financial market</p> <ul style="list-style-type: none"> • Regulation is absolutely necessary and should weight the risks and benefits <ul style="list-style-type: none"> • Crypto need to be held to the same standard as the rest of the financial system • How should we tax them? • Public disclosure and reporting need to be intensified • Swift negotiations between all actors are necessary • AMLA is necessary for harmonization • ECB and National Central Banks need to make quick progress because otherwise alternatives will appear
<p><i>“DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council on information accompanying transfers of funds and certain crypto-assets” (07.02.2022); (ECON, 2022a)</i></p>	<ul style="list-style-type: none"> • For crypto assets there should be no 1000 Euro threshold for the CDD requirement • Should be clarified that the requirements do also apply to un-hosted wallets • The EBA should have a public register of non-compliant VASP’s • TFR should be decoupled from the AML package and linked to the existing AMLD until this AML package comes into force
<p><i>“Opinion of the European Central Bank of 16 February 2022 on a proposal for a directive and a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (CON/2022/5)” (16.02.2022); (European Central Bank, 2022a)</i></p>	<ul style="list-style-type: none"> • The ECB welcomes the initiative • Responsibilities of the compliance manager do not exempt the collective responsibility of the management body • AMLD6 sanction provisions: it should be clarified that sometimes the AML supervisor does not have the power to withdraw the license of an institution and is thus only the one recommending this action to the competent authority • Some administrative measures seem to be more severe than administrative sanctions, need to be checked again • More specific provisions on with whom financial supervisors can secretly exchange information • The AMLR would introduce a payment limit and it is of utmost necessity that the legislation specifies why this does not constitute a breach of article 17 of the Charter of Fundamental Rights of the EU. Proportionality needs to be justified and exemptions need to be specified

Source	Findings
	<ul style="list-style-type: none"> • AMLR: The definition of ‘virtual assets does not cover all possible kinds of virtual assets
<p>“<i>Crypto community mobilises against MEPs’ transfer transparency rules</i>”(30.03.2022); (Bertuzzi, 2022)</p>	<ul style="list-style-type: none"> • See the requirements of accompanying all crypto transfers with information about beneficiary and originator as disproportionate
<p>“<i>DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing</i>” (15.03.2022/ 31.03.2022); (ECON, 2022b)</p>	<p>Amendments:</p> <ul style="list-style-type: none"> • Ban the use of bearer instruments • More obliged entities: wealth or asset manager, high level professional football club, sports agents in the football sector • Want to ban ‘Citizenship by Investment’ but have to include provision because the EUCJ is still ruling on a case • CDD requirements should be starting at 5000 Euro instead of 10000 Euro • Ensure implementation of whistle-blower Directive 2019/1937 • Obligated Entities should perform CDD on transactions of more than 1000 Euro in crypto assets • There should be a prohibition of relationships with non-compliant crypto asset service providers • Demand public register on shell banks and non-compliant VASP’s • Decrease threshold that serves as an indication of ownership of a legal entity from 25 to 5 percent • Better provisions on data protection and how specific categories of sensitive personal data should be processed • Article 58: banning anonymous accounts • Article 59: cash payments only up to 5000 Euros instead of 10000 Euros • Article 65: Regulation should apply from 2 years (instead of 3 years) from its entry into force) • The EP called for this package several times • Internal policies, controls and procedures have to be implemented while keeping the principle of proportionality in mind • Co-rapporteurs added an obligation for the AMLA to set up a public register on shell banks and non-compliant VASP’s • High net worth individual have to be placed under enhanced CDD as evidence shows that

Source	Findings
	banks are still willing to set CDD measures aside for these individuals
<p>“<i>Financial Stability Review, May 2022</i>” (25.05.2022); (European Central Bank, 2022b)</p>	<ul style="list-style-type: none"> • Crypto does not pose a contagion risk for the entire financial sector but significant losses for individual investors • As investors move more to crypto assets and international institutions get involved, the interconnectedness between crypto and the traditional banking system rises and can thus pose systemic risks
<p>“<i>Decrypting financial stability risks in crypto-asset markets</i>” (Hermans et al., 2022)</p>	<ul style="list-style-type: none"> • There is a growing demand for crypto assets from investors • The market volume of crypto is still small but steadily rising as well as the interconnectedness with the financial market • Crypto assets pose risks to investor protection and market integrity • Regulation is necessary • There is also a significant lack of data regarding the risks of crypto assets, which makes risk mitigation very difficult

Table 4. Countries Response to Crypto Regulation

Country	Source	Findings
Austria	“ <i>Österreich wehrt sich gegen EU-Pläne für Bargeldobergrenze.</i> ”(26.07.2021); (tagesschau.de, 2021)	<ul style="list-style-type: none"> • is strictly opposing the 10000 Euro cash limit as they think that it infringes on the fundamental rights of the citizens
Germany	“ <i>Wirksam im Kampf gegen Geldwäsche in Deutschland und auf internationaler Ebene</i> ” (24.06.2020); (Ministry of Finance Germany, 2020)	<ul style="list-style-type: none"> • Pushing for AMLA • Wants to go further in the international dimension (chairing the FATF taskforce for two years (2020 to 2022)) • Germany will however completely oppose 10000 Euro Limit (Diesteldorf, 2021)
Estonia	“ <i>Once a Crypto Trailblazer, Estonia Is Cracking Down on Risk. Bloomberg.Com.</i> ” (25.05.2022); (Tammik & Eglitis, 2022)	<ul style="list-style-type: none"> • Estonia, that has for a long time championed the cryptos is now starting to regulate them strictly • From 15th June accounts of providers cannot be anonymous anymore • Estonia feels prepared for regulating assets as they have more experience with them than other European countries
Cyprus	“ <i>Cyprus in trouble over EU anti-money laundering directive</i> ” (08.11.2020); (Kiliaris, 2020)	<ul style="list-style-type: none"> • Cyprus is using corrupt methods to grant ‘Citizenship by Investment’
	“ <i>Cyprus enacts the 5th Anti Money Laundering Directive Introducing Crypto Assets</i> ” (07.04.2021); (Chigrina, 2021)	<ul style="list-style-type: none"> • Cyprus only implemented the AMLD5 more than one year after the deadline
Lithuania	Lithuania banning self-hosted wallets (09.06.2022); (Carreras, 2022)	<ul style="list-style-type: none"> • Banning of anonymous accounts and stricter CDD requirements in anticipation of EU regulation
France	“ <i>Protecting EU Citizens from Financial Crime and Terrorist Financing—French Presidency of the Council of the European Union 2022</i> ”(19.01.2022); (French Government, 2022)	<ul style="list-style-type: none"> • The French Presidency will push for the package without lowering its ambitions • Authorities need up-to-date tools and cooperation between the member states to fight ML