EU AML Agency: Citizens deserve better than a back-room deal on location

After a series of scandals which significantly damaged the reputation and credibility of EU financial services firms (here and here) and EU authorities (here, here and here) alike, the European Commission (EC) released a package of measures to overhaul its anti-money laundering (AML) and countering the financing of terrorism rules (CFT) just under a year ago.

The package, part of an earlier adopted, broader Security Union Strategy for 2020-2025, highlighted the importance of enhancing the EU's AML/CFT framework to protect Europeans from terrorism and organised crime.

The package contained 4 elements but at its centerpiece is a Regulation establishing a new, decentralised EU Authority (AMLA). For the sake of brevity, this article focuses on AMLA and assesses recent developments in both the Council and European Parliament (EP), in particular in relation to the location of the new authority.

Firstly, a bit of context on EU agency location politics: it's worth recalling that the EU has some prior form when it comes to focusing on location policy rather than substance regarding the location of EU agencies. In financial services, the most memorable example remains the creation of the three European Supervisory Authorities (ESAs) which, as part of a political deal, were divided between the three largest Member States: Germany (EOIPA); France (ESMA) and UK (EBA). A large part of the reason why a single supervisor was ultimately rejected was due to significant UK opposition to an overly powerful EU-level authority, potentially being located in Paris. It is therefore somewhat ironic that post Brexit, EBA relocated to Paris, though admittedly in a rather arbitrary way (here and here) after several rounds of voting.

In one sense, one could argue that the EC has learnt its lesson since then, recognising that a fight for location is a Member State fight it doesn't want to get drawn into. But by simply not putting any location in its draft ALMA proposal, the EC is intrinsically focusing attention away from the substance of the AML package onto the much less important (but clearly more politically prestigious) issue of location.

Some EP policymakers have privately complained about the intensity of lobbying by Member States on ALMA's location policy, to the detriment of the rest of the package. Others have suggested that the EC should have been bolder by suggesting ALMA be located in one of the Member States which has historically been seen as having weaker AML measures – a symbolic gesture in recognition of AML efforts at EU level only being as strong as the weakest link. Such a location selection would also have signalled support for significant reform efforts by countries which have fallen foul of AML breaches, given such Member States have often been the most ardent in their fight against AML precisely because of the reputational damage of previous scandals.

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In any case the fight over location of the AML Agency will rumble on. On the Council side, the French Presidency are clearly prioritising ALMA over other parts of the package, with discussions advanced and the objective of a partial general approach by the end of June. ECOFIN ministers 'took note' of a progress report at their meeting on 17 June but again remained silent on location.

Perhaps somewhat more surprisingly, the EP has also ducked the question of location in its draft report. Rather than picking a specific city, the co-rapporteurs preferred to outline criteria it deems important, namely that the location: (a) shall not affect the Authority's execution of its tasks and powers, the organisation of its governance structure, the operation of its main organisation, or the main financing of its activities; (b) shall ensure that the Authority is able to recruit the high-qualified and specialised staff it requires to perform the tasks and exercise the powers provided by this Regulation; (c) shall ensure that it can be set up on site upon the entry into force of this Regulation; (d) shall ensure appropriate accessibility of the location, the existence of adequate education facilities for the children of staff members, appropriate access to the labour market, social security and medical care for both children and spouses.

Fortunately, MEPs focused more on substance than location in their recent joint committee debate, flagging the importance of improving coordination and information exchange between national Financial Intelligence Units (FIUs) and strengthening the EU's supervisory framework via direct supervision for cross-border obliged entities. Nevertheless, the EP co-rapporteur's expressed confidence in an upcoming final decision by the ECJ on the EP's role in agency location policy, inferring that location will undoubtedly be a key element of the final political negotiations later this year/early next year.

Irrespective of where AMLA is ultimately located, the most important thing is for the EU agency to be provided with the tools, finance and appropriate legal framework to enhance the fight against anti-money laundering and terrorist financing. Avoiding competition with and duplication of national bodies and provisions will be a key part of the EU legislative framework. Thereafter, it will be up to the authority itself to execute its mandate to enforce EU AML law, with accountability to EU institutions.

At the end of the day, EU citizens would be best served by the co-legislators if there were more of a focus on these issues of substance rather than the false prestige of back-room deals on AMLA's seat.

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