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# Anti-money laundering compliance race across the pond

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In July 2021, the European Commission launched an extensive anti-money laundering (AML) package that plans on completely changing and harmonizing the AML framework. This package has several legislative proposals that first and foremost establish the first European AML authority as well as several changes in the legal provisions establishing the AML rules.



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In light of these new regulations, we want to dive into the way they will change the European framework with a focus on the comparison with the United States (US) and the already established US AML supervisory authorities.

### The current European framework

From a *legislative* perspective, the fight against money laundering has been fought through European directives, with the latest and most important being the fourth and fifth AML directives and the AML criminal law directive.<sup>[1][2]</sup> These are supplemented with guidance from supervisory bodies and regulatory technical standards.

The issues of the current legal framework stem from the transposition mechanism and the differences in interpretation.

If every directive needs to be transposed by each member state, this means that the European Union (EU) gives the discretionary power to 27 countries to change the act in certain ways before it actually gets adopted. The directives set some general limits, but many aspects are left to the control of the member states. This means that it's impossible to not have differences or variations on the same topics, and the topics relating to AML are too important to have different interpretations.

A very fitting example of this issue is the current regime of crypto-assets service providers (CASPs). Based on the fifth AML directive, the CASPs are obliged entities and have to be registered.<sup>[3]</sup> The directive does not elaborate clearly on the limits of registration and licensing, and allows countries to set their conditions. This led to certain member states having a licensing regime (Germany, Estonia), others having a registration regime (Ireland, Belgium), and countries like the Netherlands having a registration regime so strict that virtually transforms it into licensing. These differences ultimately defeat the purpose of having a harmonized European legislation.

From a *supervisory* perspective, at the moment, the EU does not have an overarching authority responsible for monitoring and supervising the fight against money laundering. The AML responsibilities fall upon the financial intelligence units of each member state and the European supervisory authorities of the financial sector: the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority.

The financial intelligence units and national supervisors have disproportionate activity in different states because the resources allocated are also different, such as the resources for implementation and enforcement. This is also why some supervisors are more active than others, offer more guidance to their relevant financial entities, and also impose more fines.

There is a clear need for an entity that can coordinate the activity of the financial intelligence units, offer guidance, and focus exclusively on AML.

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