

2.1.2 The 4th AML/CFT-Directive of the EU

Through the 4th Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁷ (the 4th AMLD), the EU is implementing the FATF recommendations.

2.1.2.1 The draft 4th AMLD

The enumeration of operational objectives of the draft Directive⁸ (page 7) reads as follows: “*Inclusion of tax crimes in the scope*: include an explicit reference to tax crimes as a predicate offence.” This is declared to be one of the best options to improve the existing situation described in the Impact Assessment undertaken by the Commission. It remains unexplained why the inclusion of taxes crimes in the scope of the draft 4th AMLD would improve the existing situation. It will be analysed in chapters 3 and 4 of this thesis whether there are more arguments in favour or against the conclusion made by the European Commission. But first, it is necessary to go through all the lengthy language of the draft and the enacted 4th AMLD on the search for practical guidance on how to implement the FATF recommendations in national law.

Recital No. 9 of the draft 4th AMLD proposed by the Commission reads as follows: “It is important to expressly highlight that “tax crimes” related to direct and indirect taxes are included in the broad definition of “criminal activity” under this Directive in line with the revised FATF Recommendations.”⁹ The Parliament has amended this recital in its first reading as follows: “It is important to expressly highlight that ‘tax crimes’ related to direct and indirect taxes are included in the definition of ‘criminal activity’ under this Directive in line with the revised FATF Recommendations.”¹⁰ Later on, the Parliament added even more language: “The European Council of 23 May 2013 stated the need to deal with tax evasion and fraud and to fight money laundering in a comprehensive manner, both within the internal market and vis-à-vis non-cooperative third countries and jurisdictions. Agreeing on a definition of tax crimes is an important step in detecting those crimes, as too is public (sic!) the disclosure of certain financial information by large companies operating in the Union on a country-by-country basis.

⁷ OJ L 141, 05.06.2015, p. 73 et seq., available in English from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:141:FULL&from=RO>, accessed on April 17, 2016.

⁸ COM(2013) 45 final; 2013/0025 (COD), available in English from http://eur-lex.europa.eu/procedure/EN/2013_25, accessed on April 17, 2016.

⁹ COM(2013) 45 final; 2013/0025 (COD), p. 14.

¹⁰ Draft report dated November 11, 2013 (COM(2013)0045 – C7-0032/2013 - 2013/0025(COD)), p. 8.