It remains unclear what the last sentence means. Normally, national legislation concerning the exchange of information between FIUs subjects the exchange to the verification of dual criminality. Is the 4th AMLD calling for abolishing the principle of dual criminality? In order to find the answer to this question, the competence of the EU on abolishing dual criminality has to be assessed first.

The EU does not have a general competence to legislate criminal law nor tax law, but according to art. 83 of the Treaty on the Functioning of the European Union (TFEU[13]), the "European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.
These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime" (Art. 83 1. TFEU).
"If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76" (Art. 83 2. TFEU).

Summing up Art. 83 TFEU, the EU could have harmonised the definition of tax crimes in Member States' national law, but chose not to do so. By deduction, it seems unlikely that the EU wanted to abolish the principle of dual criminality. One could argue that the EU should have harmonised the definition of the criminal offences first before aiming at abolishing dual criminality. If the latter was the goal of Recital 11 of the 4th AMLD (and supposed Recital 11 would be backed by an actual article of the Directive), it seems more than unlikely that national constitutional courts would accept that, e.g. the German Supreme Court (Bundesverfassungsgericht), having ruled that the competence according to Art. 83 TFEU has to be interpreted in a narrow sense.[14]

Art. 3 point (4) (f) of the 4th AMLD reiterates the reservation concerning national law as in Recital No. 11, but has not been altered substantially compared to the draft directive. It reads as follows:

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[13] See the consolidated version of the TFEU in OJ C 326, 26.10.2012, p. 47 et seq. (Art. 83 to be found on p. 80 et seq.)

[14] BVerfGE 123, 267 = NJW 2009, 2267.