

tion to § 12 para 1 of the law on the implementation of the common market and directly paid subsidies.⁵⁸

Finally, § 261 para 1 sentence 2 number 4 lit. b Criminal Code stipulates that misdemeanours according to § 370 Fiscal Code (Tax evasion, Steuerhinterziehung)⁵⁹ are predicate offences to ML, if committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences. This is an important qualification. Although there is no definition of the term gang in the Criminal Code, the meaning of the term is the same as in most countries, i.e. a group of a minimum of 3 persons, based on a decision by the Federal Court of Justice (Bundesgerichtshof).⁶⁰ Point 2 of the interpretive note to FATF recommendation 3 seems to be implemented.

The maximum sentences are 5 years imprisonment according to § 370 Fiscal Code, and 10 years imprisonment according to §§ 373 and 374 para 2 Fiscal Code. The maximum sentences always being of more than one year, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems to be met.

§ 263 para 3 Criminal Code sanctions any attempt.

When looking at the German criminal law, the situation appears to be different from the one in Austria, since § 370 para 7 Fiscal Code clearly states that “irrespective of the *lex loci delicti*, the provisions of subsections (1) to (6) above shall also apply to acts committed outside the territory of application of this Code”. This means that any qualified tax evasion committed outside of Germany can be a predicate offence to ML in Germany. When asking whether the proceeds of such a predicate offence can be the object of ML in Germany, § 261 para 8 Criminal Code gives a clear answer: “Objects which are proceeds from an offence listed in subsection (1) above committed abroad shall be equivalent to the objects indicated in subsections (1), (2) and (5) above if the offence is also punishable at the place of its commission”, hence yes. This applies without regarding whether the foreign predicate offence is past the statute of limitations, whether the foreign threat of punishment is equivalent to the German

⁵⁸ Gesetz zur Durchführung der gemeinsamen Marktorganisation und der Direktzahlungen (Marktorganisationsgesetz, MOG, no English translation available).

⁵⁹ To be found in Annex C below, both in German and in English.

⁶⁰ The decision by the Federal Court of Justice (Beschluss des Bundesgerichtshofs, GSSt 1/00, NJW 2001, 2266ff.) is available in German from <http://www.hrr-strafrecht.de/hrr/1/00/gst-1-00.php3>, accessed on April 3, 2016.