

2.2.7 Luxembourg

Luxembourg being a member of the FATF, it should implement the FATF recommendations. In Luxembourg, ML is punishable according to Art. 506-1 Criminal Code⁸². The text of Art. 506-1 Criminal Code is very long, hence it can be found in Annex D below, in French (updated as of January 1, 2016). Although the article is very long, there is no tax crime listed as predicate offence to ML in Art. 506-1 Criminal Code.

The existing law on tax fraud is § 396 para 5 of the “loi générale des impôts”, which reads as follows:

« Si la fraude porte sur un montant significatif d'impôt soit en montant absolu soit en rapport avec l'impôt annuel dû et a été commise par l'emploi systématique de manoeuvres frauduleuses tendant à dissimuler des faits pertinents à l'autorité ou à lui persuader des faits inexacts, elle sera punie comme escroquerie fiscale d'un emprisonnement d'un mois à cinq ans et d'une amende de cinquante mille francs à un montant représentant le décuple des impôts éludés. »⁸³

The minimum sentence being one month, it appears that the definition according to Art. 3 point (4) (f) of the 4th AMLD seems not to be met. The interpretive note to FATF recommendation 3 seems not to be implemented relating to tax crime as predicate offence to ML.

Practitioners expect “(...) that in the course of implementation of AMLD IV, Luxembourg will take specific legal measures (as foreseen in CSSF Circular 15/609) to ensure that tax fraud as a predicate offence is included and thereby render punishable money laundering of tax fraud benefits.”⁸⁴

The next mutual evaluation by the FATF for Luxembourg is scheduled to take place in 2020/21. It will be interesting to see if tax crimes are predicate offences to ML by then and how this will be assessed.

⁸² The Criminal Code is available in French from <http://www.legilux.public.lu/index.html>, accessed on April 10, 2016.

⁸³ As introduced by the « Loi du 22 décembre 1993 sur l'escroquerie en matière d'impôts », available from <http://www.legilux.public.lu/rgl/1993/A/2024/1.pdf>, accessed on April 10, 2016.

⁸⁴ See the text published on the “Fourth Anti-Money Laundering Directive and Wire Transfer Regulation” by André Hoffmann of the law firm Elvinger, Hoss & Prussen, available from <http://www.ehp.lu/legal-topics/legal-topics-by-areas-of-expertise/banking-insurance-and-finance/banking-insurance-and-finance-detail/article/fourth-anti-money-laundering-directive-and-wire-transfer-regulation-1/>, accessed on April 10, 2016. The Circular by the Commission de Surveillance du Secteur Financier (CSSF) that is mentioned in the law firm’s text is available from http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Blanchiment_terrorisme/cssf15_609eng.pdf, accessed on April 10, 2016.