

## 5. Conclusions

To conclude, the questions raised at the beginning of this thesis are coupled with the answers given in the main parts of the thesis.

On the global level: Has the FATF considered whether the FATF recommendations can be implemented in compliance with the constitutions of the countries concerned? Probably not. The potential constitutional conflicts caused by the implementation of the FATF recommendations on the national level are not about to be solved by a multilateral convention.

On the European level: Has the EU considered whether the wording of the directive implementing the FATF recommendations in the EU is clear enough to avoid too different national legislations? Probably not. If the EU has tried to agree on a harmonised definition of the term “tax crime”, it has failed so far to come to a solution. At least, it would have made it clearer to every member state of the EU if the 4<sup>th</sup> AMLD would have added the tax crimes as predicate offences to ML in a separate statutory provision, e.g. a new Art. 3 point (4) (f) with as simple a wording as:

“(f) tax crimes;”

Thus leaving the catch all provision unchanged as new Art. 3 point (4) (g) AMLD:

“(g) all offences, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months”.

On the national level: Have the countries implementing FATF recommendations and EU directives considered whether the national legislation and regulation is easy to be applied by the private and the public sector? Some did, others didn't. Some countries have simply defined existing misdemeanours or felonies as tax crime which are predicate offences to ML. This certainly makes it easier to apply tax crime as predicate offence to ML if the case is a purely national one. But as soon as the case is an international one, the application of tax crimes as predicate offences to ML tends to become very complicated due to the lack of a harmonised definition of tax crime as predicate offence to ML.

Did all three institutional levels try to avoid unwanted consequences of the implementation of FATF recommendation 3, the money laundering definition, like under- or over-reporting, weakening the existing AML/CFT-regime resource-wise both in the private and in the public sector, de-incentivising service providers from motivating their clients to file a voluntary disclosure, de-motivating compli-