Money Laundering and Tax Fraud

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Executive Summary

Lately, tax evasion was included in the regulation of money laundering. While originally Money Laundering was meant for combatting drugs, its scope broadened over time from drugs to terrorism financing and lately also to taxes. This means that tax evasion will become more seriously criminalized than before. The following paper wants to show the tricky relation between money laundering and tax evasion both in law in the books and in law in practice. How is tax crime/tax evasion/tax fraud defined in the Member States and some other countries? And could tax evasion now that it is included in the fourth Anti Money Laundering Directive really be prosecuted as money laundering in the Member States? Which problems of definitions do still exist in order to link money laundering and tax evasion consistently among Member States? And how can they be solved?
1. REGULATING TAX CRIME AS A MONEY LAUNDERING OFFENSE

In the previous delivery 6.2. of COFFERS we focused on the description of money laundering and its definition and use in the EU Member states. The following paper wants to show in how far tax evasion and tax fraud can be considered money laundering. Tax evasion or tax fraud money stem often from honest business. So, just the act of not paying taxes is the criminal part of it. The criminal origin of the laundered money has to be seen in stealing tax money from the public sector rather than from an illegal business activity. How criminal this act is differs over time and across countries. Lately tax evasion has received again more attention. Is stealing from the public sector considered equally bad as stealing from the private sector? By making tax evasion a predicate crime for money laundering in the FATF Regulations and in the Fourth EU Anti Money Laundering Directive the regulators intends to increase the heaviness of the tax evasion delict.

One important reason for this can be seen in the financial crisis of 2008 which has increased public debt in many countries in the world. All European countries (except Sweden) were hit quite severely. As Figure 1 shows, in some countries, like Ireland, Spain, Slovenia, Estonia and the UK public debt more than doubled between 2007 and 2013. In 2016 Greece’s public debt rocketed towards 180 percent of Gross Domestic Product. Cyprus’ public debt in percent of GDP more than doubled since 2007. Only two countries (Malta and Slovenia) saw a decline in public debt since 2013, but debt is still above of what it was before the financial crisis. On average, public debt within the EU Member States increased by one fourth till 2013 and almost doubled till 2016 (see Figure 1).
Many countries focused now on the tax revenue side in order to serve the increased public debt and the need of the population for public expenditures like infrastructure, housing and education. Many leaks, like the Panama Papers in April 2015, followed by Luxleaks, Bermuda Leaks revealed that the global unregulated tax system was seriously going wrong. The most recent ‘Paradise Papers’ of November 2017 show 13.4 million confidential documents relating to offshore investments of 120,000 people and companies in 19 jurisdictions involving around 10 trillion of USD (Boston Consulting Group 2017). They include mainly tax avoidance constructions of big companies like Facebook, Apple, Uber, Nike, Siemens who all own offshore companies. They also revealed illegal loans of 45 million USD from Glencore, the largest multinational commodity trading and mining company, in order to get rights at a copper mine in Congo. Directors of companies listed in the Paradise papers include leaders of African states, and even the British Queen and last not least also Lord Sassoon, the president of the Financial Action Task Force on Money Laundering (ICIJ 2017).

The revelation of the diverse leaks showed that a large volume of unpaid taxes was missing which meant a tremendous inequality and which could fill the public coffers and be used for public needs. To link tax evasion to money laundering can be seen as a political effort to prevent and reduce tax evasion by criminalizing it more heavily. While drugs and organized crime are clearly defined as crimes in the member states, tax evasion is not. It is therefore doubtful whether the directive really adds to the combat.

1.1 The volume of global tax evasion

While there are significant uncertainties about the scale of tax avoidance, tax evasion and money laundering, there is no longer any doubt that the volume of tax revenues lost is substantial and that the amounts would be sufficient to solve many global problems of our time.

Cobham and Klees (2016) from the Tax Justice Network show that globally, revenue losses due to multinational corporate tax manipulation alone are estimated at 600 billion USD annually. Revenue losses on income tax due to non declared offshore wealth, are estimated to approach 200 billion USD. These lost revenues would be sufficient to provide education globally or to reach many of the defined sustainable development goals (The estimated education resource gap being 39 billion USD. Reaching all sustainable development goals would need 1.4 trillion USD annually, see Cobham and Klees 2016).

Crivelli et al (2015) from the IMF estimate total tax losses of over 400 billion USD for OECD countries and 200 billion USD for developing countries through tax havens and spill over effects. The estimated global revenue loss of 650 billion USD of James Henry for TJN comes close to these IMF estimates (see Cobham 2016).
A lower estimate is done by the OECD (2015). It suggests between 100 billion USD and 240 billion USD annually lost. This estimate is based on company balance sheets.

Cobham and Jansky (2015) estimate that profit shifting of US MNEs resulted in revenue losses of 130 billion USD in 2012 (compared to 12 in 1994) which shows the immense growth of tax avoidance.

In the US, the Internal Revenue Service (see www.fortune.com from 29th of April 2016) calculates that tax evasion costs the US Government 458 billion USD a year, so approximately one fourth of American tax revenue is lost through MNEs shifting their profits abroad.

The range of estimates and what precisely is estimated are still very broad. The lowest and most prominent estimate of revenues lost is made by University of Berkeley professor Gabriel Zucman (2015). In his widely noticed book ‘The Hidden Wealth of Nations - The Scourge of Tax Havens’ he concluded that as of 2014, at least 7.6 trillion of world's total financial wealth of 95.5 trillion USD was 'missing'. Countries’ national balance sheets recorded much more liabilities than assets. This means that the difference must be hidden somewhere. Zucman calculated that 2.6 trillion USD of financial wealth in Europe is held offshore, leading to tax revenue losses of 78 billion USD annually. Worldwide, 8% of financial wealth is held offshore, leading to global tax revenue losses of 190 billion USD. Next to the loss of tax income of 190 billion USD through tax evasion, he estimated losses of 130 billion USD through tax avoidance by US corporations (Zucman 2015).

Zucman expressed his shock about what was going on globally by exclaiming: ‘As if planet earth were in part held by Mars’. His suspicion and the findings of many authors mentioned above were definitely confirmed when the International Consortium of Investigative Journalists (ICIJ) in April 2015 revealed the ‘Panama Papers’. Some authors, notably the Financial Secrecy Index of the Tax Justice Network found a perfect match between their own work and the Panama revelation www.cgdev.org/blog/panama-papers-and-correlates-hidden-activity).

Zucman’s Martian men systematically were revealed: heads of governments, top politicians, football players and football managers, actresses, film makers; an elite which had apparently stopped paying taxes by making use of loopholes emerging in an unregulated global world. These elites used apparently the same offshore channels as drug dealers and human traffickers.

It was this latter clientele, drug dealers, fraudsters, human traffickers, to which the money laundering debate referred to. In 1995, the Australian criminologist John Walker estimated that 2.85 trillion USD is laundered globally, of which almost half (46%) in the US. In 1998, Michel Camdessus from the IMF guessed that around 2-5% of GDP worldwide are lost annually through money laundering. Camdessus’ estimate amounted then to 1.5 trillion USD. worldwide (see Unger et al 2006, Walker and Unger 2009). Many estimates followed. Though no calculations of Camdessus could be found, his ‘wet finger’ approach has turned out valid and could not be rejected by far more sophisticated measures till today.

Since money launderers and tax evaders both used offshore centers to hide their identity and business, it was only a matter of time that the two fields – tax evasion and money laundering – would merge.
1.2 The FATF and EU efforts to criminalize tax evasion more heavily

The regulations of both money laundering and tax evasion started in the 1990ies and were both initiated by the United States. Money laundering regulation originally was meant as an alternative to fight drugs. Before 1922, the use of drugs was not criminalized in the US. Coca Cola, for example, contained – as the name coca still indicates - cocaine in order to cheer you up. However, the criminalization of drug abuse in the US in 1922 was followed by several decades of unsuccessful efforts to reduce drug trafficking. In a renewed attempt to win the 'war on drugs', the Clinton regime focused on a new strategy: following the drugs money and stripping criminals of their proceeds from crime. “If one could not get at drug dealers […], then at least they should be discouraged by the realization that they could not reap the monetary benefits of their acts.” (Unger, 2013, p.53). In 1986, the US established the first Money Laundering Control Act (1986) that established money laundering as a federal crime.


- participation in an organized criminal group and racketeering;
- terrorism, including terrorist financing;
- trafficking in human beings and migrant smuggling;
- sexual exploitation, including sexual exploitation of children;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit arms trafficking;
- illicit trafficking in stolen and other goods;
- corruption and bribery; fraud;
- counterfeiting currency; counterfeiting and piracy of products;
- environmental crime;
- murder, grievous bodily injury;
- kidnapping, illegal restraint and hostage-taking;
- robbery or theft;
- smuggling (including in relation to customs and excise duties and taxes);
- tax crimes (related to direct taxes and indirect taxes);
- extortion;
- forgery;}
• piracy; and
• insider trading and market manipulation.

The EU so far only transposed the recommendations of the Financial Action Task Force (FATF) - an inter-governmental organization created by the G-7 in 1989 to coordinate global efforts on money laundering. Contrary to other policy fields (e.g. food standards where the EU was far more proactive) Europe did not take a lead in fighting criminal money but was a follower.

For Europe the following EU Directives show the enlargement of scope of anti money laundering regulation from combating drug to tax crime:

• Directive 2001/97/EC of the European Parliament and of the Council extended the scope of Directive 91/308/EEC both in terms of the crimes covered and in terms of the range of professions and activities covered. (2nd AML Directive). Reporting requirements were expanded to include trust companies, financing companies, and commercial dealers of high-value goods. Also notaries, lawyers, real estate agents/intermediaries, accountants, business economic consultants, independent legal advisers, trust companies and other providers of trust related services, and tax advisors were added. In the Netherlands, to give an example, reporting entities that fail to file reports could be fined 11,250 Euros, or be imprisoned for up to two years.
• Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. This 4th AML Directive takes into account the latest recommendations of the Financial Action Task Force (‘FATF’) from 2012. Point 11 of the Directive stresses that it is important expressly to highlight that ‘tax crimes’ relating to direct and indirect taxes are included in the broad definition of ‘criminal activity’ in this Directive, in line with the revised FATF Recommendations of 2012.

Following the FATF (2012) Recommendations, the Fourth AML Directive stresses tax crime as a predicate crime for money laundering. This is tricky. Since the term tax crime mostly does not exist in many EU Member States penal codes. It is a US term which entered the European Directive. Tax crime, tax evasion, tax fraud, contribution fraud, crime against exchequer are the terms used in European laws. In every day’s
language the German term of a ‘Steuersünde’ – a ‘tax sin’ – completes this list and reminds of the close relationship between the state and the church.

In a similar way, the OECD (2017) being aware of the lack of a global regulatory tax regime and the diversity of interpretations for tax crime, tries to make a link between money laundering and tax crime by pointing at the importance of making tax crime a serious one: ‘Although “tax crimes” is not defined, the FATF Interpretive Note to Recommendation 3 states that jurisdictions are required to apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Each jurisdiction must determine how the requirement will be implemented in their domestic law, including how it will define the offence and the elements of those offences that make them serious offences’ (OECD 2017).

For the European Union the principle of subsidiarity leaves tax matters to the national authorities. This again can result in a large variety of defining what ‘tax crime’ is when transposing the Fourth Anti Money Laundering Directive of 2015. ‘It is important expressly to highlight that ‘tax crimes’ relating to direct and indirect taxes are included in the broad definition of ‘criminal activity’ in this Directive, in line with the revised FATF Recommendations. Given that different tax offences may be designated in each Member State as constituting ‘criminal activity’ punishable by means of the sanctions as referred to in point (4)(f) of Article 3 of this Directive, national law definitions of tax crimes may diverge. While no harmonisation of the definitions of tax crimes in Member States' national law is sought, Member States should allow, to the greatest extent possible under their national law, the exchange of information or the provision of assistance between EU Financial Intelligence Units (FIUs) (see The Official Journal of the European Union L141/73 5.6.2016 http://eur-lex.europa.eu/legalcontent/).

1.3 The transposition of the 4th Anti Money Laundering Directive by the Member States

The EU institutions have intensely worked on the harmonization of the Member State’s legislation regarding the prevention of Money Laundering, but due to the principle of subsidiarity which gives competences for criminal law and tax regulation to the Member States, and due to the requirement of a high level of consensus, the criminal law of each jurisdiction still remains very different.

An additional obstacle on the tasks carried out by Community institutions is the fact that some of the Directives are transposed (lawyers call it implemented) to national law with quite some delay. Directives are binding legislative tools which set out goals for all EU countries. But, in contrast with Regulations, Directives only enter in force when each country adapts them to its national legal framework. Member States have a deadline of two years to transpose the Directive, but as can be seen in Figure 2, some countries run serious delays of transposition. A large research on the transposition of EU rules in 15 EU countries revealed that delays of transposition can often be due to some ‘resistance’ of Member States regarding the contents of the
Directive (Falkner et al 2007). As Unger et al (2014) showed for the transposition of the Third Anti Money Laundering Directive, delays were more due to the slow political process and to legal problems than to a non acceptance of the Directive. For the Fourth Anti Money Laundering Directive the reason for the delays have not been analyzed so far. But what is striking is that while the delays in the transposition of the Third Directive were mainly with old Member States (France took more than three years to implement the Directive), the Fourth Directive causes transposition delays also from many Eastern European countries (and France is far ahead of the transposition date due). One reason for this might be that Eastern European countries, who often just copy and pasted the third directive (see Unger et al 2014) realized the importance that a good legal fit has for legal work and for further FATF evaluations.

Delays in the transposition can be harmful, not only for the effectivity of the EU legislation on money laundering prevention, but also for the rule of law and quality of institutions in Europe.

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (4th Money Laundering Directive) was published in the Official Journal of the European Union on 5 July 2015 and had to be implemented into national law by 26 June 2017.

Figure 2: Transposition delays of the 4th Directive (2015/849) in days. Source: Own work based on Official Gazettes and EURLex

As Figure 2 shows, only 10 Member Countries have transposed the 4th Directive into their national legal framework on time. The European Commission opened infraction procedures against the rest of the members. (Some of the countries are still waiting for an EU answer on adequacy, so infraction procedures are still open.)
Slovakia received a reasoned opinion on 08/03/2018, which is the 2nd step of the procedure after formal notice, and has already passed its transposition in March. Bulgaria received a reasoned opinion on 07/12/2017, and has transposed the Directive on 27/03/2018. Belgium also complemented the partial implementation of 28/03/2018, but has not been notified yet. So, by 11th of April 2018, 9 countries haven’t finished their transposition tasks yet: Spain, Romania, Poland, the Netherlands, Ireland, Greece, Cyprus plus Belgium and Bulgaria.

The 4th Directive includes tax crimes in the list of what it defines as “crimes” source of the object of the money laundering. This is a very important step for money laundering prevention but still some issues remain.

Historically, some legal systems have not considered income from tax crimes as “dirty” as income coming from other sources such as from drug dealing. This reflects a softer moral valuation of the illicit behaviour of not paying the correct amount of taxes. However, today the social perception on tax non compliance has changed. Not paying taxes is interpreted more as theft of public income rather than as a gentlemen’s delict and an indication of being smarter than the authorities. The OECD, FATF and EU efforts can be seen as a reflection of this changed public opinion and a way to try to change politics by criminalizing activities of not paying taxes more heavily.

However, there are limits to criminal prosecution of tax related illicit behaviour.

- **Thresholds**: some countries impose a threshold to consider unpaid tax as a crime, and not just an administrative offence. For example, if the unpaid amount of taxes is under 100.000€, in Spain it is not a crime.

- **Requirements**: some countries impose a requirement on how the illegal tax behaviour was carried out. Many penal laws require an intentional act in order to qualify something as a crime. For example, in the Netherlands or the United States, the act needs to be deliberated or intentionally and wilfully committed to consider it a crime.

- **Prescription**: short prescription periods for tax crimes are a problem to prosecute it.

These three types of requirements to qualify a behaviour as tax crime have a key influence on money laundering prosecution since the latter can only be prosecuted if the proceeds laundered have a criminal origin. If the origin is not considered a crime, no prosecution for money laundering could be achieved. So due to its relevance, if included in legislation, requirements should be fully justified. For instance, countries with a threshold qualification measure should explain why the first, let’s say, 10.000€ of unpaid taxes are not dirty money, but why it turns into a crime if the amount equates 10.001€.

The message is that money not paid to tax authorities is dirty money, starting from the first euro. So, if the first euro of income from crimes such as corruption or terrorism is illicit money in Spain, why should this be different with tax crimes? A different legal vision have countries like Austria and Germany where ‘bagatelle amounts’- ie. small amounts related to a delict - are not criminally prosecuted, since the law tries to avoid to
criminalize people too quickly. The idea of ‘Angemessenheit’ - proportionality – between delict, prosecution and punishment is essential here.

The heterogeneities on these requirements, particularly among EU countries, shows the variety of Europe and reflects its principle of ‘in varietate concordiae’ – of being united in variety - but it also establishes a very large playing ground for criminals who may locate their activities within the EU Member States depending on these legal differences and exploiting them, as it also happens with tax legislation.
2. THE DIFFERENT ANTI MONEY LAUNDERING APPROACHES IN THE US AND THE EU MEMBER STATES

At the moment there is a very diverse understanding of what fighting money laundering and of what fighting tax evasion is. A precondition for tax evasion and tax fraud in order to qualify for money laundering is that they are considered a crime. Since only the proceeds of criminal activities can qualify for laundering. But not all criminal activities lead to proceeds that are under the umbrella of the anti money laundering law.

In order to qualify for money laundering, there are four possibilities.

- First, countries have an **all crimes approach** to money laundering and tax evasion is considered a crime. Then tax evasion can be prosecuted as money laundering in the same way as for all other crimes.
- Second, countries have **a list approach** of predicate crimes. Only the proceeds of crimes from this list can be considered laundering activities. Only if tax evasion or tax fraud are listed as predicate crimes on this list, they can be prosecuted as laundering.
- Third, countries have **a threshold approach** which indicates from which on a crime is serious enough to be considered a money laundering delict. For example crimes below a threshold (say one year) would not be considered heavy enough to be prosecuted under money laundering.
- Fourth, countries can have **a hybrid approach**. For example they can have a list approach with a threshold or an all crimes approach with a threshold.

2.1 Money laundering and tax evasion in the United States: A list approach

Since the pressure to do anti money laundering policy and the pressure to fight tax evasion more intensely comes from the United States (see Unger 2017), see also the Foreign Account Tax Compliance Act of the US) we want to start to study the relationship between these two policy fields first at the federal level.

The US has a predicate crimes list approach, which means it lists all crimes of which the proceeds can constitute a money laundering delict. The list of 130+ crimes includes by now almost 250 listed predicate crimes. **But at the moment even the US does not include tax evasion on its list of predicate crimes.** The federal criminal money laundering statutes reference an extensive list of predicate offences. The underlying predicate offences are catalogued in 18 USC section 1956(c)(7) and include all of the Racketeer Influenced and Corrupt Organization Law predicate offences listed in 18 USC section 1961(1). There are nearly 250 predicate offences for money laundering by now, including federal, state and foreign crimes. The list of state and federal predicate offences are similar - murder, kidnapping, bribery, drug trafficking, arson, robbery and so on. Certain foreign crimes can be predicate offences if there is a sufficient nexus between the conduct and the United States.
The list of federal predicate offences is expansive but does not currently include tax evasion, despite the 2012 Financial Action Task Force (FATF) Recommendations guidance that suggested for the first time that tax crimes should be considered predicate offences till today.

It is difficult to observe the American power games from abroad being not an expert on American politics, but it is striking to see the fading away of the initiatives to put tax evasion on the predicate crime list in the Senate:

‘US senators Patrick Leahy (D-VT) and Charles Grassley (R-IA) introduced legislation in 2011 that would include tax evasion in the list of predicate offences for money laundering prosecutions, but neither reintroduced the bill in subsequent sessions of Congress. Leahy has publicly supported the reintroduction of the bill in November 2014, but has not acted on it since. In April 2013, the US Senate Caucus on International Narcotics Control, chaired by US Senators Dianne Feinstein (D-CA) and Grassley issued a report, ‘The Buck Stops Here: Improving US Anti-Money Laundering Practices’, in which they encouraged the enactment of legislation such as the Incorporation Transparency and Law Enforcement Assistance Act, which would require the disclosure of beneficial ownership information to combat the use of anonymously incorporated shell companies, and the Combating Money Laundering, Terrorist Financing and Counterfeiting Act of 2011, which would make all felonies, including tax evasion, predicate offences for money laundering. Nothing came of the Combating Money Laundering, Terrorist Financing and Counterfeiting Act of 2011. The ‘Incorporation Transparency’ bill was reintroduced in both the House and the Senate in 2013 and again in 2016, but it never made it out of committee’ (Sultan and Mata 2017).

Tax evasion/tax fraud can in principle be prosecuted not only at the federal level but also at State level in the United States, e.g. under New York state statutes in Penal Law Art. 470. Some authors claim that some of US president Trump’s activities and tax amnesty protegees could be prosecuted for money laundering there (https://www.justsecurity.org/44704/states-trump-trumps-pardons-state-prosecutions-money-laundering-hacking-conspiracy-tax-fraud/).

Seen the recent developments in the US, president Trump’s tax reform and tax amnesties it is not expected that tax evasion and tax fraud will pass the bill in the Senate to be listed as predicate crime for money laundering.

1 Contrary to this interpretation, the Wolfe Law Group of taxpayers in the US thinks that tax evasion can be prosecuted for laundering, because tax evasion is a Specified Unlawful Activity (“SUA”). However they do not refer to the source which would specify tax evasion as unlawful activity, http://gsylaw.com/us-criminal-prosecution-tax-evasion-money-laundering/ 19.12.2016.
2.2 Money Laundering and Tax Evasion in the EU: different approaches

Countries differ in what constitutes a predicate offence for money laundering. Generally, we see four approaches towards defining predicate offences for money laundering in Europe.

- Most straightforward is the ‘all crimes approach’ in which a country simply classifies all crimes as possible predicate crimes for money laundering. The following countries have an all crimes approach: Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the UK.

- An alternative is a ‘threshold approach’ or ‘serious crimes approach’ where the country classifies all crimes above a certain threshold as predicate crimes for money laundering. Generally the threshold is a specific sentence, e.g. Cyprus classifies all crimes with a prison sentence of more than 1 year as predicate offences for money laundering. The following countries have a threshold approach: Australia, Cyprus, Estonia, Ireland, Romania and Slovakia.

- The third approach is when a country simply lists which crimes constitute predicate crimes for money laundering. The following countries have a list approach: Germany (and also Panama and the US).

- The fourth approach is a hybrid approach: some countries have a list of predicate crimes which they complement with a safety net by adding a threshold, such as ‘and all crimes punishable by more than a specific amount of years’. Only Austria, Greece and Luxembourg have a list and threshold approach within the EU Member States.

Within the EU-28 countries most countries (19 of the 28) have an all crimes approach. We added to our study Australia, Panama and the US for comparison, so that in total our results are for our 31 focus countries.

The approach towards predicate offences for money laundering seems to be unrelated with the legal tradition (common law, civil law). Also no geographical pattern seems to emerge, as can be seen in the figure below.

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2 Spain is classified as having an ‘all-crimes approach’ by the OECD (2017), while the FATF (2014) says that all crimes punishable by more than three months imprisonment are predicate offences, indicating that Spain has a threshold approach. We decided to follow the OECD here, because their publication is more recent.
In countries with an all crime approach, tax evasion, tax fraud and tax crimes are predicate offences (which is the case in 19 of our 31 focus countries) if they are interpreted as ‘crimes’ and not e.g. only as ‘misdemenours’. ‘Jurisdictions draw different conclusions as to precisely when the application of the criminal law is warranted. The provisions of the criminal law define the actions that are designated as tax crimes as well as the type of criminal sanctions that are considered appropriate’ (OECD 2017, p.14). For the countries with an all crimes approach (Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovenia, Spain\(^3\), Sweden and the UK), so for the majority of EU Member States, the definition of tax evasion and tax fraud as a crime are essential in order to qualify for money laundering.

Jurisdictions may also take different approaches to the **threshold at which an act is classified as an offence**. For instance, jurisdictions may criminalise actions starting from simple non-compliance, such as any deliberate failure to correctly file a tax return. Some other jurisdictions may apply the criminal law starting from a higher threshold, where the deliberate failure to comply with a tax obligation is accompanied by aggravating factors such as if the amount of tax evaded exceeds a certain threshold, if the offence is committed

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\(^3\) Spain is classified as having an ‘all-crimes approach’ by the OECD (2017), while the FATF (2014) says that all crimes punishable by more than three months imprisonment are predicate offences, indicating that Spain has a threshold approach. We decided to follow the OECD here, because their publication is more recent.
repeatedly, when taxable income is actively concealed, or when records or evidence are deliberately falsified. Alternatively, jurisdictions may have set a very high threshold to classify tax crime, such as organised crime for profit, or tax evasion accompanied by particularly aggravating circumstances (OECD 2017, p.15).

Some jurisdictions cannot hold legal entities criminally liable for tax offences (Germany, Finland, Greece, Italy and Sweden) while others can (Australia, Austria, Czech Republic, Denmark, France, Iceland, Lithuania, Luxembourg, Netherlands, Slovak Republic, Slovenia, Spain, Switzerland, UK, Australia, US (OECD 2017, p. 16). This means that if for example a tax evader used a business for evading taxes, he would not qualify for a money laundering prosecution in Sweden, even though an all crime approach applies.

• Whether tax evasion, tax fraud and/or tax crimes are predicate offences for money laundering in countries with a threshold approach depends on the seriousness of these crimes and their relevant sentences. In Cyprus, Estonia, Ireland, Romania and Slovakia (and Australia) tax evasion and tax fraud must be interpreted as a serious crime in order to qualify for money laundering prosecution.

• In countries with a list approach, it depends on whether tax evasion, tax fraud and tax crimes are on the list of predicate offences. Germany (and also Panama and the US) have a list approach.
3. THE DIFFERENT DEFINITIONS OF TAX CRIME IN THE EU MEMBER STATES

3.1 A country comparison of tax crime in 31 countries

The goal of the ongoing research of the COFFERS project is to fill in a comparative table for the EU-28 Member States and for Australia, Panama and the US which lists the different terms tax crime/tax fraud/tax evasion definitions and references in the law and whether this would qualify for money laundering prosecution in the criminal code and tax code of the – in total – 31 countries.

We aim at a table with 31 country columns distinguishing

- tax evasion regulation,
- tax fraud regulation,
- thresholds from which on a tax delict constitutes a crime,
- money laundering regulation,
- money laundering approach for defining the predicate crime,
- fiscal crimes as predicate crimes and
- the prescription of tax crimes.

Section 3.2. describes our methodology of collecting the data for this ‘tax crime’ table. Section 3.3. shows our results for some of the countries. The rest of countries is still under double check from some legal experts. Seen how complicated penal law comparisons are, we do not expect only the one and only the one answer but a discussion among lawyers. For this reason we want to send the 31 country tax crime table to lawyers of all Member States, and to Australia, the US and Panama with the request to double check our results.

Regarding language our table will be in English, but each cell will refer also to the official language of each country. This seems important since lawyers are used to their national language only, since it is the national language law which applies to a concrete case.

3.2 Methodology of collecting the data for the “Tax crime” table for EU-28 plus Australia, Panama and the US

In order to collect the information about the law regulations concerning tax evasion and money laundering in all the EU-28 Member States the publications of the European Parliament website were taken as a primary source.

Specifically, the money laundering, tax avoidance and tax evasion committee of the European Parliament has sent a request for Member State contributions: investigating cases of tax evasion, tax avoidance, tax fraud and money laundering at the EU Member State level (European Parliament, 2017). This request to the ministry
of Finance of each EU country included the question about what are the legal definitions of administrative and criminal tax-related offences in the Member State covering, as appropriate, avoidance, evasion, fraud and money laundering at both the individual and corporate levels, as well as references to the national laws underpinning these definitions, as appropriate. To obtain the relevant information for our research – the legal definitions of tax evasion, tax crimes and tax fraud, the responses from the Ministry of Finance of each of the EU countries (where applicable) were taken as a primary source. In case the relevant articles of the laws were cited in the letter in English, the text was directly copied into the table. Otherwise, the articles of the laws (mentioned in the letter from the Ministry) were looked up on the Internet firstly on the official governmental websites, where the content in English (translated either from government employees or via the Google Translate option on each page) of the articles was directly derived. If no such official website was discovered, only then the content or interpretation of the law articles was extracted from law-related articles. That was necessary only in few cases. And in the specific case of Hungary, where no response from the Ministry of Finance was published on the European Parliament website, information about the law regulation on the researched topic was extracted from law-related articles, found on the Internet (Erdos et al. 2015).

In all cases the last amendments of the laws were additionally researched, to ensure that the collected data is relevant and where the legal definitions/penalties/thresholds or other information was changed since the publication of the letter of the Ministry of Finance, the information in the table has been updated accordingly to those amendments found (on the official governmental websites or in law-related literature on the Internet) and the changes, were mentioned in a designated for that area in the table.

Wherever the legal definitions mention penalties or other monetary measurements, different than EUR, further details and calculations were provided. For comparative purposes the thresholds (which were in a currency different than EUR) were calculated and presented both in the national currency and in EUR using the Google currency converter (the official exchange rate for the day was used in the day of making the calculations, which is also mentioned in a designated for that area in the table). Additionally, some legal definitions mention penalties measured in categories/units or other similar. For analyzing purposes and completeness of the research, additional research was performed and those measurements were explained (the information was extracted from governmental websites on the Internet) and given the EUR amount for the time of the collection of the data.

To find the relevant information needed for the research about the three reference countries, which are not members of the EU (Australia, Panama and the United States of America) the official government website was used as a primary source of information (wherever possible). The content of the specific articles regarding the legal definitions of tax evasion, tax crimes and tax frauds was copied directly from the official website, and in case this information was not found there, the content or interpretation of the article was found in law-
related articles on the Internet. The last found amendments were put in the table. In order to detect where to find the legislation both letters mentioned above and the transposition references in EURLex where employed.

To find the relevant information needed for the research about the three reference countries, which are not members of the EU (particularly Australia, Panama and the United States of America) the official government website was used as a primary source of information. The content of the specific articles regarding the legal definitions of tax evasion, tax crimes and tax frauds was copied directly from the official website. The last found amendments were put in the table.

Overall, wherever there are citations of the law in the tax table in English, but the law regulations are about a country, where the official language is not English, the English translation is provided only for research purposes, meaning only the official text in the official language are relevant and applicable in court. This is why we also include the original name of the law in the local language to be easily understood by audience in each country.

To collect the information about the money laundering approach, the information in the latest Mutual Evaluation Report on Anti-money laundering and counter-terrorist financing measures published by the FATF was used for the table. In case no such report was found, an IMF report or a similar report on anti-money laundering by another financial institution was used to collect the information. It has been verified by searching on the original regulation in force in each country in order to make sure that the data is updated.

### 3.3 First Results

Legal heterogeneity among EU countries establishes a very useful playing ground for criminals who may locate their activities within the EU depending on these legal differences and exploiting them, as it also happens with tax legislation.

Therefore it seems important to get a clear and encompassing overview over similarities and differences among tax evasion, tax fraud and money laundering regulations in the EU-28 Member states (and for comparison purpose Australia, Panama and the US).

We show the legal heterogeneity in the EU by looking into five countries: Austria, Germany, the Netherlands, Spain and as a point of comparison the US.

#### 3.3.1 Legal heterogeneity

Differences in legislation means that each country has different names, definitions, and laws on tax crimes and money laundering. Perhaps, one of the trickiest issues when analysing and comparing laws are the nomenclature of the criminal conduct.

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4 The list with the Official Gazettes List can be found in the Appendix. EURLex Directive 2015/849:
In the first five countries selected for the research (Austria, Germany, The Netherlands, Spain and the US) only Austria distinguishes clearly between two kinds of tax crime: tax evasion and tax fraud. In Germany, only tax evasion is a crime since tax fraud is considered as just an administrative offence. In the Netherlands and the US no differences exist, but in the US lawyers have informally classified the two conducts (evasion and fraud). Finally, in Spain no tax evasion or tax fraud are provided by law (even if these denominations are used informally) since there exists a general category of “crimes against the exchequer”. The complexity of the comparison is even higher when considering that almost each country has a different official language, which is the only version of the legislation legally binding.

The second major hurdle is the differences on concepts. Even between Austria and Germany, countries that share the same language and that regulate both fraud and evasion separately, the classification between fraud and evasion differs.

Among the differences on conducts included in the law, we detect that Austria regulates specifically the evasion of each type of tax, while Germany does not. Also, German law does not require explicity that the consequence of the taxpayer’s uncompliance to be paying lower taxes in order to qualify it as a crime, in contrast with Austria and The Netherlands. This means that lack of compliance without paying less tax like in Germany could be ‘tax evasion’. These are just some examples to illustrate how broad differences are.

Another issue that should be taken into account is where the regulation is included. For instance, Austria has a specific Law for tax crimes. Germany and The Netherlands include tax crimes in the General Tax Code and Spain includes tax crimes in the common Criminal Code. In contrast, the analysed countries regulate money laundering in the Criminal Code. These differences are part of the country-specific characteristics of criminal law which reflect their historical legal background.

Finally, and more specifically related to the prosecution of money laundering, each country follows a different approach to establish the range of predicate crimes. Depending on the approach, every origin crime will qualify the object to be judged for money laundering, or only those crimes included in a list or over a threshold. At first glance, the so called “all crimes approach” is the most convenient or strict against money laundering. However, if the regulation of the predicate crimes is very soft and requires fulfilling many conditions to qualify as a crime, in practice money laundering prosecution will be very limited. This is why we consider very important to analyse tax crimes to determine the effectiveness of fight against money laundering.
### Table 1: Summary table for money laundering and tax crimes as predicate crimes.

<table>
<thead>
<tr>
<th></th>
<th>Austria</th>
<th>Germany</th>
<th>The Netherlands</th>
<th>Spain</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax evasion</strong></td>
<td>Art 33-34 Finanzstrafgesetz</td>
<td>Art 370 Abgabenordnung</td>
<td>Art 58, 69, 69a Algemene wet inzake rijksoelastingen</td>
<td>Art 306-305bis Código Penal</td>
<td>26 USC § 7201 and 7206</td>
</tr>
<tr>
<td><strong>Tax fraud</strong></td>
<td>Art 39 Finanzstrafgesetz</td>
<td>Denomination for administrative offences</td>
<td></td>
<td>Art 301 Código Penal</td>
<td>26 USC § 7203 and 7206</td>
</tr>
<tr>
<td><strong>Threshold to crime</strong></td>
<td>-</td>
<td>-</td>
<td>Only if deliberated</td>
<td>€120.000</td>
<td>Only if intentionally and willfully committed</td>
</tr>
<tr>
<td><strong>Money laundering</strong></td>
<td>Art 165 Strafgesetzbuch</td>
<td>Art 261 Strafgesetzbuch</td>
<td>Art 420bis-quinqueis Wetboek van Strafrecht</td>
<td>Art 301 Código Penal</td>
<td>18 USC § 1956</td>
</tr>
<tr>
<td><strong>Predicate crime approach</strong></td>
<td>Combined (&gt;1 year/list of crimes)</td>
<td>List</td>
<td>All crimes</td>
<td>All crimes</td>
<td>List (Federal), can differ among states</td>
</tr>
<tr>
<td><strong>Fiscal crimes as predicate crimes</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, if deliberated</td>
<td>Only over &gt;€120.000 threshold</td>
<td>No, at Federal level. Yes, in some states</td>
</tr>
<tr>
<td><strong>Self-money laundering is punished</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Prescription of tax crimes</strong></td>
<td>5 years</td>
<td>5-10 years</td>
<td>12 years</td>
<td>5-10 years</td>
<td>6 years</td>
</tr>
</tbody>
</table>

---

5 In Germany “General minor tax fraud” is the denomination for administrative offences (Art 379Abgabenordnung).

USA: United States v. Irby, prescription starts from the last act of evasion. Sec. 7201-7217 Part I, Ch. 75, Sub.F, Tit. 26 (but in the table the more frequent) ML in US is considered (among other reasons) if the goal is to avoid paying taxes, but tax crimes aren’t on the list of predicate crimes.

In the Federal level tax crimes are not predicate crimes, but one of the goals for ML.

But in some states, such as in NY, predicate crimes are all crimes considered by the state laws (Art 470 NY Penal Law). If we check the §1801 of the NY Tax Law we see that some serious tax fraud conducts (depending on the degree) are considered felonies/crimes. So in the state of NY some type of serious tax crimes are predicted crimes for ML, since NY follows all crimes approach.

USA does not really make difference between fiscal evasion and fraud.

In every case self-money laundry is considered but, sometimes with restricted interpretation to guaranty the non bis in idem principle (no two sentences for the same crime)
Austria

Austria makes the difference between tax evasion and tax fraud, and between individual and firms to decide the punishment. As Germany, Netherlands, France or the USA, Austria includes Tax Crimes and Money Laundering in separated pieces of legislation (Financial Crimes Law and Criminal Code).

On the one hand tax evasion is regulated by art. 33 Finanzstrafgesetz/FinStrG:

- Violation of duties of notification, disclosure or trueness with result of reduction of taxes.
- Reduction of taxes due to violation of the duty to keep payroll accounts
- Reduction of taxes by using goods with lower taxation in law fraud (different purpose than imposed) without notification to authorities.

It is punished with:

- A fine of up to the twofold amount of the evaded taxes (or unjustified credits). This amount comprises only those taxes (unjustified credits) and imprisonment subject to Art. 15. FinStrG in accordance to art 15 (it imposes an imprisonment up to two years)
- Fulfilling conditions of reoffence, maximum jail period increased a 50%

On the other hand, tax fraud is regulated by art. 39 FinStrG as Commission of tax evasion, smuggling, evasion of import or export duties by:

- False or falsifies document, data, or evidences
- Fictitious deals, acts or data of the order books
- Fake receipts to deduct VAT

Tax evasion in Austria is punished proportionately to the defrauded amount:

- Tax fraud: fine up to €1mil. and imprisonment up to 3 years (legal entities a fine up to €2.5mil.)
- Tax fraud > €250,000: fine up to €1,5 mil. and imprisonment 6 months- 5 years (if <4 years of prison-> a fine up to €1,5mil.)(legal entities a fine up to 5 mil.)
- Tax fraud > €500,000: fine up to €2,5 mil. And imprisonment 1 - 10 years of imprisonment (if <8 years of prison-> a fine up to 2,5 mil.)(legal entities a fine up to the fourfold amount defrauded)

We can test that tax fraud in Austria is more serious crime than evasion since the punishment is higher. The 5 years of prescription period, beginning as soon as the action threatened with punishment is completed or the behaviour threatened with punishment ceases (art 31 FinStrG).

In addition, money laundering is regulated by art. 165 Strafgesetzbuch/StGB:

- Punished with up to three years imprisonment (5 years prescription period)
- If > €50,000 or committed continuously as part of criminal organization: imprisonment between 1-10 years (10 years prescription period)

Prescription regulated by art. 57 StGB in this case (the general prescription periods for every crime in the common Criminal Code).
Finally, Austria follows a combined approach to determine predicate crimes for money laundering, it can be prosecuted when the origin of assets is (Art 165 Strafgesetzbuch/StGB):

- A crime punished with more than 1 year of imprisonment (here is where tax evasion and fraud are included)
- Included in the list:
  - Falsification/ destruction of documents
  - Falsification/ destruction of evidence
  - Drug crimes...

The Austrian way has two main positive elements:

- Austria does not require a threshold to prosecute tax crimes
- Austria transposed the 4th Directive on time

But there are also some elements to improve:

- Austria regulates a shorter and specific prescription period for tax crimes in FinStrG, in comparison with prescription periods for general crimes in StGB.
- 4th Directive does not pursue to harmonize tax crime legislation, which is not competence of the EU, but it would help to a more effective prosecution of crime and thus, prevention of ML.

**Germany**

Germany makes the difference between tax evasion and tax fraud, but tax fraud is not considered a crime but just an administrative offence. As Austria, Netherlands, France or the USA, Germany includes Tax Crimes and ML in separated pieces of legislation (Tax Code and Criminal Code).

On the one hand tax evasion is regulated by art. 370 Abgabenordnung as

- Incorrect or incomplete statements on taxation issues
- Fail to inform to tax authorities of relevant data for taxation

Germany punishes tax evasion with:

- A fine or up to 5 years of jail
- For particularly severe cases, imprisonment from 6 months to 10 years:
  - Greatly reduce taxes or unjustified tax benefits (>€50,000, threshold set by jurisprudence: Federal Court of Justice on 27 October 2015 (1 StR 373/15)
  - Abuse of power, continuity, as member of a gang or use of third party firms

On the other hand, tax fraud is regulated by art. 379 Abgabenordnung. Is not a crime but as administrative offence is punished with a fine up to 5,000€. Particularly “General minor tax fraud” is punished when:

- Incorrect documents issued
- Document placement for a fee
- Fail to record a transaction that must be on books
• Fails to comply with certain disclosure obligations

• Breaches in the obligation of authenticity of accounts

In these cases income coming from tax fraud cannot be prosecuted for money laundering since it is not a crime.

The 5 years prescription time begins as soon as the crime is over (Art 78 Criminal Code/Strafgesetzbuch). However, for severe cases the prescription time is 10 years (Art. 376 Fiscal Code/Abgabenordnung)

In addition, money laundering is regulated by art. 261 Strafgesetzbuch:

• Imprisonment from three months for up to five years

Prescription regulated by art.78 Strafgesetzbuch in this case (the general prescription periods for every crime in the common Criminal Code) is five years.

Finally, Germany follows a list approach to determine predicate crimes for money laundering, it can be prosecuted when the origin of assets is included in the list (Art 261 Strafgesetzbuch):

• Tax evasion

• Drug crimes...

The German approach has two main positive elements:

• Germany does not require a threshold to prosecute tax crimes

• Does not require deliberation or intention to consider the act a tax crime

• Germany transposed the 4th Directive on time

But there are also some elements to improve:

• 4th Directive does not pursue to harmonize tax crime legislation, which is not competence of the EU, but it would help to a more effective prosecution of crime and thus, prevention of ML.

• Not all tax crimes are predicate offences for money laundering in Germany. “Tax crimes, while added to the FATF list of designated offense only recently, constitute predicate offenses to ML in Germany since 2001. The legal framework was further refined in this respect in 2007. The CC11 includes a range of tax crimes as predicate offenses. Professional or violent smuggling, tax evasion and receiving, holding or selling goods obtained by tax evasion in serious cases are predicate offenses to ML if committed on a commercial basis or by a member of a gang. According to authorities, the aggravating criteria ensure that the range of tax crimes that are included as predicate offenses are limited to serious tax offenses. The notion of an activity conducted “on a commercial basis” refers to the intent on the part of the offender to commit repeated offenses to procure an ongoing source of income of some magnitude and for some duration.” (IMF Country Report No. 16/190 - June 2016)
The Netherlands

The Netherlands does not make the difference between tax evasion and tax fraud. As Austria, Netherlands, France or the USA, The Netherlands includes Tax Crimes and ML in separated pieces of legislation (Tax Code and Criminal Code).

On the one hand tax evasion is regulated by art. 68, 69, 69a Algemene wet inzake rijkstbelastingen, but not always as a crime:

- **Not a crime:**
  - Incomplete or not providing required information;
  - Not making books and records available for tax purposes or to falsify them;
  - Not conducting administration according with requirements of the Tax Code;
  - Not storing books and required data carriers and documents;
  - Not grating cooperation;
  - Issuing an incorrect or incomplete invoice.

- **A crime:**
  - Deliberately fail to make a declaration in the prescribed period or carried out conducts of the previous list, with the goal to pay less taxes.

Regarding to punishment:

- Punished with imprisonment up to 4 years or a fine of the fourth category or, of this is more, not more than once the amount of the tax levied short.
- In case of intentional wrong statement, imprisonment up to 6 years and a fifth category fine (not more than the amount evaded).

The 12 years of prescription period, is the longest among the five countries considered (art 31 FinStrG). The period of limitation commences on the day following the day on which the offense was committed (article 71 Criminal Code/Wetboek van Strafrecht).

In addition, money laundering is regulated by art. 450bis-quinquies ‘Wetboek van Strafrecht’:

- Term of imprisonment not exceeding six years or a fine of the fifth category (12 years prescription)
- Who makes a habit of committing money laundering shall be punished with a term of imprisonment not exceeding eight years or a fine of the fifth category (20 years prescription)
- If guilty of guiltwashes is punished with a term of imprisonment not exceeding two years or a fine of the fifth category (3 years prescription).

Prescription regulated by art. 70 Wetboek van Strafrecht (the general prescription periods for every crime in the common Criminal Code).

Finally, The Netherlands follows an “all crimes approach” to determine predicate crimes for money laundering, it can be prosecuted when the origin of assets is any crime (art 420bis Wetboek van Strafrecht).

The Dutch way has one main positive element:
• Long prescription periods
  But there are also some elements to improve:
  • The Netherlands has not finished the transposition tasks of the 4th Directive, since the project is still in the Upper Chamber.
  • The regulation of tax crimes requires explicitly the act to be deliberated, which could make it more difficult to prosecute.
  • 4th Directive does not pursue to harmonize tax crime legislation, which is not competence of the EU, but it would help to a more effective prosecution of crime and thus, prevention of ML.

Spain

Spain does not consider tax evasion or tax fraud, but a general classification of crimes against the exchequer. On the opposite of the previously analysed examples, Spain regulates both tax crimes and money laundering in the same law, in the Criminal Code.

These tax crimes are regulated by art. 305-305bis Código Penal, in fact it is a crime if more than €120.000 on taxes are unpaid by:

• Misuse of deductions and fiscal benefits;
• Any other technique (action or omission) with the same result of tax underpayment.

In Spain, these tax crimes are punished, also proportionately to the amount:

• If the amount evaded is >€120.000, the punishment will be a fine up to 6 times the evaded sum and imprisonment 1 - 5 years. (in case of reoffence, jail between 3 years and 1 day to 5 years)
• If the amount evaded is >€600,000 or if is committed as part of a criminal organization or if legal schemes (like firms in fiscal paradises) were used in order to make it more difficult to detect the crime: a fine up to 6 times the evaded sum and 2-6 years of jail (in case of reoffence, jail between 4 years and 1 day and 6 years)

The main concern with Spanish regulation of tax crimes is that only if the amount is higher than 120.000€ the act will be considered a crime, and not just an administrative offence. This means that if the illegit conduct does not exceed that amount neither can be prosecuted for money laundering.

5 years of prescription starting the day of the crime. If the crime surpass the €600,000 or is carried out by a criminal organization or using legal schemes or fiscal paradises to make more difficult to detect the crime, 10 years (Art. 131 and 132 Organic Law 10/1995, of 23th of November of Penal Code).

In addition, money laundering is prosecuted by art. 301 Código Penal/Penal Code:

• It will be punished with imprisonment from six months to six years and a fine of three times the value of the goods.
• The penalty shall be imposed in its upper half when the goods originate in any of the offenses related to the trafficking of toxic drugs, narcotics or psychotropic substances described in articles 368 to 372 of this Code.

• If the acts were carried out due to serious negligence, the penalty shall be imprisonment from six months to two years and a fine of three times as much.

In Spain the money laundering criminal offence is an autonomous offence (STS 884/2012, de 8 de noviembre), so even if there is no previous firm ruling (sentencia firme por delito antecedente) it can be imposed by a judge. Also, for example if you get convicted due to tax evasion, you can also be convicted for money laundry regarding the same capital, since it is considered by the Supreme Court (STS 265/2015 29 de abril de 2015) that it does not infringe no bis in idem principle. However, the interpretation of money laundry crime has to be restrictive in cases of self-laundering (those cases in which the same person carries out both crimes) in order to avoid to convict twice for the same action.

The guilty party will also be punished even if the offense from which the property originated, or the acts punishable in the previous sections, were committed, totally or partially, abroad. This is a very positive explicit clause since it states clearly that even if the predicated crime was carried out abroad, making it easier for Spanish judges to prosecute cross-border money laundering.

The prescription period for ML is 10 years (art. 131 Código Penal). It can be the case that laundry prescribes at 10 years and fiscal fraud at 5 years, if it is not a serious case of fraud. The result could be that at the sixth year after the crime happened, only ML could be prosecuted.

Finally, Spain follows an “all crimes approach” to determine predicate crimes for money laundering, it can be prosecuted when the origin of assets is any crime (art 301 Código Penal). However, since there is a threshold to consider tax related misbehaviour a crime is €120.000, everything under the threshold cannot be prosecuted for ML.

The Spanish way has two main positive elements:

• The case law has clarified ML as an autonomous crime, so can be prosecuted even if there is no previous sentence for the predicate crime

• The explicit prevision of ML prosecution for predicate crimes carried out abroad

• It does not regulate a specific and closed list of ways to commit the tax crime, which makes it easier to prosecute it.

But there are also some elements to improve:

• The €120.000 for tax crimes should be revised and explained

• Spain has not completed the transposition of the 4th Directive in its national legislation.

• 4th Directive does not pursue to harmonize tax crime legislation, which is not competence of the EU, but it would help to a more effective prosecution of crime and thus, prevention of ML.
The USA makes no difference between tax evasion and tax fraud but it is possible to elaborate an unofficial classification. As Germany, Netherlands, France or Austria, the USA includes Tax Crimes and ML in separated pieces of legislation (26 USC and 18 USC; Federal Laws).

Professional consider tax evasion the “wilful attend or evade in any manner any tax imposed in the Federal Law”. In contrast, they consider tax fraud “the wilful failure or falsification on file return, supply information, to pay tax, to make a return, keep records or supply required information on time”.

What we could compare with tax evasion is punished with a fine up to $100,000 ($500,000 for firms) and/or imprisonment up to 5 years, together with the costs of prosecution (26 USC §7201). In contrast, the equivalent to tax fraud would be punished with a fine up to $25,000 ($100,000 for firms) and/or imprisonment up to 5 year, together with the costs of prosecution (26 USC § 7203). Both have a prescription period of 6 years (26 USC §6531).

In addition, money laundering is regulated by 18 USC § 1956 and punished with a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

Finally, the US follows a list approach to determine predicate crimes for money laundering, but tax crimes are not in the list (18 USC § 1956). However, if the goal of a predicate offense listed is to intend to evade taxes, ML is considered a crime. For example illegal gambling also evades taxes and can be a predicate crime for money laundering.

As Spain, the USA does not regulate a close and specific conduct to consider the tax underpayment as a crime. This open and more broad approach helps to prosecute crimes.

The US regulation should revise some issues in order to achieve a more efficient prosecution of money laundering:

- Tax crimes are only criminal offence if intentionally and wilfully committed, which makes it more difficult to prove and prosecute.

Although some states (e.g. New York) do include tax crimes in their list of predicate crimes, it is not in the Federal List.
4. LAW IN THE BOOKS AND LAW IN PRACTICE - AN EMPIRICAL STUDY

How do countries deal with specific tax crimes, whom would they prosecute for tax evasion, tax fraud or money laundering, whom would they convict and which differences are among them? Comparative penal law – and this between 28 EU Member States plus three other countries – seems to be impossible. Alone the comparison between four countries (Austria, Germany, Switzerland and the US) for one very specific question – (Would a lawyer who defends a drug dealer and gets paid by him, hence must know that the money comes from an illicit source, be a money launderer ?) filled an excellent PhD of around 300 hundred pages (see Hufnagel 2003)!

When one of us first approached countries, she ended up with several thousand pages of law texts in different languages. And this was for only five countries. Clearly, compared to other social sciences, law must be as precise as possible in order to avoid to convict innocent people. But this makes large scale comparison very very difficult if not impossible.

The survey of the European Parliament (2017) revealed that it is not sufficient to send questions to Member States regarding their tax system. The answers were so varied that a comparison was impossible. Some countries wrote about corporate tax regulation, others about income tax, others send the whole list of their laws, others two lines, some did not answer at all. The survey can, however, be seen as a pilote study from which one can learn how to set up a survey.

In order to identify loopholes in the regulations of anti money laundering and tax crime between Member States we, therefore, decided to send concrete cases to each Member State and find out whether this could (and would) lead to a prosecution/conviction for tax crime and or money laundering. We asked both for issues related to law in the books and law in practice. From the answers we expect to identify loopholes in the prosecution of tax evasion, tax fraud and money laundering.

4.1 Setting up the Tax Survey

We conducted a qualitative survey to analyze the differences between law in action and law in books. The question whether law is different in practice than it is on the books has become increasingly important since Pound’s 1910 article “Law in Books and Law in Action”, since then the interest in analysis that incorporate legal realism rather than pure normativism has grown. However, this growth has not necessarily been reflected in European legal or socio-legal analysis where the normative school is still preponderant (Halperin, 2011). This makes our research interesting and relevant not only in terms of the core topic but also in the realm of European socio-legal studies.

Regarding our methodology, we use an original cross-sectional type of survey, where we present different cases to legal experts and questions regarding these cases in order to then contrast their analysis of the case.
To use surveys as part of socio-legal research is not uncommon, however, this method to the best of our knowledge has not been used before in comparative studies regarding tax avoidance and evasion. It allows to reduce the complexity of the diverse country penal laws to concrete comparable cases.

Our target respondents are public prosecutors and legal professionals from countries across the European Union and three additional countries: Panama, United States and Australia. The reason to focus on prosecutors comes from the essence of this profession, as public prosecutors are those who make the decision on whether or not to bring charges for a crime and against who these charges should be brought. Hence they have in their hands the power to apply the law. We additionally consider legal professionals in the tax realm such as tax law consultants or tax attorneys in order to broaden our sample and increase the amount of perspectives available. The platform used to distribute the survey was Survey Monkey we chose this platform because it allows for an easy distribution of the survey through a personalized link\(^6\), furthermore the survey is presented in a didactic and dynamic way.

In order to approach survey respondents we opted a three-fold process. First we approached public prosecutors through the International Association of Public Prosecutors; this association has agreed to distribute our survey to their members. Second we used a database from the EU Project ECOLEF in order to send the survey to people with whom we have previously collaborated, this database has emails of public prosecutors and other legal professionals across Europe. Third we used personal contacts and connections to distribute the survey. These three phases are still active and we expect to gain more respondents in the upcoming months via prosecutor and lawyer associations as well as personal contacts and individualized pursuit for respondents from missing countries.

Finally regarding ethical clearance, all participants where informed that their personal information would remain anonymous and that their answers are only connected to specific countries and not to them personally. Furthermore participants have the option to give their emails in order to receive the final outcomes of the survey.

4.2 The Survey

In the survey, participants were asked to analyze “core cases” and to give the type of prosecution, punishment and crime that the cases could be held upon\(^7\). We chose three cases. The first case describing tax non payment on the lower bound, where we describe an individual who has not paid 35,000 € (or the equivalent in the local currency) worth of income tax. The next case refers to limited liability company that has not paid 35,000 € (or the equivalent in local currency) on its VAT duties.

\(^6\) [https://www.surveymonkey.com/r/COFFERS](https://www.surveymonkey.com/r/COFFERS)

\(^7\) Complete survey available in Appendix
Last but not least our third case was highly inspired by the case of the German Uli Hoeness\(^8\). ‘The former German international and president of Bayern München was sentenced 13.3.2014 to three and a half years in jail for tax fraud calculated to have cost the state more than 28.5 million Euros’ (The Guardian 13.3.2014).

‘Former football star Hoeness, who won the World Cup with West Germany in 1974, admitted to squirrelling large profits made on the stock market into a Swiss bank account, opting for what German law calls "voluntary disclosure", where evaders can avoid trial by detailing taxes they have skipped and paying them back with 6% interest. But during his trial in Munich, it not only emerged that the sums Hoeness evaded were almost 10 times higher than previously assumed, but also that he failed to disclose his accounts within the rules.

Even before the sentencing, the most high-profile tax evasion trial in German history has already had a noticeable effect: more than 26,000 German tax evaders have opted for voluntary disclosure since the Hoeness revelations hit the headlines in 2013. In Bavaria alone, the figure has quadrupled since 2012’ (The Guardian 13.3.2014).


But football stays football. The ‘longest sending-off in Bundesliga history’ found its ‘glorious’ end: Hoeness started his stay in prison 2.6.2014. After half of the time sentenced was over, the rest of the sentence was suspended into a probation of three years. November 25th 2016 Uli Hoeneß returned to the field: he was reelected president of the FC Bayern Munic football club.

In order to find out, whether Uli Hoeness could have been prosecuted for tax evasion, tax fraud or money laundering in the EU Member States, and how seriously, we described a scenario in which an individual who had not paid taxes over 18 million € (or the equivalent in local currency) worth of taxes using a Swiss bank account to receive investment income that has not been reported to the authorities.

After being presented with the three cases described above, the respondents where asked the following questions in order to evaluate the law in the books and the law in action in each jurisdiction:

- Could (following legal norms) this (case) be prosecuted as:
  - Tax crime;
  - Tax fraud;
  - Tax evasion;

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None;
- Other.
- Would this (in practice) be prosecuted as such? Please explain the reasoning or legal justification for your answer.
- If only negligence could be proven, would this still be prosecuted?
- If intent could be proven, does your previous answer hold?
- What would be the most likely scenario regarding money laundering prosecution?
  - The individual can be both legally and practically be prosecuted;
  - The individual can be legally prosecuted, but would not be in practice;
  - No, the individual cannot be prosecuted;
  - Other.
- What would be the most likely scenario regarding jail time in your country?
  - This individual could get jail time;
  - This individual could NOT get jail time;
  - This individual could get jail time and would have to serve it;
  - This individual could get jail time, BUT would not have to serve it.
- If yes, how many years is the maximum?
  These questions were tweaked in order to fit to each case but in essence we asked the same questions and sought for the same type of information.

4.3 Results

The questions were sent to public prosecutors of all EU Member States. Our preliminary results are 14 respondents, from 9 countries. Out of these we have so far complete responses only for four countries: Estonia, Slovenia, United States of America and The Netherlands; in addition for the first case we have answers for one additional country Belgium. For the Uli Hoeness case we have divergent answers from Germany which still have to be double checked. Although few, preliminary results show that as expected there are not only differences between countries but also within country level approaches.

The following figures and descriptions summarize these results and highlight the most interesting issues.
Case I An individual who hasn’t paid 35,000 Euro income tax

Figure 4: Could (following legal norms) an individual who hasn’t paid 35,000 Euro taxes be prosecuted as:

- United States
- Slovenia
- The Netherlands

Figure 5: What would be the most likely scenario regarding money laundering prosecution?

- Slovenia
- The Netherlands
- Estonia
- United States

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9 The category others was selected by respondents when they wanted to give further detail regarding their output. In Figure 4: Estonia chose this category to explain that there was minimum amount required for prosecution that was superior to the 35000€ suggested in this case the U.S. chose this category to explain that it could even be considered tax crime. In Figure 5 Slovenia chose this category to explain that this would only happen if the threshold of the crime goes up to 50000€. For the final version of this paper we will not use Survey Monkey auto generated charts to make the output clearer.
The answers from the first case show that half of the countries consider the amount of 35,000 Euro too low. Two countries either consider it tax fraud (U.S.A and The Netherlands) or tax evasion (U.S.A). Additionally, our respondent from the United States explains that this case could be prosecuted either as tax fraud, tax evasion and even tax crime. In Estonia and Slovenia the amount due would have to increase by either 5000€ or 15000€ in order to qualify for tax crime. When the respondents where asked if this individual would in practice be prosecuted the answer where mixed; in the U.S.A as it is a low amount it would in practice not be prosecuted, in Slovenia and Estonia as it is below their threshold it is only considered a minor misdemeanor; the Netherlands did not reply to this question. If the case is considered tax fraud it can be prosecuted in the books. If this case is considered only tax evasion, this would be a misdemeanor and not fall under money laundering.

When it comes to tax evasion as a predicate crime for money laundering in the United States tax evasion is not a predicate case for money laundering whereas in Estonia, tax misdemeanors are not a predicate crime unless money comes from criminal proceedings (drug trafficking, arm smuggling, illicit trade, etc.)

So, to sum up, Case 1 would not be prosecuted for money laundering in any of the five countries mentioned.

Case II A limited liability company that has not paid 35,000 € VAT duties

![Diagram](image)

Figure 6: Could (following legal norms) this be prosecuted as:

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10 Same as in the previous answer the respondent from Estonia chose this category to explain that the threshold in the country is 50000€
Case II asked respondents to analyze the scenario of a company not paying VAT tax, in this case answers were once again quite mixed. For Slovenia and The Netherlands it is considered tax evasion, for Estonia it is only tax evasion if the amount would exceed 50.000€, in the U.S.A there is no VAT but only a sales tax. Regarding money laundering prosecution this could only happen in Slovenia. In the Netherlands our respondent suggested that it can be legally prosecuted but would not be prosecuted in practice.

For this specific case respondents were also asked if the company could and would be prosecuted differently if instead of V.A.T tax it would be a profit tax. Three countries answered: Estonia, the Netherlands and Slovenia. All three agreed that the treatment of V.A.T tax non-payment and profit tax evasion is the same.

Case III Uli Hoeness

For a final version of this paper we will look for more answers for each country in order to corroborate the veracity.
Seen that this was a German case, the answer of Germany seems especially interesting. The answer we got from a public prosecutor via our personal network was that only import duties and VAT smuggling are predicate crimes for laundering (‘qualifizierte Steuerhinterziehung von Einfuhrabgaben’, § 373 AO and ‘qualifizierte Steuerhehlerei’ - Tatobjekt nur Verbrauchsteuern oder Einfuhrabgaben - § 374 AO). ‘Normal’ tax evasion is only a predicate crime when done by business or by organized crime. So, Uli Hoeness could not have been convicted for money laundering in Germany. Since we did not get this answer through our regular Monkey Survey, for methodological reason, we are still waiting for (all of) the survey questions to be filled in.

**Figure 9: What would be the most likely scenario regarding money laundering prosecution?**

For the case based on Uli Hoeness in addition to the answers from Estonia, Slovenia, the U.S.A and The Netherlands we have feedback from Belgium. Regarding the type of act that this case constituted, Belgium is the only country that considered it a tax crime. The two respondents from Slovenia both had differing views as one considered it tax fraud and the other tax evasion, the one that selected tax evasion considered the case to be equal to wrongly filling a tax return. Slovenia, the U.S.A and The Netherlands answer that this could be prosecuted as tax evasion. Regarding the prosecution of this individual in practice Slovenia makes a difference based on who discovers the act, if the tax authority discovers the act, there will most likely not be a criminal prosecution as the Tax Authority does not usually fill a criminal complaint. However, if the Anti Money Laundering or the Police discover this it will be prosecuted. For Estonia and Slovenia it would be prosecuted and according to our American respondent in the U.S.A this would depend on if this could be proven, as proof requires information from a country such as Switzerland this could be difficult.

Regarding money laundering prosecution it would practically and legally be prosecuted in Estonia, Slovenia and The Netherlands and it would not be prosecuted for money laundering in the United States and Belgium and also not in Germany. In the Netherlands, Hoeness could have been prosecuted for money laundering as ‘fraud’ already before the Fourth Anti Money Laundering Directive.
For this case respondents were also asked what would be the corresponding jail time to prosecution the results were the following: in Estonia the individual could legally be sentenced to up to 5 years of prison however in practice would not serve this, worse case scenario there would only be a “shock imprisonment” of a couple months. In Slovenia there would legal jail time and time served between 1 and 8 years. In Belgium there would be a maximum of 2 years in prison that in practice would not have to be served. For Germany we know that it was a 3.5 years prison sentence which after 1.5 years of mild prison (Hoeness spent 8.5 hours a day off jail working in the FC Bayern junior recruitment department) was turned into a ‘Bewaehrung’ of three years. The other countries did not provide detailed information regarding jail time.

We asked two additional questions regarding intent and negligence. The results are that in two countries (U.S.A and Slovenia) if prosecutors are convinced that non payment is due to negligence there would be no prosecution. In the rest negligence is not an excuse when it has resulted in a significant damage such as this case because of the amount. When intent can be proven Slovenia changed its answer and agreed that this could be prosecuted, what is interesting is that in the U.S.A our respondent suggests that there is still a matter of prosecutorial discretion independent if intent can be proven as the prosecutor can take other things into account.
5. CONCLUSIONS

How strongly should one criminalize not paying taxes and does the Fourth Anti Money Laundering Directive help to criminalize people and companies that evade taxes? If one looks at the reactions of countries to the Panama Papers (almost no investigations having been taken up against persons or companies revealed in the EU Member States) or to the case of former football star Uli Hoeness (a mild prison sentence spent in the department of FC Bavaria youngsters during the days and then halfed) one has the feeling that not paying taxes is still a minor delict, hence far away from qualifying itself as heavy crime for money laundering conviction purposes.

Should tax evaders be put into the same crime box as drug dealers and terrorism financiers? If the purpose of the new International Standards transposed into EU Member States’ national laws is to intensify the prosecution of tax evasion and tax fraud, to put it under the umbrella of money laundering is certainly a way of emphasizing the seriousness of stealing public money.

However, the other extreme would be to apply the new rules to all types of tax evasion, tax fraud and tax crime. This might backfire, as a large part of the population is involved in some kind of shadow economy activities, small amounts of tax evasion and small amounts.

But how many people can be criminalized in a society? If a large majority of people has some kind of illegal activities, the legal norm cannot be executed. Take the extreme example where every civil servant accepts a gift as a compensation for his public service. In this case, no corruption combat would be possible. Society would be a ‘gift exchanging’ society rather than one that fights corruption. Similar, if more than a certain percentage of people would not obey to traffic rules (for example stop at a red light) traffic rules would not work.

If very small delict gets prosecuted in the same way as a big one, the investigators, prosecutors, courts would be busy with too large amounts of the population. For educational purpose criminalizing even small delicts might be wishful. Rules can change behavior and also tax morale if applied to many people.

However for practical reasons especially medium to big tax crimes should be investigated and prosecuted. The Anti Money Laundering Directive can be a helpful tool for some countries, but not for others. Already the Third Directive offered very different possibilities. Sweden, for example, found it much easier to prosecute criminals due to the reversal of the burden of proof which is possible under money laundering. Other countries, like Germany, found the Directive an additional burden, since double punishment for one crime is not possible and the underlying predicate crime would have to be proven (see Unger et al 2014).

The Anti Money Laundering Directive can help in cases where the underlying predicate crime is difficult to prove. The ‘reversal of the burden of proof’ is possible under money laundering regulation (see Unger et al 2014). This means that the tax evader would have to proof that he didn’t evade taxes when there indications of tax evasion are uncovered. For such a ‘paradigm shift in law’ (Vervale, law professor Utrecht University) a
clear definition of what tax evasion is and which elements constitute tax evasion needs to be developed. Especially when trying to apply it across border.

In order to link medium to big tax crimes to money laundering more harmonisation of terms and practices within Europe is urgently needed.
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7. APPENDIX 1

Sources for 31 country table on tax crime and tax evasion

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   - Letter from ministry of Finance -
   - FATF Anti-money laundering and counter-terrorist financing measures Austria – 2016 -

2. Belgium:
   - Letter from ministry of Finance -
   - Thresholds (if not found updated information elsewhere) -
   - Anti-money laundering and counter-terrorist financing measures in Belgium – 2015 -

3. Bulgaria:
   - Letter from ministry of Finance -
   - Third round detailed assessment report on Bulgaria Anti-money laundering and combating the finance of terrorism – 2008 -
     https://rm.coe.int/european-comitee-on-crime-problems-cdpc-comitee-of-experts-on-the-eval/1680715c0f
   - Letter from ministry of Finance -
   - Report on 4th assessment visit of Croatia – 2013 -
     https://rm.coe.int/report-on-fourth-assessment-visit-executive-summary-anti-money-launder/1680715c76

4. Cyprus:
   - Letter from ministry of Finance -
     http://www.mondaq.com/cyprus/x/594344/Money+Laundering/Tax+Evasion+Or+Tax+

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6. **Czech Republic:**
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7. **Denmark:**
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- Penal code (French version 2016) - 
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11. Germany:
- Letter from ministry of Finance - 

12. Greece:
- Thresholds (if not found updated information elsewhere) - 
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13. Hungary:
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14. Ireland:
- Taxes Consolidation Act 1997 -
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- Letter from ministry of Finance -
- AML/CTF Policy Co-ordination Unit – 2016 -

15. Italy:
- Letter from ministry of Finance -
16. Latvia:
- Criminal code - http://www.legislationline.org/documents/section/criminal-codes/country/19

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- Criminal code - https://e-seimas.lrs.lt/portal/legalActPrint/l?jfwid=q8i88l10w&documentId=a84fa232877611e5bca4ce385a9b7048&category=TAD

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20. Netherlands:
21. Poland:
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26. Spain:
   - Criminal code - http://www.legislationline.org/documents/id/18769

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28. UK:

29. Australia:

30. Panama:

31. USA:
8. APPENDIX 2

Tax survey

Welcome to the Survey!

The EU Horizon 2020 project COFFERS is committed to Combating Fiscal Fraud and Empowering Regulators. One way to do this is to gather information from different actors regarding tax regulation and practice.

This survey will take you approximately 10-15 minutes, your responses are strictly confidential and the results will not allow you to be individually identified. In exchange for your time we will send the outcome report to all participants. This report will include the results and analysis from the survey.

Please remember, there are NO right or wrong answers. It is your honest feedback we are seeking.

Should you have any concerns or questions about this survey, please feel free to contact Lucia Rossel (l.e.rosselflores@uu.nl) or Martina Kamburova (m.v.kamburova@uu.nl)

By participating in this survey you will be making an important contribution to our research.

1. Position (lawyer, public prosecutor, researcher, etc.):
_____________________________________________________________________

2. Country where you practice law (Please answer the survey based on this country):
_____________________________________________________________________

Case:
It has been proven that an individual has not paid taxes over 18 million € (or the equivalent in your currency) using a Swiss bank account to receive investment income and that he did not report that to the authorities.

3. **Could** (following legal norms) this be prosecuted as:
(Please for all questions with possible answers given, underline the answer(s) which are right for your country. Example: c) Answer)

 a) Tax crime;
 b) Tax fraud;
 c) Tax evasion;
d) None;
e) Other.
Would this (in practice) be prosecuted as such?
Please explain the reasoning or legal justification for your answer.
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
4. If only negligence could be proven, would this still be prosecuted?
_______________________________________________________________________________________
_______________________________________________________________________________________ …
5. If intent could be proven, does your previous answer hold?
_______________________________________________________________________________________
_______________________________________________________________________________________ …
6. What would be the most likely scenario regarding money laundering prosecution?
a) The individual can be both legally and practically prosecuted;
b) The individual can be legally prosecuted, but would not be in practice;
c) No, the individual cannot be prosecuted;
d) Other.
Please explain the reasoning or legal justification for your answer.
_______________________________________________________________________________________
_______________________________________________________________________________________ …
7. What would be the most likely scenario regarding jail time in your country?
a) This individual could get jail time;
b) This individual could NOT get jail time;
c) This individual could get jail time and would have to serve it;
d) This individual could get jail time, BUT would not have to serve it.
If yes, how many years is the maximum?
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________

8. Do you find that tax evasion as a predicate crime for money laundering is a useful legal construction?

a) Yes;
b) No.
Why?
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________

Case:
It has been discovered that a limited liability company has not paid its corresponding VAT of 35,000 € (or the equivalent in your currency).

9. **Could** (following legal norms) this be prosecuted as:

a) Tax crime;
b) Tax fraud;
c) Tax evasion;
d) None;
e) Other.

Would this (in practice) be prosecuted as such?
Please explain the reasoning or legal justification for your answer.
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
10. What would be the most likely scenario regarding money laundering prosecution?

a) The company can be both legally and practically be prosecuted;
b) The company can be legally prosecuted, but would not be in practice;
c) No, the company cannot be prosecuted;
d) Other.

Please explain the reasoning or legal justification for your answer.
_____________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________

11. Does this answer hold if the company had not paid 35,000 € (or the equivalent in your currency) on profit tax? If not, what changes?

_____________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________

Case:
The tax authority discovered that an individual has not paid taxes of 35,000 € (or the equivalent in your currency).

12. Could (following legal norms) this be prosecuted as:

a) Tax crime;
b) Tax fraud;
c) Tax evasion;
d) Other.

Would this (in practice) be prosecuted as such?

Please explain the reasoning or legal justification for your answer.
_____________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________

Page 58 of 59
13. What would be the most likely scenario regarding money laundering prosecution?

e) The individual can be both legally and practically be prosecuted;
f) The individual can be legally prosecuted, but would not be in practice;
g) No, the individual cannot be prosecuted;
h) Other.

Please explain the reasoning or legal justification for your answer.

_______________________________________________________________________________________

_______________________________________________________________________________________

________________________________________

14. Do these answers hold if the amount is raised to 100,000 € (or the equivalent in your currency)? If not, what changes?

_______________________________________________________________________________________

_______________________________________________________________________________________

Thank you for your contribution!