МІЖНАРОДНЕ ПРАВО

MIKELE SHCHURBA,
Applicant PhD at the Department
of International Law and Comparative Law
(Interregional Academy of Personnel Management)

УДК 341.01

THE END OF PRIVACY FOR EU CITIZENS: A CLOSER LOOK AT THE FOUR THE ANTI-MONEY LAUNDERING DIRECTIVE

The current Anti-Money Laundering regime jeopardises the essential achievements of the state under the rule of law. The increasing centralisation and cooperation of the competent authorities in the exchange of personal data creates a security architecture that leads to a considerable risk of freedom restriction. In particular, the extension of the authorities' power of intervention granting them access to citizens' personal data without the need for initial suspicion underlines that a substantial part of the constitutional state is at risk today. The fact that employees of financial institutions and other professionals involuntary execute the role of auxiliary policemen is the symbol for AML regime amendments in the European Union and Financial Action Task Force countries ignoring fundamental constitutional principles. The Brexit further complicates the compliance with AML requirements for UK companies, posing an additional challenge for the future development of the EU AML regime.

Key words: *Anti-Money Laundering, Human Rights, Brexit, 4th Money Laundering Directive, Counter-Terrorism Financing, Data Protection, Suspicious Activity Reports.*

Чинний режим боротьби з відмиванням грошей ставить під загрозу основні досягнення держави з верховенством закону. Зростаюча централізація і співробітництво компетентних органів в обміні персональними даними створює структуру безпеки, яка веде до значного обмеження свободи. Зокрема, розширення повноважень влади, які надають їм доступ до персональних даних громадян без необхідності первинної підозри, підкреслює, що значна частина конституційної держави нині знаходиться під загрозою. Той факт, що співробітники фінансових установ та інші фахівці мимоволі виконують роль допоміжних поліцейських, є символом поправок режиму Боротьби з відмиванням грошей у країнах-учасницях Європейського Союзу і Групою розробки фінансових заходів боротьби з відмиванням грошей, які ігнорують основні конституційні принципи. Brexit ще більш ускладнює відповідність вимогам боротьби з відмиванням коштів для британських компаній, що створює додаткову проблему для майбутнього розвитку режиму боротьби з відмиванням коштів в ЄС.

Ключові слова: *боротьба з відмиванням грошей, права людини, Brexit, Четверта Директива відмивання грошей, антитерористичне фінансування, захист даних, звіти про підозрілі дії.*

Действующий режим борьбы с отмыванием денег ставит под угрозу основные достижения государства с верховенством закона. Растущая централизация

и сотрудничество компетентных органов в обмене персональными данными создает структуру безопасности, которая ведет к значительному ограничению свободы. В частности, расширение полномочий властей, предоставляющих им доступ к персональным данным граждан без необходимости первоначального подозрения, подчеркивает, что значительная часть конституционного государства сегодня находится под угрозой. Тот факт, что сотрудники финансовых учреждений и другие специалисты невольно выполняют роль вспомогательных полицейских, является символом поправок режима Борьбы с отмыванием денег в странах-участницах Европейского Союза и Группой разработки финансовых мер борьбы с отмыванием денег (ФАТФ), игнорирующих основополагающие конституционные принципы. Brexit еще более усложняет соответствие требованиям борьбы с отмыванием средств для британских компаний, что создает дополнительную проблему для будущего развития режима борьбы с отмыванием средств в ЕС.

Ключевые слова: *борьба с отмыванием денег, права человека, Brexit, 4-я Директива о борьбе с отмыванием денег, контртеррористическое финансирование, защита данных, отчеты о подозрительных действиях.*

1. Introduction

The concept of civil rights in the *Magna Carta*, including the presumption of innocence and the rule that there must be grounds for initial suspicion before bringing charges against someone, evolved into the core elements of a modern constitutional state [1, p. 115]. As the European Union (EU) and the international community has recognised the problem of transnational organised crime related to money laundering (ML) activities through illegal business, there has been an increasingly closer cooperation of states at the legislative, executive and judicial levels, resulting in the creation of one of the most extensive legal frameworks not only in the EU but worldwide [2, p. 23]. The most important international body to combat money laundering and terrorist financing (TF) is the Financial Action Task Force (FATF), which was founded at the G7 Summit in Paris in 1989, involves 35 countries and two regional organisations, and is affiliated with the Organisation for Economic Co-operation and Development (OECD) in Paris [3]. The FATF has been given the task of developing recommendations and international standards concerning AML/CTF for the financial sector. The recommendations the FATF adopted on 16 February 2012 [4], in which the previous 40 [5] + 9 [6] recommendations were unified, provided a central component in combating financing of weapons of mass destruction. The EU today has largely adopted the FATF's 2012 recommendations in its fourth Anti-Money Laundering Directive 849/2015 (4th AMLD) [7], after previously adopting in 2014 Directive 2014/42/EU [8] on the freezing and confiscation of instrumentalities and proceeds of crime [9, p. 104]. These two directives form the core of the current EU AML/CFT regime. The 4th AMLD broadens the range of money laundering predicate offences by including crimes in connection with direct and indirect taxes [10, p. 270]. In addition, it significantly extends the obligation to store and distribute data of the member states in comparison to the third Anti-Money Laundering Directive (3rd AMLD) [11]. The 4th AMLD also extends the obligation of credit and financial institutions to carry out customer due diligence and to report suspicious transactions by professionals like lawyers, trustees, company service providers, real estate agents or gambling companies [9, p. 104]. It thereby creates conflicts of interest not only in the trust relationships of bank customers and their bankers but also with tax advisors, lawyers, etc. Employees of financial institutions and these new professional groups are drafted into the role of auxiliary policemen suggesting the AML regime in the EU and the FATF states has abandoned common sense and fundamental principles of the rule of law. Although the 4th AMLD is primarily intended to prevent money laundering, terrorist financing or tax evasion by creating a transparent system of data in each member state, which is publicly available and can identify final beneficial owners, its design is highly suitable to spy upon normal citizens without warrant or grounds

of suspicion. While the 4th AMLD gives Financial Intelligence Units (FIUs) significantly more autonomy in evaluating and accessing data related to ML, TF and tax offences [10, p. 270], the European Commission believes there are gaps which need to be closed involving high-risk third countries, virtual currency exchange platforms, prepaid instruments and further improvement of central data registers with regard to electronic payments and even greater access to information for and exchange between FIUs. The Commission has taken these issues into account in its proposal COM(2016) 450 final [12], without however addressing their highly heterogeneous nature due to the lack of harmonisation of criminal law among the member states, especially the issue of tax offences as a ML predicate offense [13].

Purpose: This paper promotes the improvement of the compatibility of AML/CTF legislation, provisions as well as recommendations with fundamental human and civil rights by presenting areas of massive intrusions into civil liberties, and strengthens the legal academic discourse of adherence to these fundamental rights under the principle of the rule of law in the fight against money laundering and terrorist financing.

2. The EU AML regime under the 4th AMLD

The 4th AMLD, on the basis of Article 288 TFEU [14], creates a series of new obligations for the member states, but leaves it to them how to precisely implement the Directive at the national level. In contrast to the 3rd AMLD, in Chapter III of the 4th AMLD member states are obliged to ensure that information on companies and other legal entities located in the respective member state is available in a central register and up to date in terms of their beneficial ownership and beneficial interests pursuant to Article 30(3) and (4) 4th AMLD [9, p. 105]. In addition, the member states must ensure that the competent authorities and FIUs performing customer due diligence have unrestricted access to this register at all times [10, p. 279]. The 4th AMLD extends these disclosure obligations once more under Article 31 by obliging trustees of any legally possible type of trust in the respective member state to comply with this transparency requirement. A further change compared to the 3rd AMLD is that a risk-based approach and documentation is required from all persons and companies covered by the Directive. In addition, a risk assessment of politically exposed persons (PEPs) is required while, at the same time, the group to be considered as PEPs has been significantly expanded [15, p. 77]. In practice, an inadequate definition of PEPs under the 4th AMLD and the simultaneous far-reaching extension of its scope to family members and other related parties means that many banks, for fear of possible risks, collectively have rejected opening bank accounts for these customers, resulting in unjustifiable discrimination. Even though the 4th AMLD expressly states that the PEP status must not lead to discrimination, the opposite is actually true. It remains unclear what reasons are advanced for expanding scrutiny to family members and relatives in the PEP context [16]. As it is *de facto* left to each bank to decide how far-reaching this inspection goes and how it is performed, the 4th AMLD creates even more uncertainty for the banks and their customers. The 4th AMLD requires individual financial institutions and professional figures such as lawyers, trustees, real estate agents or casino operators to carry out customer due diligence when establishing a relationship or a transaction and, in particular, to report to the competent authorities, if the risk of TF or ML offences including tax offences occurs [16, p. 104]. This creates the basis for a transnational data exchange system within the European financial system that *de facto* lies beyond any democratic checks and balances by the individual member states. The improvement of the exchange of information across Europe based on Article 53(1) 4th AMLD, in conjunction with Articles 53(2) and (3), has granted the FIUs immense power, as they are allowed to exchange or analyse any available information in the context of ML or TF independently or upon request. Although Article 30(9) 4th AMLD to a limited extent permits that the member states can refuse or restrict access to data on a case-by-case basis, Recital 56 of the 4th AMLD underscores that the request for information exchange, as a rule, has to be granted. Overall, the 4th AMLD raises a number of doubts about its democratic procedures, the guarantees of the rule of law and on its adoption. Indeed, the EU's decision not to adopt the 4th AMLD based on Article 83(2) TFEU but based on Article 114 TFEU was aimed at obstructing interference by member states in the area of criminal law, as Article 83(2) TFEU would have provided the option

for member states to prevent the introduction of the Directive in order to first examine whether it is in line with their own respective constitutions [17, p. 613]. Article 83 TFEU would not have circumvented national sovereignty in order to avoid the inconsistencies between EU criminal law and national laws. These inconsistencies are especially evident today in the area of serious cross-border crime such as terrorism, money laundering and tax evasion. The 4th AMLD not only prohibits ML, but links ML offences to the obligation of member states to impose sanctions or penalties on private companies that fail to carry out their due diligence, record-keeping and reporting duties under Article 58(1) 4th AMLD in conjunction with Articles 59 and 61. As a result, everyone who falls within the 4th AMLD's scope *de facto* becomes an extension of the investigative authorities and suspicious activity reports (SARs) can be filed without initial suspicion to avoid institutional and personal liability [10, p. 271]. This law enforcement practice is partly hindered by the European Court of Justice (ECJ), as demonstrated by the judgments of *Digital Rights Ireland and Seitlinger and Others* (2014) [18] and *Schrems v Data Protection Commissioner* (2015) [19]. Despite the US law allows US intelligence to access personal data from EU citizens, the ECJ has declared this practice to be inadmissible in the EU, as no adequate protection of privacy is ensured, resulting in a clear breach of EU law [20]. Accordingly, the infringement of Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union (the Charter) [21] led the ECJ not only to classify the transfer of personal data to US authorities as inadmissible, but also to annul all of the Data Protection Directive 95/46 [22]. The reason for the annulment was that Article 25 of Directive 95/46 in relation to the Commission Adequacy Decision 2000/520 [23] had allowed a too far-reaching extraterritorial effect of the US law and the related competence of the US authorities in monitoring the EU citizens' data. Ultimately, the ECJ confirmed this legislation to be in breach with the Charter in respect to data protection and privacy [20]. Overall, the 4th AMLD aims to reveal violations of ML, TF and tax evasion to the fullest extent by maximising the information exchange at European level, which is softening personal data protection and the principles of the rule of law in criminal law [10, p. 271]. Therefore, the 4th AMLD raises significant questions about its efficiency and the preservation of the principles of the law.

3. The AML/CTF legislation's inability to prevent terrorist attacks

In the UK, the linking of AML policies to counter-terrorism strategies is one of the current stated goals of the Home Office and the UK Security Service. In 2015, the Joint Money Laundering Intelligence Task Force was consisting of government and law enforcement representatives and led by the National Crime Agency (NCA) [9, p. 418]. Its mission was to implement faster and more efficient intervention and law enforcement mechanisms in the private and public sectors to combat ML and TF. Thereby, a central element was a fast and far-reaching information gathering of customer-related data by financial institutions, without the possibility of protection under section 7 of the Crime and Courts Act 2013 [24, p. 22]. For banks, this means that they may disclose any information about clients without violating their obligation of confidence. Accordingly, the UK government created a way to override the banker's duty of customer confidentiality that is more extensive than the SAR process and justifies this development primarily on the grounds that it is necessary to effectively combat terrorism, without however providing reliable empirical data to support this assumption. In the UK, Part 8 of the Proceeds of Crime Act 2002 (POCA 2002) [25, p. 29] has unified ML offences similar to the 4th AMLD through the extension of confiscation, civil recovery and money laundering investigations. This resulted in a merging of civil and criminal jurisdictions, which aims at covering three investigation areas [9, p. 387]. Together with the Serious Crime Act 2007 [26, p. 27] and the amendments of sections 327-329 POCA 2002 by the Serious Organised Crime and Police Act 2005 [27, p. 15], the POCA 2002 is now one of the key legislations within the AML and CTF framework in the UK [28, p. 285]. Currently, the AML legislations in most jurisdictions worldwide, for example the Indian Prevention of Money Laundering Act 2002 [29] and the Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006 [30], have a similar structure to the POCA 2002, as they include CTF provisions [31]. These laws, which the UK and many other FATF countries established more than a decade ago to effectively combat ML and TF, in fact form the basis for the increasing prosecution risks for finan-

cial institutions and financial professionals. Moreover, institutions are subject to the risk of considerable sanctions if they do not apply a sufficient compliance structure in line with AML/CTF legislation. One may question the efficiency of this AML/CTF legislation, as the recovery of proceeds of crime through 15 enforcement agencies in the UK was only GBP 155 million in 2014, while estimated administrative costs amounted to GBP 100 million [32, p. 2]. Also, the British bankers' association assumes that most of the largest international banks are spending around GBP 700 million to one billion annually on financial crime compliance [33]. These figures show that the AML/CTF legislations create immense bureaucratic burdens without actually providing any proportionate results. This also applies to the AML/CTF legislation's efficiency as a tool to prevent terrorist attacks. In its 2016 recommendations on terrorist financing [34], the FATF states that similar to ML, the monitoring of financial flows, including cash transactions, helps the investigators to identify terrorists and prevent terrorist attacks. However, when taking a closer look at the cost of current terrorist attacks, the conclusion must rather be that the FATF recommendations may only help to uncover small tax evaders, but are completely unsuitable for preventing terrorist attacks [35, p. 9]. The low costs of terrorism attacks highlight that *de facto* only minimum financial resources are needed to carry them out. According to the estimates of the Center for the Analysis of Terrorism (CAT), the Nice attack of 14 July 2016, in which ISIS fanatic Mohamed Lahouaiej-Bouhlel killed 86 people and injured more than 450 people with a truck, cost no more than GBP 2200 [36]. This latest *low tech* strategy for terrorist attacks is based on the use of everyday objects and vehicles as deadly weapons. The Westminster attack on 22 March 2017 at the Westminster Bridge in London, in which three people were killed with a truck and 20 were injured, and the Berlin Christmas Market attack on 19 December 2016, where 12 people were killed with a truck and around 50 were injured, were based on the use of improvised weapons, including vehicles and knives [37, p. 67]. Overall, the catch-all approach of the AML/CTF regulations is touted as means of preventing terrorism, but is in fact unsuitable to prevent low tech terrorist attacks, which are relatively simple and inexpensive to realise. Most terrorist attacks in recent years have not required major financial transactions or large sums of money. Yet, the policy makers and investigative authorities still use the prevention of terrorist attacks and the prevention of the financing of terrorism as the main argument for the increasingly excessive expansion of the AML/CTF legislation worldwide.

4. *Brexit* and other future challenges of the EU AML regime

The AML/CTF regime in the UK places disproportionate burdens on companies and financial institutions. *Brexit* could further complicate this situation for companies, if they are no longer part of the EU and, thus, of the EU single market. Particularly in view of the fact that the 4th AMLD includes combating tax evasion in its regulatory system, the *Brexit* implies that the joint efforts of the EU network of information exchange and administrative cooperation will be significantly weakened by the withdrawal of the UK economy. Accordingly, the network's joint aim of the promotion of European harmonisation will be weakened as well. This may lead to substantial problems regarding the administrative cooperation related to cross-border tax issues within the EU, as EU directives will no longer apply for the UK after *Brexit*. In 2016, Directive 2016/1164 [38] was adopted, which includes provisions to combat tax avoidance practices that have direct negative effect on the functioning of the internal market. Through the *Brexit*, this Directive will become ineffective in the UK as does Directive 2014/107 [39] with regard to mandatory automatic exchange of information in the field of taxation, which ensures the existence of a cross-border administrative cooperation among the financial authorities of the member states and allows the member states to obtain full information on taxable persons or companies from member states concerned [40, p. 180]. Particularly with regard to corporate groups or multinational corporations, Directive 2014/107 gives financial authorities the opportunity of jointly carrying out audits by tax authorities of several member states [40, p. 183]. After the *Brexit*, there will no longer be a legal basis to which the UK can refer to for this precise tax administrative cooperation, which will probably have a wide range of negative consequences for companies registered in the UK, as their tax treatment within the EU will be reduced in accordance with the status of a third country. The 4th AMLD poses further challenges for the EU AML regime in the EU beyond the *Brexit* issue. Thereby, the lack of harmonisation of criminal law regarding tax evasion is

paramount. The 4th AMLD raises fundamental doubts as to what extent it is in conflict with existing civil and human rights. Against the background of the planned amendment to the 4th AMLD or the possible adaptation of the 5th AMLD, the question of the compatibility of the legislation with constitutional principles becomes increasingly important. A core element of the 4th AMLD is directed at tax avoidance and evasion. In addition, the 4th AMLD focuses on national risk assessments. In this connection, the important standard setter, the Basel Committee on Banking Supervision, has adopted the FATF recommendations of 2012 in its January 2014 guidelines *Sound Management of Risks Assessment on Money Laundering and Financing of Terrorism* [41] similar to the 4th AMLD [20]. The guidelines describe risk assessments as a central responsibility of credit and financial institutions, in which three lines of defence against money laundering are specified: The first line of defence is the front-office staff, which is in direct contact with the customer and responsible for identifying the customer, for accessing and monitoring the business risk, and for implementing respective AML/CTF policies and procedures. The second defensive line is the senior management, which is responsible for the on-going monitoring and implementation of AML/CFT requirements, and is also the point of contact for AML/CTF related queries from internal and external authorities and FIUs. The third line of defence against ML is the internal auditing, which provides an independent assessment of the effectiveness of the implementation of risk management and controlling in compliance with AML/CTF policies and procedures [15, p. 55]. At the same time, the interlinking of the recommendations of the Basel Committee, the 4th AMLD and other regulatory technical standards set by the European Supervisory Authorities creates an ever-finer network of financial institution control [20]. This network is increasingly far-reaching, as Europol is getting more closely involved in the fight against financial crimes and is becoming a central hub of information, in which data is exchanged and evaluated at unprecedented levels. Furthermore, Europol actively contributed to proposals contained in the agreement between the EU and US on the Terrorist Finance Tracking Program (TFTP) [42]. The fight against financial crimes is now being expanded with proposals about the future of the 4th AMLD involving its amendment or the 5th AMLD. Thereby, it is particularly noticeable that the proposals intend a tightening of due diligence requirements regarding the transparency of beneficial ownership [43, p. 3]. The so-called "Panama Papers affair" has contributed to the greater focus on the prevention of tax evasion and on controls on the movement of anonymous funds. Against this background, the EU Council Proposal COM/2016/0450 final [12], which is supposed to close gaps in the ML and TF area, is highly problematic due to the fact that the objective of closing gaps is being mixed with the aim to create more transparency in financial transactions in relation to offshore jurisdictions in order to prevent tax avoidance or evasion [13]. Ultimately, the integration of CTF and the inclusion of tax evasion prevention into the EU AML framework means to lump completely different phenomena together at the same level, which makes the whole system inefficient and legally questionable.

Conclusion

The progressive development of the European AML/CTF legislation combined with the clear target to eliminate tax evasion has resulted in the over-burdensome administrative monitoring of every EU citizen and the increasing undermining of fundamental civic rights. Accordingly, the 4th AMLD raises questions about its efficiency and the preservation of the principles of the law. In this context, a very critical point is that the 4th AMLD includes the conformity of ML, TF and tax evasion which questions the admissibility of the Directive in principle due to the lack of harmonisation of criminal law and of the definition of tax crimes relating to direct and indirect taxes. In particular, as there is no reciprocity among the member states in the field of tax evasion in many areas in terms of what is punishable and what is not, the 4th AMLD raises fundamental questions on data protection and an European law enforcement that, by lack of harmonisation, allows the conduct of European investigations without the existence of a criminal offense in the respective member state. At the same time, the high-risk third country and non-cooperative jurisdictions policy in the EU led to the criminalisation of countries that are primarily considered as tax havens, but which pose no actual criminal threat to the security through terrorist financing or money laundering of funds generated from illegal sources. The "Panama Papers" have raised questions about and criticism of existing policies regarding offshore structures. The legislative

reaction has been one of blind activism. The fight against terrorism and the prevention of tax evasion are being used as arguments, both politically and in the media, to create increasingly far-reaching legislation that allegedly create fair taxation and prevent terrorist attacks. The integration of these highly divergent objectives into the EU AML framework has led to an explosion of compliance costs in the EU and worldwide, with no empirical data to suggest the actual effectiveness of this legislation in preventing terrorist attacks. Neither an intensified customer due diligence nor a comprehensive monitoring and control of millions of financial transactions of ordinary citizens can prevent the new low-tech method of terrorist attacks, since these attacks require only minimal financial resources. Primarily, the 4th AMLD is apt to spy on ordinary citizens without any initial suspicion to an unprecedented degree. Today, the EU promotes an on-going unbridled and unrestricted transfer of personal data to third-party countries by virtue of the AML framework, placing every citizen under a general criminal suspicion and carrying out investigations under this policy without grounds for reasonable suspicion, which is incompatible with the rights described in the ECHR and the Charter of Fundamental Rights. Therefore, the proposals for the amendment of the 4th AMLD that suggest to extend the powers of the FIUs must include a detailed review of the rights to privacy and data protection that citizens enjoy by virtue of the ECHR and the Charter. The extension of the powers to investigate tax evasion ultimately requires the prior harmonisation of the bases for offences punishable under criminal law within the EU.

References:

1. Baldus M. Freiheitssicherung durch den Rechtsstaat des Grundgesetzes. Huster S., Rudolph K. (eds) Vom Rechtsstaat zum Präventionsstaat. 1st edn, Suhrkamp, 2008. S. 115.

2. Quedenfeld R. Grundlagen der Geldwäschebekämpfung. Quedenfeld R. Handbuch. Bekämpfung der Geldwäsche und Wirtschaftskriminalität. 4th edn, Berlin: ESV, 2017. S. 23.

3. FATF Members and Observers. URL: http://www.fatf-gafi.org/about/membersandobservers/ (accessed 29 November 2017).

4. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (2012, February). URL: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

5. FATF 40 Recommendations (2003, 20 June). URL: www.fatf-gafi.org.

6. FATF IX Special Recommendations (2004, 22 October). URL: https://www.fiu.go.tz/FATF9Special%20Recommendations.pdf.

7. 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, Amending Regulation (EU) № 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (4th AMLD). OJ. 2015. L 141/73.

8. Directive 2014/42/EU of the European Parliament and of the Council on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union. OJ. 2014. L 127/39.

9. Blair W., Brent R., Grant T. Banks and Financial Crimes. The International Law of Tainted Money. 2nd ed. Oxford: OUP, 2017. 571 p.

10. Mitsilegas V., Vavoula N. The Evolving EU Anti-Money Laundering Regime. Challenges for Fundamental Rights and the Rule of Law. Maastricht Journal of European and Comparative Law. 2016. № 23(2). P. 270–280.

11. Directive 2005/60/EC of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing. OJ. 2005. L 309/15.

12. Proposal COM/2016/0450 final – 2016/0208 (COD) for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money laundering or Terrorist Financing and Amending

Directive 2009/101/EC (5 July 2016). URL: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-593.836+01+DOC+PDF+V0//EN&language=EN.

13. Communication COM/2016/050 final from the Commission to the European Parliament and the Council on an Action Plan for Strengthening the Fight against Terrorist Financing (2 February 2016) and Annex 1 COM(2016)50 final – Action Plan for Strengthening the Fight against Terrorist Financing to the Communication from the Commission to the European Parliament and the Council (2016, 2 February). URL: https://europa.eu/european-union/documents-publications_en.

14. Treaty on the Functioning of the European Union (TFEU): Consolidated Version. OJ. 2016. C202. Art. 288.

15. Cox D. Handbook of Anti Money Laundering. 1st ed. Wiley, 2014. 752 p.

16. Sheen S. Politically Exposed Persons ("PEPs") regime in the UK: Anticipatory Response to the 4AMLD. ACAMS. 2017. 4 October. P. 103–105.

17. Oppermann T., Classen C.D., Nettesheim M. Europarecht. 7th ed. Verlag: CH BECK, 2016. 698 s.

18. Case C-293/12 "Digital Rights Ireland and Seitlinger and Others". Digital Reports (Court Reports – General). 2014. ECLI:EU:C:2014:238.

19. Case C-362/14 "Maximillian Schrems v Data Protection Commissioner". Digital Reports (Court Reports – General). 2015. ECLI:EU:C:2015:650.

20. Herlin-Karnell T., Ryder N. The Robustness of EU Financial Crimes Legislation: A Critical Review of the EU and UK Anti-Fraud and Money Laundering Scheme. European Business Law Review. 2017. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2816980 (accessed 29 November 2017).

21. Charter of Fundamental Rights of the European Union (the Charter). OJ. 2012. C326/391. Art. 7–11.

22. Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data. OJ. 1995. L 281/31. Art. 25.

23. 2000/520/EC: Commission Decision Pursuant to Directive 95/46/EC of the European Parliament and of the Council on the Adequacy of the Protection Provided by the Safe Harbour Privacy Principles and Related Frequently Asked Questions Issued by the US Department of Commerce. OJ. 2000. L 215/7.

24. Crime and Courts Act 2013.

25. Proceeds of Crime Act 2002 (POCA 2002).

26. Serious Crime Act 2007.

27. Serious Organised Crime and Police Act 2005 (SOCPA 2005).

28. Harvey J., Ashton S. Anti-money Laundering Policy: A Response to the Activity of Criminals or of Agencies? Van Duyne P.C., Maljević A. et al. The Relativity of Wrongdoing: Corruption, Organised Crime, Fraud and Money Laundering in Perspective. Nijmegen: Wolf Legal Publishers, 2015. P. 280–290.

29. The Prevention of Money-Laundering Act 2002 (Act № 15 of 2003).

30. Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

31. Nobanee H., Nejla E. Voluntary Disclosures of Anti-Money Laundering and Anti-Terrorist Financing. SSRN Electronic Journal. 2017. № 7. URL: https://ssrn.com/abstract=2971473 (accessed 6 December 2017).

32. Gentle S., Spinks C., Harris T. Legislative Comment. Proceeds of Crime Act 2002: Update. COB. 2016. № 139. P. 2.

33. LexisNexis Risk Solutions for the British Bankers' Association "Future Financial Crime Risks. Considering the Financial Crime Challenges Faced by UK Banks" (November 2015).

34. Terrorist Financing / FATF. URL: http://www.fatf-gafi.org/publications/fatfgeneral/documents/terroristfinancing.html (accessed 6 December 2017).

35. Mai H. Cash, Freedom and Crime. Deutsche Bank Research. 2016. 23 November. P. 9.

36. McGuinness R. The Price of a Life – How European ISIS Terror Attacks Cost just £2,000.

URL: https://www.express.co.uk/news/world/722642/European-ISIS-terror-attacks-cost-study (accessed 6 December 2017).

37. Hoffman B. Low-Tech Terrorism. National Interest. 2014. № 130. P. 67.

38. Council Directive (EU) 2016/1164 Laying down Rules against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market. OJ. 2016. L 193/1.

39. Council Directive 2014/107/EU Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation. OJ. 2014. L 359/1.

40. Reimer E. Nach dem Brexit: Die Zukunft der europäischen Steuerrechtsordnung. Kramme M., Baldus C. et al. Brexit und die juristischen Folgen. Baden-Baden: Nomos, 2017. S. 180–200.

41. Basel Committee on Banking Supervision. Guidelines. Sound Management of Risks Related to Money Laundering and Financing of Terrorism (June 2017).

42. Agreement between the European Union and the United States of America on the Processing and Transfer of Financial Messaging Data from the European Union to the United States for the Purposes of the Terrorist Finance Tracking Program. OJ. 2010. L 195/5.

43. Srivastava A., Simpson M. et al. Financial Crime Update. Compliance Officer Bulletin. 2017. № 147. P. 3.