ELSA.ORG.MT

SOCIAL
POLICY

# THE 4th ANTI MONEY LAUNDERING DIRECTIVE

# AN ACADEMIC ANALYSIS

A POLICY PAPER
BY ELSA MALTA'S SOCIAL POLICY
ORGANISING COMMITTEE

elsa
The European Law Students' Association
MALTA

LEAD SPONSOR

Deloitte.

Gauci-Maistre Xynou
LEGAL | ASSURANCE

# Thinking Ahead in Social Policy

ELSA Malta would like to thank…

*After months of hard work, co-operation, planning, drafting and excitement, our **'The Fourth Money Laundering Directive: an Academic Overview'** policy paper has come to a conclusion, and we can finally say that we are on the map when it comes to proposing policy.*

*ELSA Malta remains committed to be pro-active on several heated issues that have a social impact. We will be there voicing our opinion, proposing legislation and discussing ideas. This policy paper is a clear example.*

*Many people are behind such a project, and without them this would surely not have been possible. Our thanks go to:*

**ELSA Malta President:** Bernice Saliba
**Director for Social Policy and Legal Publications:** Nicole Sciberras Debono
**Policy Paper Leader:** Mariah Mula
**Policy Paper Team:** Mariah Mula, Leanne DeBattista, Charlene Chircop
**Proof-Reading:** Dr. Diane Bugeja
**Design:** Gigi Gatt
**ELSA Malta's Legal & Social Policy Organising Committee**

*Our **special thanks** goes to Dr. Diane Bugeja who reviewed our policy paper and provided suggestions to mentor the team in the best way possible.*

*On behalf of the ELSA Malta Social Policy Office, we hope that you enjoy reading our paper, take the time to evaluate our suggestions, and lastly to follow us and support us in our aim - to always be **#pro-active**!*

*Thank you.*

# Table of Contents

# The Fourth EU Anti-Money Laundering Directive: An Academic Overview

## General Introduction

Money laundering is a reality which has become of primary concern for every government due to the negative repercussions that it may have on the integrity of the financial and economic system.[1] The Fourth EU Anti-Money Laundering Directive (the Directive) has recently been published in May 2015 and it focuses on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing; already, plans are in the pipeline for further revisions to this Directive. But what exactly do these crimes constitute?

In the words of Min Zhu, Deputy Managing Director of the International Monetary Fund (IMF),

> Money Laundering and the financing of terrorism are financial crimes with economic effects. They can threaten the stability of a country's financial sector or its external stability more generally. Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse. Action to prevent and combat money laundering and terrorist financing thus responds not only to a moral imperative, but also to an economic need.[2]

Indeed, this new Directive is geared towards benefitting businesses, government and law enforcement by ensuring that resources can be targeted towards the areas of higher risk. Mainly, it aims to achieve a more risk-based approach, with greater consistency of rules across the EU, simplifying cross border trade and implementing the Financial Action Task Force (FATF) recommendations.

[1] Peter Reuter, Edwin M. Truman (2004), *Chasing Dirty Money: The Fight Against Money Laundering*, Institute for International Economics, 130.
[2] The IMF and the Fight against Money Laundering and the Financing of Terrorism Factsheet < http://www.imf.org/external/np/exr/facts/aml.htm> accessed on 27th August 2015.

## Historical Background

In the past, the definition of what entails a criminal activity for the purposes of money laundering was very restrictive as it entailed robbery, fraud, as well as dealing in drugs or other illicit substances. Therefore, handling the proceeds from any such activity would amount to money laundering. Traditionally, the crime of money laundering has been described as being a process whereby criminals attempt to hide the origins and ownership of the profits earned through criminal activities. Such methods would enable these criminals to retain control over the proceeds and provide them with an alibi for their profits.

It is essential to note that the crime of money laundering is not a new phenomenon. Indeed, Sterling Seagrave, a British historian, wrote about how Chinese merchants over three thousand years ago, laundered the profits they made due to the prohibition imposed by the regional governments on many forms of commercial trading.[3] Thus, Chinese traders used to hide their wealth out of fear of being robbed of their assets by the respective governments. The Chinese merchants used to employ a technique, which is still popular up to this day, whereby the money launderers' profits would be invested in offshore financial centers. The term '*laundering'* is said to have originated around the time Chicago gangster, Al Capone, embarked on his crime spree. In fact, he used the profits of the intense business of launderettes to disguise the illegal proceeds he earned from alcohol he imported in times of prohibition in the 1920s.[4] However, the term '*money laundering'* was first used in a newspaper reporting about the Watergate scandal of 1973 in the United States.[5]

Anti-money laundering issues have undeniably attracted more worldwide attention in the late 20th century and the beginning of the 21st century due to the ever-increasing complex systems of money laundering. As Healy rightly argues, the September 11 terrorist attacks on the United States of America have highlighted new challenges to law enforcement agencies around the world in detecting and combatting elaborate money laundering systems used to finance international terrorism.[6] Indeed, in the Unites States, prior to 2001 terrorist attacks, the crime of money laundering was regulated by the Bank Secrecy Act, but since 2001, there

[3] Inter-American Development Bank (2004), *Unlocking Credit: The Quest for Deep and Stable Bank Lending*, 241.
[4] B. Unger, D. Van der Linde (2013) *Research Handbook on Money Laundering*, Edward Elgar Pub, 3.
[5] J. Richards (1999), Transnational Criminal Organizations, Cybercrime, and Money Laundering, CRC Press, 43.
[6] N. Healy (2001) *The impact of September 11th on Anti-Money Laundering efforts, and the European Union and Commonwealth gatekeeper initiatives.* The International Lawyer, Vol. 26, No. 2, 733.

has been the introduction of the USA Patriot Act which was stimulated by the 9/11 terrorist attack.[7]

## An Attempt to a Definition

The International Monetary Fund (IMF) defines money laundering as the '*process by which the illicit source of assets obtained or generated by criminal activity is concealed to obscure the link between the funds and the original criminal activity*'.[8] Even though money laundering may seem to be a linear process, the process can be complicated as it involves a number of actors and methods which makes it also very difficult to be traced by the relevant authorities. Indeed, according to the Fourth European Anti-Money Laundering Directive, the crime of money laundering can be committed intentionally in the following ways:

a) The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;

b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;

c) The acquisition, possession or use of property, with full knowledge upon receipt that such property was derived from criminal activity or from an act of participation in such an activity;

d) Participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the above-mentioned actions.[9]

Hence, it is very clear that the European Union is aware of the constant threat being imposed by this crime and acknowledges the various shades the crime can

[7] <https://en.wikipedia.org/wiki/Patriot_Act> accessed on 27th August 2015.
[8] The IMF and the Fight against Money Laundering and the Financing of Terrorism Factsheet < http://www.imf.org/external/np/exr/facts/aml.htm> accessed on 27th August 2015.
[9] Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73, article 1(3).

take so as to manifest itself. Indeed, this latest EU Anti-Money Laundering Directive was stimulated by the fairly recent terrorist attacks which took place in Copenhagen, Paris and Brussels, and which were all triggered through money-laundering.[10]

[10]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, <http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf>
Accessed on 27th August 2015.

# The Directive's Implications

In general, the Fourth Anti-Money Laundering Directive, which is to be transposed into local legislation by 26 June 2017, strives to ensure consistency across borders. The Third Directive was not implemented consistently by Member States and thus, the intention of this Fourth Directive was mainly that of creating a more coherent cross-border approach, which will simplify cross-border trade by ensuring that legislation is adopted consistently in each Member State. Consequently, businesses should be able to operate more effectively between jurisdictions because the inconsistencies in legislation would be reduced, allowing organisations to streamline systems and reduce costs.

In relation to the gaming sector, the Directive proposes to bring all providers of gambling services within the scope of the regulation, including online gambling, and not just land-based casinos. In addition, for the gambling sector, Customer Due Diligence (CDD) will henceforth be required for single transactions of €2,000 or more[11]. The Fourth EU Anti-Money Laundering Directive allows discretion to Member States to make a case for scoping out certain gambling services providers on the basis of these presenting a low risk of money laundering, although any such arguments are likely to be difficult to justify in light of the anonymity, remoteness, multi-jurisdictional reach and other similar factors that make the gambling sector prone to being exploited by criminals in their furtherance of their money laundering activities. As a result of such a requirement, businesses in the gambling sector which are now within the scope of the Directive will have to implement systems and controls to prevent money laundering, including undertaking CDD, training staff, monitoring transactions, keeping records and reporting suspicious transactions; equally, regulators will have to become conversant with the specific money laundering risks presented by the online gambling sector and up their resources to cater for the wider reach of the Directive.

A second area tackled by this new Directive is that of tax crimes, which are now to be included within the definition of an offence. Indeed, tax evasion and other serious fiscal crimes will become criminal offences in all EU member states. The impact of this will be that businesses operating in jurisdictions in which tax evasion is not currently a crime will need to review their current systems to ensure compliance.

[11] Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73, article 11.

The Directive has also repealed the 'white-list' of jurisdictions outside the EU which the Third Anti-Money Laundering Directive had implemented. Indeed, this Fourth EU Directive now requires each obliged person (i.e. those persons subject to the requirements of the Directive) to conduct a risk assessment for that specific country outside of the EU where business is to be done[12], therefore placing additional responsibility on obliged persons in deciding whether a particular jurisdiction is to be considered reputable or otherwise.

Simplified Due Diligence (SDD) is another area in respect of which changes are being made in the Fourth Directive. The risk-based approach adopted by this Fourth EU Directive includes more stringent CDD measures. Previous Anti-Money Laundering regulations permitted certain customers and products to qualify for the due diligence procedure when they fell within a certain category. The Fourth Anti-Money Laundering Directive now requires obliged persons to determine the level of money laundering risk posed by any customer prior to the due diligence status, providing a justification for qualification.[13] Indeed, previously, businesses could apply simplified due diligence in certain situations, which reduced the regulatory burden; such blanket exemptions were considered by the EU as being too permissive and lenient. With the introduction of this Directive, it is expected that obliged persons will be required to assess whether a transaction or customer relationship is low risk on the basis of certain risk-related criteria and act accordingly. Hence, obliged persons may be able to apply SDD only if they are satisfied that the customer or transaction presents a lower degree of risk and can evidence this through supporting documentation which may eventually be challenged by the regulator. The Directive lists potentially lower risk factors which obliged persons should consider in making their assessment.

On the other hand, the Directive introduced a requirement to conduct Enhanced Due Diligence (EDD) for domestic Politically Exposed Persons (PEPs) (e.g. MPs, judges or high ranking army officials) as well as foreign PEPs[14]. Thus, businesses will need to amend their systems and controls to ensure that they can identify domestic PEPs. The policies and procedures will need to be revised so employees know what the EDD requirements are for such clients. The Directive also provides a non-exhaustive list of higher risk factors that obliged persons are bound to consider in addressing business relationships or occasional transactions that may present a higher risk of money laundering and in respect of which EDD measures may be appropriate.

[12] ibid, article 7.
[13] ibid, article 10 and article 13(5).
[14] ibid, article 18.

Moreover, the Directive introduced increased due diligence for employees. Indeed, there is a provision in the Directive requiring businesses to have policies, controls and procedures which cover employee screening.[15] Hence, businesses that do not screen employees at present will need to consider how to verify employees, which could be costly and time consuming. Automated screening systems may provide a solution while providing reassurance for the business, particularly if the checks include the asylum and immigration requirements.

The new Directive also introduced a reduction in the threshold for cash transactions. Under the current regime, a €15,000 threshold for cash transactions is applicable, i.e. persons dealing in cash above this threshold in connection with a single transaction or a series of linked transactions, is considered to be engaging in a 'relevant activity' and must comply with the requirements set forth in the anti-money laundering regime; this threshold has been lowered to €10,000 under the new Directive.

Increased level of transparency of beneficial ownership and record retention is another aspect featured in this new Directive, which shall apply for both companies and trusts. Businesses should be aware of this implementation and that it is likely to impose significant administrative burdens on companies and trusts. Indeed, similarly to the Third EU Anti-Money Laundering Directive, obliged persons are requested to identify and manage due diligence on any customer that controls more than 25% of the shares or voting rights (or other elements which may be indicative of a controlling position) of a customer.[16] However, through the Fourth EU Anti-Money Laundering Directive, a more rigorous record retention requirement for beneficial ownership is put in place. Now, each Member State will be required to maintain a registry containing information about beneficial owners.[17] This new Directive provides that the mentioned registers ought to be accessible to the authorities of each Member State and their Financial Intelligence Units without any restriction.[18] The registers are also to be available to obliged persons and also to the public through registration.

This new Directive provides for three levels of risk assessment – a supra-national risk assessment, a national risk assessment, and a risk assessment process at the level of each obliged person, each of which should identify and

[15] ibid, article 8 (4)(a).
[16] ibid, article 13
[17] ibid, article 30.
[18] ibid, article 30(5).

locate the main risks relating to anti-money laundering. Such risk assessments are expected to assist the Member States' obliged persons in developing their own procedures for anti-money laundering risk assessments. Malta has followed closely with the risk assessment procedure and towards the end of 2013, the Maltese Government had entrusted the task to lead the national risk assessment in question to the Financial Intelligence Analysis Unit (FIAU).[19] The National Risk Assessment should provide regulated businesses with a clear picture of the risks and threats in their country which will help them to identify, manage and mitigate their own risks. Indeed, this risk assessment is necessary to identify the risks of money laundering and terrorist financing affecting the internal market. Obliged persons are already required, under the current regime, to undertake written risk assessments which will have to be made available to the regulator upon request. Those businesses which do not have a clear picture of their risks and how to mitigate them, should undertake a risk assessment process henceforth. This is also regarded as a good business practice.

When it comes to the issue of data protection, it is generally accepted that there is a need to balance the requirements of the anti-money laundering/counter terrorist financing regimes with the data protection rights of individuals. Member States will now have to consider how to transpose the requirements into national legislation particularly around data. Businesses should review what data they hold and for how long so they comply with the existing data protection obligations, which will help to prepare for the new requirements.

Under the Directive, it is proposed that administrative sanctions for breaches of the key requirements of the Directive are strengthened, including a proposal to impose a fine of up to ten percent (or even twenty percent) of the total annual turnover of a business and twice (or even ten times) the amount of profit gained (or losses avoided) through the breach.[20] These proposals demonstrate the need for businesses to ensure that they have robust procedures, systems/controls and resource (including staff) in place to ensure compliance.

Following the recent terrorist attacks in Copenhagen, Paris and Brussels, the European Commission together with the Council agreed to take strong decisive action against any form of terrorist-financing. Indeed, so as to enhance the efficiency of these new AML regulations, these two EU institutions have called for

[19] Analysis to consider risks of money laundering and terrorist financing in Malta, <http://www.timesofmalta.com/articles/view/20131218/local/analysis-to-consider-risks-of-money-laundering-and-terrorist-financing.499524> accessed 27 August 2015.
[20] Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73, article 59.

further efforts towards speeding up the national processes of implementation of AMLD4. This will in turn strengthen cooperation on the combat against terrorist-financing between the various Member States' FIUs. Any terrorist-financing risks are then to be addressed via the EU supranational risk-assessment. Indeed, the EU constantly stresses upon the fact that coordinated action at international, European and national level is essential so as to truly tackle the threats posed by money laundering and terrorist-financing as effectively as possible. The Commission shall also be examining further actions and initiatives that may be adopted on countering terrorist-financing in the context of implementing the recently adopted European Security Agenda.21

Even though AMLD4 has not yet been implemented by the EU Member States, the European Commission has already geared its direction towards new steps and procedures to tackle the identified loopholes of this new Directive. It has in fact issued an Action Plan aimed on two main focal strands of action, namely, (i.) tracing any threatening terrorists through their financial movements and preventing them from transferring any funds or other assets; and (ii.) disrupting the roots and sources of revenue known to be used by terrorist organisations, by targeting and distorting their capacity to raise funds.22 As regards the first strand of action, the Commission has called upon all EU Member States to commit to implement AMLD4 into their domestic laws by the end of 2016 instead of June 2017. As had been requested during the extraordinary Justice and Home Affairs Council of the 20 November 2015, the Commission recently proposed a number of targeted amendments to the AMLD4. Such proposed amendments include both short-term and long-term initiatives, namely, (i.) including a list laying down all compulsory checks and CDD measures that financial institutions ought to carry out on financial flows from third States having high-risk strategic deficiencies in their national AML and CTF regimes; (ii.) widening the scope of information and data accessible by the national FIUs; (iii.) enabling faster and easier cooperation and communication methods for the various EU FIUs to access information on the holders of bank and payment accounts by introducing centralized bank and payment account registers; (iv.) bringing virtual currency exchange platforms under the scope of the AMLD4 and the control of competent national authorities so that such platforms too would have to apply CDD controls when exchanging virtual currency for real currency, and

[21] 'European Parliament backs stronger rules to combat money laundering and terrorism financing' (European Commission – Press Release) <http://europa.eu/rapid/press-release_IP-15-5001_en.htm> accessed 20 March 2016.

[22] Peter Snowdon & Lisa Lee, 'Commission presents Action Plan to strengthen the fight against terrorist financing' (Financial Services: Regulation Tomorrow Blog Post, 3 February 2016) <http://www.regulationtomorrow.com/eu/commission-presents-action-plan-to-strengthen-the-fight-against-terrorist-financing/> accessed 2 April 2016.

potentially including virtual currency 'wallet providers'; and (v.) widening customer verification requirements for prepaid instruments and lowering the thresholds for identification. 23 Gaps in the EU-US Terrorism Financing Tracking Programme (TFTP), which has been in force since August 2010, will also be tackled. In addition, the Commission has claimed that in 2017 it will table a legislative Proposal geared to reinforce the powers of customs authorities and thereby address terrorism-financing through trade in goods. Another Commission Proposal is envisaged to address the illicit trade in cultural goods and wildlife. The Commission has also urged all Member States and their relevant AML authorities to work hand-in-hand with third countries so as to create stronger cooperation and ensure a global response to tackling sources of terrorist-financing. Indeed, as Dr. Jean-Claude Juncker, the President of the European Commission himself, validly propounded:

> "The recent terrorist attacks on Europe's people and values were coordinated across borders, showing that we must work together to resist these threats."24

As has been evidenced during the recent Paris terrorist attacks, prepaid cards are very often used as a major tool by terrorists to anonymously finance their attacks. Whilst acknowledging the benefits of such prepaid cards to many citizens, the Commission is also aware of the many risks stemming from the anonymity of some of these prepaid instruments and intends to amend AMLD4 so as to specifically address these concerns without doing away with the potential benefits of such cards when used normally. Indeed, a timeline to implement these actions has also been published by the Commission, highlighting the targeted deadlines.

Thus, as has been constantly reiterated throughout this analysis paper, all obliged entities should now start considering how AMLD4 might impact their businesses and their customers, while onboarding employees with the new AML compliance requirements. Given the problematic issues created by the late implementation of AMLD3 in certain Member States such as Ireland, it is hoped that AMLD4 will be implemented on time by June 2017 and that financial institutions would have by then updated their compliance programs in readiness for that date.

---

[23] Ibid.

[24] Jean-Claude Juncker, 'Action Plan to Strengthen the Fight Against Terrorist Financing' (European Commission – European Agenda on Security Factsheet, February 2016) <http://ec.europa.eu/justice/criminal/files/aml-factsheet_en.pdf> accessed 13 April 2016.

## The Current Maltese Situation

Malta's commitment in the fight against money laundering is essential for the country in protecting its role as a reputable financial services center and an international hub for gaming companies to operate. Under current Maltese law, the main regulatory Act governing money laundering is the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) (PMLA), which was introduced in 1994 so as to augment the effectiveness of other legal provisions found in the Criminal Code (Chapter 9 of the Laws of Malta), namely, Sub-Title IV which deals with acts of terrorism, funding of terrorism and ancillary offences. In addition, the PMLA and the Criminal Code's relevant provisions are further supplemented by the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR). It is to be noted that whilst the PMLFTR list out the substantive provisions and procedures to be adopted relating to the offences in question, the Act establishes the foundations for the legal framework regulating money laundering. The PMLA lays down the procedures for the investigation and prosecution of money laundering offences as well as establishing the FIAU.

The term '*money laundering*' is defined in Article 2 of the PMLA, whereby the material element of the crime is laid down, accompanied with the intentional element:

i. Converting or transferring property, with the knowledge that such property is derived from criminal activity or participation in such activity, for the purpose of concealing or disguising the origin of the property or assisting a person involved in criminal activity.

ii. Concealing or disguising the true nature, source, location, disposition, movement, right over or the ownership of property with the knowledge that such property is derived from criminal activity or any participation therein.

iii. Acquiring property with the knowledge that such property is derived from criminal activity or any participation therein.

iv. Retaining without reasonable excuse property with the knowledge that such property is derived from criminal activity or any participation therein.

v. Any attempt at or complicity in any of the above matters or activities.

Following the implementation of the Third EU Anti-Money Laundering Directive, the PMLA has been amended to define the term '*criminal activity*' for the purposes of money laundering as any criminal offence or acts of terrorism as defined under the Maltese Criminal Code. Therefore, Malta adopts an 'all-crimes' regime in respect of money laundering offences, such that the handling of profits from any activity that is considered to be a crime under Maltese Law would amount to money laundering.

It is fundamental to note that, in addition to the position adopted in the Third EU Anti-Money Laundering Directive, the recent Fourth EU Anti-Money Laundering Directive has broadened the definition of what '*criminal activity*' would amount to money laundering. As indicated earlier, the newly-enacted Directive now also includes tax crimes, relating to both direct and indirect taxes.[25] This new step in this Fourth EU Anti-Money Laundering Directive aims at developing a harsher fight against tax crimes and terrorist financing.

According to Article 4 of the PMLA, the Attorney General may, if he has reasonable cause to suspect that a person is guilty of an offence involving money laundering, apply to the Criminal Court requesting the issue of an investigation order, so as to provide access to any place for the purpose of searching for any material relevant to the said suspected offence. Such an investigation order cannot be countered by the issue of a warrant of prohibitory injunction. The Attorney General may also apply for an attachment order in the same circumstances, which may be issued together with an investigation order and has the effect of attaching, in the hands of the garnishees, all money and other movable property due or belonging to the suspect. [26]

In addition, according to Article 4B of the PMLA, the Attorney General may request a monitoring order, whereby he may apply to the Criminal Court for such a monitoring order to be issued, on the basis of a reasonable suspicion that a person or legal entity is guilty of a money laundering offence. The order, if upheld by the Court, would require the relative bank/s to monitor the transactions or banking operations being carried out through the bank account(s) of the suspected person/s. This order may be requested at any time before, during, or after the

[25] Proposal for a Directive 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, COM/2013/045 final - 2013/0025 (COD) <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0045&from=EN> accessed on 31st August 2015.
[26] Prevention of Money Laundering and Funding of Terrorism Activities in Malta, <http://www.csb-advocates.com/malta-law-articles/prevention-money-laundering-and-funding-terrorism-activities-malta> accessed on 27th August 2015.

commission of the suspected offence and has thereby proved to be a successful tool available to the Attorney General in tackling money laundering related crimes. [27]

As hinted earlier on, the PMLA also sets up the FIAU which is a body corporate having a distinct legal personality, and the national central agency charged with enforcing the provisions of the PMLA in Malta. It is responsible for the collection, collation, processing, analysis and dissemination of information of suspected money laundering or terrorist financing-related activities, thereby supporting the domestic and international prevention of money laundering and terrorist financing law enforcement effort[28]. Nonetheless, it is important to note that Maltese legislation will soon undergo a major shift due to the transposition and harmonization of the Fourth EU Anti-Money Laundering Directive into domestic law, mostly in relation to the establishment of a risk-based customer due diligence as well as risk-based supervision. Indeed, Implementing Procedures issued by the FIAU are binding on subject persons and are divided into two parts; namely, Part I includes general obligations mandatory on all subject persons, whereas Part II contains sector-specific guidance.

Moreover, Malta is also part of MONEYVAL, which is a committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism which was established in 1997 by the Committee of Ministers of Europe and which continues to enhance the protection awarded to combat crimes related to money laundering and the financing of terrorism.

[27] ibid.
[28] ibid.

# Conclusion

It may be concluded that the overall idea of the Fourth EU Anti-Money Laundering Directive is consistent with the EU Directives which had been published earlier, mainly the Third EU Directive. However, as has been highlighted throughout this legal paper, through this new Directive there have been various new developments which strongly favour the risk-based approach and a greater level of transparency when it comes to the origin and circulation of money, especially across EU frontiers. For instance, when considering the national gaming sector, the current Remote Gaming Regulations established by the Malta Gaming Authority already provide for AML measures, including an obligation on licensees to verify the identity, age and residence of a player before making a payment exceeding €2330. Hence, AMLD4's reduction of the single transaction threshold to €2000 should not pose a major impact on operators of the remote gaming industry that are licensed in Malta. Thus, although under AMLD4 all remote gaming operators will be considered as obliged entities for the first time in the history of EU AML legislation, under Maltese law remote gaming operators have already been subjected to some form of AML regulations, such as those established in terms of the Remote Gaming Regulations and the Lotteries and Other Games Act.[29] However, the AML measures which will eventually be enacted to transpose AMLD4 go into much further detail and stipulate more onerous obligations when compared to current AML obligations.

When it comes to the national risk-assessment requirement imposed by AMLD4, towards the end of 2013, the Maltese Government had already initiated and entrusted the task of leading a national risk-assessment procedure upon the domestic FIAU. Once this project is concluded the Government would be expected to take all the necessary measures to offset any risks identified in such national risk-assessment. Moreover, AMLD4 now also imposes the requirement that all assessments carried out by financial entities need to be based on a risk-based approach. Thus, all obliged entities must now carry out their risk-assessments and CDD on the basis of the type of transaction in question and the degree of risk posed by the customer or third State being dealt with. Such entities will then be held accountable by the national regulators for any decisions they may take under such a risk-based approach. Although the carrying out of risk-assessments is not a novel concept under Maltese legislation, AMLD4's shift towards a risk-based approach is envisaged to leave a considerable impact on the application of AML and CTF procedures by national subject-persons. In addition, AMLD4 will surely leave a huge impact on Maltese AML legislation in relation to the new requirements

[29] Lotteries and Other Games Act, Chapter 438 of the Laws of Malta.

imposed on corporate entities and trusts with regard to the recording of beneficial ownership information.

Hence, it is very evident that the enhanced focus on a risk-based approach and the stronger emphasis placed on strengthening the cooperation between the various FIUs clearly shows that previous errors have been taken into consideration whilst drafting this new Directive, and possibly also improved upon. Indeed, it is an undisputed fact that a proactive implementation strategy will aid in ensuring that global financial and business institutions understand, at an early stage, the challenges posed by this implementation procedure and can thereby bring their current existent global AML programs in conformity with AMLD4 in a timely and efficient manner. As held by Stuart Gulliver, Chief Executive of HSBC, at the Parliamentary Commission on Banking Standards 2013, "our [bank's] geographic footprint became very attractive to trans-national criminal organisations, whether they are terrorist in origin or criminal in origin."[30] Hence, each State must do its utmost to collectively combat such trans-national criminal activities and ensure better safeguards for their prevention.

> "Money laundering is a very sophisticated crime and we must be equally sophisticated."[31]

[30] Steve Slater, 'HSBS's global spread left it open to crime: CEO' (Reuters, 6 February 2013) <http://www.reuters.com/article/us-hsbc-inquiry-idUSBRE9150DZ20130206> accessed 13 April 2016.
[31] Janet Reno, while serving as Attorney General of the United States from 1993 to 2001.

# Bibliography

## Statutes

EU Directives

Directive (EU) 2005/60/EC on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2005] OJ L 309/15

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73

EU Communications, Proposals

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM (2015) 185 final

Proposal for a Directive 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, COM/2013/045 final

Maltese legislation

Criminal Code, Chapter 9 of the Laws of Malta

Prevention of Money Laundering Act , Chapter 373 of the Laws of Malta

Prevention of Money Laundering and Funding of Terrorism Regulations, S.L. 373.01

## Books

Inter-American Development Bank, *Unlocking Credit: The Quest for Deep and Stable Bank Lending* (2004)

Reuter P, Truman E M, *Chasing Dirty Money: The Fight Against Money Laundering*, (Institute for International Economics, 2004)

J. Richards, *Transnational Criminal Organizations, Cybercrime, and Money Laundering* (CRC Press, 1999)

## Dissertations

Mariah Mula, *The Fourth EU Anti-Money Laundering Directive*, (LL.B (Hons.) Research Project, University of Malta, 2016)

## Journals

N. Healy, *The impact of September 11th on Anti-Money Laundering efforts, and the European Union and Commonwealth gatekeeper initiatives.* The International Lawyer, (2001) Vol. 26, No. 2

## Articles

B. Unger, D. Van der Linde (2013) *Research Handbook on Money Laundering*, Edward Elgar Pub, 3 (2013)

## Online Articles

Analysis to consider risks of money laundering and terrorist financing in Malta, <http://www.timesofmalta.com/articles/view/20131218/local/analysis-to-consider-risks-of-money-laundering-and-terrorist-financing.499524> accessed 27 August 2015.

Prevention of Money Laundering and Funding of Terrorism Activities in Malta, <http://www.csb-advocates.com/malta-law-articles/prevention-money-laundering-and-funding-terrorism-activities-malta> accessed on 27th August 2015.

## Factsheets

The IMF and the Fight against Money Laundering and the Financing of Terrorism Factsheet
< http://www.imf.org/external/np/exr/facts/aml.htm> accessed on 27th August 2015.

## Websites

<http://www.fiumalta.org/> accessed on 27th August 2015

<http://www.mfsa.com.mt/pages/viewcontent.aspx?id=233> accessed on 27th August 2015

<https://en.wikipedia.org/wiki/Patriot_Act> accessed on 27th August 2015.

The European Law Students' Association

MALTA

WWW.ELSA.ORG.MT