



Committee on Legal Affairs

2016/0414(COD)

15.9.2017

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council
on countering money laundering by criminal law
(COM(2016)0826 – C8-0534/2016 – 2016/0414(COD))

Rapporteur for opinion: Kostas Chrysogonos

PA_Legam

SHORT JUSTIFICATION

I. Introduction

Recent terrorist attacks underline the need to prevent and fight terrorism. Cutting off the sources of finance for terrorist organisations is crucial contributions to the fight against terrorism and organised crime. The European Union already has tools in place to tackle it including existing criminal legislation, cooperation between law enforcement authorities and processes to exchange relevant information as well as legislation to prevent and fight money laundering that is being constantly strengthened. The proposal for a Directive aims to counter money laundering by means of criminal law. The proposed Directive achieves this objective by implementing international obligations in this area based on the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005, CETS No 198 ("the Warsaw Convention"), as well as the relevant recommendations from the Financial Action Task Force (FATF).

II. Position of the Rapporteur

In general the proposal of the Commission is balanced, but there are a few areas that give rise to further reflection. One of them is transparency and openness, and issues in relation to privacy. Another is how to properly deal with supervision of financial institutions. A further question that merits consideration is how to ensure that the Directive properly respects fundamental rights.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) Money laundering and the ***associated*** financing of terrorism and organised crime remain significant problems at the Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal security and the internal market of the Union. In order to tackle those problems and ***also*** reinforce the application of Directive 2015/849/EU¹, this Directive

Amendment

(1) Money laundering and the ***related*** financing of terrorism and organised crime remain significant problems at the Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal security and the internal market of the Union. In order to tackle those problems and ***to complement and*** reinforce the application of Directive 2015/849/EU ***of the European Parliament***

aims to tackle money laundering by means of criminal law, allowing for better **cross-border** cooperation between competent authorities.

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p.73).

and of the Council¹, this Directive aims to tackle money laundering by means of criminal law, allowing for better **cross-border** cooperation between competent authorities **and with the Union agencies responsible, to improve the exchange of information and to identify those instigating terrorism.**

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p.73).

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, **would** have very limited effect. The measures adopted by the Union in countering money laundering should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora.

Amendment

(2) Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, have very limited effect. ***The current Union legal framework is neither comprehensive nor sufficiently coherent to be fully effective. While the Member States have criminalised money laundering, there are significant differences between them regarding the definition of money laundering, what constitutes predicate offences, and the level of sanctions. The differences in national legal frameworks can be exploited by criminals and terrorists, who can choose to carry out their financial transactions in Member States where they perceive measures to counter money laundering to be weakest.*** The measures

adopted by the Union in countering money laundering should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora.

This would create a strengthened Union legal framework making it possible to deal more effectively with terrorist funding and to reduce the threat from terrorist organisations by making it harder for them to finance their activities.

Amendment 3

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. The relevant Union legal acts should, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the ‘revised FATF Recommendations’). As a signatory to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), the Union should transpose the requirements of that Convention into its legal order.

Amendment

(3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international ***organisations and*** bodies active in the fight against money laundering and terrorist financing. The relevant Union legal acts should, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the FATF in February 2012 (the ‘revised FATF Recommendations’). As a signatory to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), the Union should transpose the requirements of that Convention into its legal order.

Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission

Amendment

(7) This Directive should not apply to money laundering as regards property derived from offences affecting the Union's financial interests, which is subject to specific rules as laid down in Directive 2017/XX/EU³. In accordance with Article 325(2) TFEU, the Member States *shall* take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

³ Directive 2017/XX/EU of the European Parliament and of the Council of x x 2017 on the protection of the Union's financial interests by means of criminal law (OJ x L, xx.xx.2017, p.x).

(7) This Directive should not apply to money laundering as regards property derived from offences affecting the Union's financial interests, which is subject to specific rules as laid down in Directive 2017/XX/EU³. ***Nevertheless, it should still be possible for Member States to transpose this Directive and Directive 2017/XX/EU by adopting a single comprehensive framework at national level.*** In accordance with Article 325(2) TFEU, the Member States ***are to*** take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

³ Directive 2017/XX/EU of the European Parliament and of the Council of x x 2017 on the protection of the Union's financial interests by means of criminal law (OJ x L, xx.xx.2017, p.x).

Amendment 5

Proposal for a directive Recital 8

Text proposed by the Commission

(8) Where money laundering activity does not simply amount to the mere possession or use, but also involves the transfer ***or the*** concealing ***and*** disguise of property through the financial system and results in further damage than that already caused by the predicate offence, such as damaging the integrity of the financial system, ***that activity should be punished separately. Member States should thus ensure that such conduct is also punishable when committed by the perpetrator of the criminal activity that generated that property (so-called self-laundering).***

Amendment

(8) ***Member States should thus ensure that certain types of money laundering activity are also punishable when committed by the perpetrator of the criminal activity through which the property was obtained (“self-laundering”).*** Where, ***in such cases,*** money laundering activity does not simply amount to the mere possession or use, but also involves the transfer, ***conversion,*** concealing ***or*** disguise of property through the financial system and results in further damage than that already caused by the predicate offence, such as damaging the integrity of the financial system, ***for example by putting into circulation the proceeds of criminal activity, thereby***

concealing the illegal provenance thereof, such activities should also be punishable.

Amendment 6

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) In order for money laundering to be an effective tool against organised crime, it should not be necessary to identify the specifics of the crime that generated the property, let alone require a prior or simultaneous conviction for that crime. Prosecutions for money laundering should also not be impeded by the mere fact that the predicate offence was committed in another Member State or third country, provided it is a criminal offence in that Member State or third country. Member States may establish as a prerequisite the fact that the predicate offence would have been a crime in its national law, had it been committed there.

Amendment

(9) In order for money laundering to be an effective tool against organised crime, it should not be necessary to identify the specifics of the crime that generated the property, let alone require a prior or simultaneous conviction for that crime. Prosecutions for money laundering should also not be impeded by the mere fact that the predicate offence was committed in another Member State or third country, provided it is a criminal offence in that Member State or third country. Member States may establish as a prerequisite the fact that the predicate offence would have been a crime in its national law, had it been committed there. ***This should not be interpreted as limiting the right to a fair trial.***

Amendment 7

Proposal for a directive

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) It is in the interests of justice that persons accused of an offence under this Directive have an opportunity to present their case and challenge the charges against them and have access to the submissions and evidence against them. While cases concerning terrorism and the financing of terrorism are of a serious nature, there is an overriding interest in the disclosure to persons of the essence of the case against them when they face the

prospect of coercive measures by the Member State so that they can give effective instructions to their lawyer or to the special lawyer. This Directive should also comply with the principle of equality of arms between the parties.

Amendment 8

Proposal for a directive Recital 11

Text proposed by the Commission

(11) In order to deter money laundering throughout the Union, Member States should lay down minimum types and levels of penalties when the criminal offences defined in this Directive are committed. Where the offence is committed within a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA⁴ **8 or** where the perpetrator abused their professional position to enable money laundering, Member States should provide for aggravating circumstances in accordance with the applicable rules established by their legal systems.

⁴ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42)

Amendment

(11) In order to deter money laundering throughout the Union, Member States should lay down minimum types and levels of penalties when the criminal offences defined in this Directive are committed. Where the offence is committed within a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA⁴, where the perpetrator abused their professional position to enable money laundering **or where the perpetrator is a politically exposed person**, Member States should provide for aggravating circumstances in accordance with the applicable rules established by their legal systems.

⁴ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42)

Amendment 9

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Member States should ensure that judges and courts have the possibility to take into account aggravating

circumstances as defined in this Directive when determining sentences for offenders, although there is no obligation to increase the penalty. It is for the judges and courts to decide, in view of all the facts of the case, whether to take into account aggravating circumstances. Member States are not required to adduce aggravating circumstances in cases where sentences for the offences defined in Framework Decision 2008/841/JHA are determined separately under national law and can result in more severe penalties.

Amendment 10

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Given the mobility of perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat money laundering, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute such activities. Member States should thereby ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology from their territory, whether or not based in their territory.

Amendment

(12) Given the mobility of perpetrators and proceeds stemming from criminal activities, as well as the complex cross-border investigations required to combat money laundering, all Member States should establish their jurisdiction in order to enable the competent authorities to investigate and prosecute such activities. Member States should thereby ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology from their territory, whether or not based in their territory. ***Under the international human rights law concept of jurisdiction, states that are contracting parties to human rights treaties are obliged to secure the rights for persons falling within their jurisdiction, even if such persons are outside their territory.***

Amendment 11

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In order to ensure the success of investigations and prosecution of money laundering offences, those responsible for investigating or prosecuting such offences should be given access to effective investigative tools such as those used to combat organised crime or other serious crimes. The use of such tools should, in accordance with national law, take into account the principle of proportionality and the nature and seriousness of the offence under investigation and respect the right to protection of personal data.

Amendment 12

Proposal for a directive Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Competent authorities, which supervise the compliance of credit and financial institutions with this Directive, should be able to cooperate with each other and exchange confidential information, regardless of their respective nature or status. To that end, such competent authorities should have an adequate legal basis for exchanging confidential information and should cooperate to the widest extent possible, in accordance with the applicable international standards in this field. Tax information involving registries of beneficial owners should be the basis of the automatic exchange of information between tax authorities and other relevant government regulatory and enforcement authorities.

Amendment 13

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Proposal for a directive
Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) In countering money laundering by means of criminal law, a high level of legal certainty as regards the respect for fundamental rights and, in particular, the rights of the accused should be ensured. In that respect, all measures taken by Member States should be proportionate and balanced.

Amendment 14

Proposal for a directive
Recital 12 d (new)

Text proposed by the Commission

Amendment

(12d) The principle of professional secrecy and the right to privacy and a fair trial should not be undermined or violated by the collection and transmission, based on a suspicion, of data or information concerning ordinary transactions that occur in the private life of individuals.

Amendment 15

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.

1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering ***in order to update the existing law and remedy any shortcomings identified.***

Amendment 16

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive fully respects the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment 17

Proposal for a directive
Article 2 – paragraph 1 – point 1 – point g

Text proposed by the Commission

Amendment

(g) illicit trafficking in stolen goods and other goods;

(g) illicit trafficking in stolen goods and other goods, ***such as trafficking of crude oil, weapons, narcotics, tobacco and tobacco products, precious metals and minerals, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or rare scientific value, and ivory and wildlife;***

Amendment 18

Proposal for a directive
Article 3 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity.

(c) the acquisition, possession, ***management*** or use of property, knowing at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity.

Amendment 19

Proposal for a directive
Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***In order for an offence referred to in paragraph 1 to be punishable, it shall not be necessary to establish:***

Amendment

2. ***For the purpose of implementing paragraph 1, each Member State shall ensure that:***

Amendment 20

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) a prior or simultaneous conviction for the criminal activity that generated the property;

Amendment

(a) ***it is not necessary that the establishment of*** a prior or simultaneous conviction for the criminal activity that generated the property ***be a precondition for sentencing perpetrators of the offences set out in paragraph 1;***

Amendment 21

Proposal for a directive

Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) the identity of the perpetrator of the criminal activity that generated the property or other circumstances relating to that criminal activity;

Amendment

(b) ***it is not necessary to establish*** the identity of the perpetrator of the criminal activity that generated the property or other circumstances relating to that criminal activity;

Amendment 22

Proposal for a directive

Article 3 – paragraph 2 – point c

Text proposed by the Commission

(c) whether the criminal activity that generated the property was carried out in the territory of another Member State or in that of a third country, when the relevant conduct is a criminal offence under the

Amendment

(c) ***it is not necessary to establish*** whether the criminal activity that generated the property was carried out in the territory of another Member State or in that of a third country, when the relevant conduct is

national law of the Member State or the third country where the conduct was committed and would be a criminal offence under the national law of the Member State implementing or applying this Article had it been committed there;

a criminal offence under the national law of the Member State or the third country where the conduct was committed and would be a criminal offence under the national law of the Member State implementing or applying this Article had it been committed there;

Amendment 23

Proposal for a directive Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *The knowledge, intent or purpose required as an element of an offence set out in paragraph 1 may be inferred from objective, factual circumstances.*

Amendment 24

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

Amendment

Each Member State shall ensure that inciting, aiding and abetting **and** attempting an offence referred to in Article 3 shall be punishable.

Each Member State shall **take the measures necessary to** ensure that inciting, aiding and abetting, **counselling the commission of, conspiring to commit, or** attempting an offence referred to in Article 3 shall be punishable.

Amendment 25

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. **Each** Member **State** shall ensure that the conduct referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive criminal

1. Member **States** shall ensure that the conduct referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive criminal penalties **in full respect for fundamental**

penalties.

rights.

Amendment 26

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Each Member State shall ensure that the offences referred to in Article 3 shall be punishable by a maximum term of imprisonment of at least four years, at least in serious cases.

Amendment

2. Each Member State shall ensure that the offences referred to in Article 3 shall be punishable by a maximum term of imprisonment of at least four years, at least in serious cases, ***corresponding to the gravity of the offence.***

Amendment 27

Proposal for a directive Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member State shall ensure that in cases of aggravating circumstances the maximum term of imprisonment is adjusted accordingly.

Amendment 28

Proposal for a directive Article 6 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the offender is a politically exposed person within the meaning of point (9) of Article 3 of Directive 2015/849/EU;

Amendment 29

Proposal for a directive Article 6 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(bb) money or property is used to directly fund or aid further criminal activities, such as terrorism.

Amendment 30

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

Each Member State shall ensure that a legal person held liable for offences pursuant to Article **6** shall be punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

Each Member State shall ensure that a legal person held liable for offences pursuant to Article **7** shall be punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

Amendment 31

Proposal for a directive

Article 8 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ***the*** exclusion ***of that legal person*** from entitlement to public benefits or aid;

(1) exclusion from entitlement to public benefits or aid;

Amendment 32

Proposal for a directive

Article 8 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) ***the*** temporary or permanent disqualification ***of that legal person*** from the practice of commercial activities;

(2) temporary or permanent disqualification from the practice of commercial activities;

Amendment 33

Proposal for a directive
Article 8 – paragraph 1 – point 4

Text proposed by the Commission

(4) judicial winding-up;

Amendment

(4) ***a*** judicial winding-up ***order***;

Amendment 34

Proposal for a directive
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Each Member State shall seek cooperation with the other Member States affected by the same offence, respecting the principle of good judicial cooperation in civil and commercial matters.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Countering money laundering by criminal law
References	COM(2016)0826 – C8-0534/2016 – 2016/0414(COD)
Committee responsible Date announced in plenary	LIBE 13.2.2017
Opinion by Date announced in plenary	JURI 13.2.2017
Rapporteur Date appointed	Kostas Chrysogonos 31.1.2017
Discussed in committee	29.5.2017
Date adopted	7.9.2017
Result of final vote	+: 20 –: 1 0: 0
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Isabella Adinolfi, Sergio Gaetano Cofferati, Luis de Grandes Pascual, Angel Dzhambazki, Rainer Wieland, Tiemo Wölken
Substitutes under Rule 200(2) present for the final vote	Gabriel Mato, Andrey Novakov

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
PPE	Gabriel Mato, Andrey Novakov, Axel Voss, Rainer Wieland, Tadeusz Zwiefka, Luis de Grandes Pascual
S&D	Sergio Gaetano Cofferati, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
VERTS/ALE	Max Andersson, Julia Reda

1	-
ECR	Angel Dzhambazki

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention