

AMENDMENTS 001-058

by the Committee on Civil Liberties, Justice and Home Affairs

Report**Ignazio Corrao****A8-0405/2017**

Countering money laundering by criminal law

Proposal for a directive (COM(2016)0826 – C8-0534/2016 – 2016/0414(COD))

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/EU³⁴, this Directive aims to tackle money laundering by means of criminal law, allowing for *better* cross-border cooperation between competent authorities.

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, *public safety and the individual safety of Union citizens*. In order to tackle those *growing* problems and *to complement and* reinforce the application of Directive (EU) 2015/849¹ *of the European Parliament and of the Council*, this Directive aims to tackle money laundering by means of criminal law, allowing for *more efficient and swifter* cross-border cooperation between *the* competent *national and Union* authorities *and with the Union agencies responsible, which will improve the exchange of information and allow the identification of the instigators of terrorism*.

³⁴ 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).

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 **of** 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 a predicate offence, 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 ***go beyond*** 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 Commission should carry out its own assessment regarding the efficiency of measures proposed by the FATF and the implementation and effectiveness of anti-money laundering measures in general. The FATF should undertake a revision of existing standards and an assessment of its own output and it should ensure regional representation, credibility, efficiency and better use of financial intelligence.*** The relevant Union legal acts should 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, ***as a matter of urgency***, transpose the requirements of that Convention into its legal order. ***Regardless of Union action in this field, Member States who signed but have not yet ratified the Convention should do so without delay.***

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Council Framework Decision 2001/500/JHA³⁵ lays down requirements on the criminalisation of money laundering. That Framework Decision is not comprehensive enough, however, and the current incrimination of money laundering is not sufficiently coherent to effectively combat money laundering across the Union, thus leading to enforcement gaps and obstacles in the cooperation between the competent authorities in different Member States.

³⁵ Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001).

Amendment

(4) Council Framework Decision 2001/500/JHA² lays down requirements on the criminalisation of money laundering. That Framework Decision is not comprehensive enough, however, and the current incrimination of money laundering is not sufficiently coherent to effectively combat money laundering across the Union, thus leading to enforcement gaps and obstacles in the cooperation between the competent authorities in different Member States. ***An example of such an enforcement gap is the increase in cybercrimes linked to money laundering and to the use of digital currencies, a type of offence which scarcely existed in the past.***

² Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001).

Amendment 5

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The definition of criminal activities which constitute predicate offences for money laundering should be sufficiently uniform in all the Member States. Member States should include a range of offences within each of the categories designated by the FATF. Where categories of offences, such as terrorism or environmental crimes, are set out in Union law, this Directive refers to such legislation. This ensures that the laundering of the proceeds of the financing of terrorism and wildlife

Amendment

(5) The definition of criminal activities which constitute predicate offences for money laundering should be sufficiently ***extended and*** uniform in all the Member States. ***Member States should apply the crime of money laundering to all offences that are punishable with imprisonment of a level defined in this Directive. To the extent that the application of those penalties thresholds does not already do so,*** Member States should include a range of offences within each of the categories

trafficking are punishable in the Member States. In cases where Union law allows Member States to provide for other sanctions than criminal sanctions, this Directive should not require Member States to establish those cases as predicate offences for the purposes of this Directive.

designated by the FATF, ***including tax evasion, fraud and avoidance, as well as any fraudulent behaviour involving the concealment of income or profits***. Where categories of offences, such as terrorism or environmental crimes, are set out in Union law, this Directive refers to such legislation. This ensures that the laundering of the proceeds of the financing of terrorism and wildlife trafficking are punishable in the Member States. ***Any kind of punishable involvement in the commission of a predicate offence or money laundering activity, such as participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling, should be considered as a criminal activity for the purposes of this Directive***. In cases where Union law allows Member States to provide for other sanctions than criminal sanctions, this Directive should not require Member States to establish those cases as predicate offences for the purposes of this Directive.

Amendment 6

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) For the purpose of this Directive, illicit trafficking in stolen goods and other goods means, inter alia, illicit trafficking in 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, as well as ivory and wildlife.

Amendment 7

Proposal for a directive Recital 6

Text proposed by the Commission

(6) Tax crimes relating to direct and indirect taxes should be included in the definition of criminal activity, in line with the revised FATF Recommendations. Given that different tax offences may in each Member State constitute a criminal activity punishable by means of the sanctions referred to in this Directive, definitions of tax crimes may diverge in national law. **However** no harmonisation of the definitions of tax crimes in Member States' national law is sought.

Amendment

(6) Tax crimes relating to direct and indirect taxes should be included in the definition of criminal activity, in line with the revised FATF Recommendations. Given that different tax offences may in each Member State constitute a criminal activity punishable by means of the sanctions referred to in this Directive, definitions of tax crimes may diverge in national law. **While** no harmonisation of the definitions of tax crimes in Member States' national law is sought, ***diverging definitions of tax crimes should not inhibit international cooperation in criminal proceedings regarding money laundering.***

Amendment 8

Proposal for a directive Recital 7

Text proposed by the Commission

(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.

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. ***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).

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 9

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 activity should also be punishable.**

Amendment 10

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

Amendment

(9) In order for **the countering of** money laundering **by criminal law measures** to be effective, **a conviction** should be **possible without it being** necessary to **establish precisely which predicate offence** generated the property, let alone require a prior or simultaneous conviction for that

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.***

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, ***subject to the conditions set out in this Directive.***

Amendment 11

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 12

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The task of deciding, in concrete and objective situations, whether there are concurrent crimes or a single crime should fall to the competent judicial bodies.

Amendment 13

Proposal for a directive Recital 10

Text proposed by the Commission

(10) This Directive aims to criminalise money laundering when committed intentionally. Intention and knowledge may be inferred from objective, factual circumstances. As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for money laundering. Member States may, for example, provide that money laundering committed recklessly or by serious negligence constitutes a criminal offence.

Amendment

(10) This Directive aims to criminalise money laundering when committed intentionally ***and with the knowledge that the property is derived from criminal activity***. Intention and knowledge may be inferred from objective, factual circumstances. ***In each case, when considering whether the property is derived from criminal activity and whether the accused person knew this, the specific circumstances of the case should be taken into account, such as that the value of the property is disproportionate to the lawful income of the accused person and that criminal activities and acquisition of property occurred within the same time frame.*** As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for money laundering. Member States may, for example, provide that money laundering committed recklessly or by serious negligence constitutes a criminal offence.

Amendment 14

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) It is important that information concerning the beneficial ownership of companies, trusts and other mechanisms be made publicly available in open-data formats in order to prevent anonymous shell companies and comparable legal entities from being used to launder money

to finance terrorist activities.

Amendment 15

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/JHA³⁷ **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.

³⁷ 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 or where the perpetrator abused their professional position to enable money laundering, ***or where the money or the property being laundered is derived from terrorist activities as defined in Directive (EU) 2017/541 of the European Parliament and the Council^{4a}, or where the offender is a Politically Exposed person as defined by Directive (EU) 2015/849***, 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)

^{4a} ***Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).***

Amendment 16

Proposal for a directive

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The Union and the Member States should provide the necessary legal measures for the protection of whistle-blowers that report information in relation to money laundering, including in third countries.

Amendment 17

Proposal for a directive

Recital 12

Text proposed by the Commission

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.

(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. ***To ensure the success of investigations and the prosecution of money laundering offences, those responsible for investigating or prosecuting such offences should make use of effective and improved investigative tools, such as those used in combating organised crime or other serious crimes. Those tools should be adapted to the latest evolutions in the fields of cybercrime and money laundering, including money laundering carried out through the use of bitcoins, cryptocurrencies and ransomware attacks. The use of such tools, in accordance with national law, should be targeted and take into account the principle of proportionality and the nature and seriousness of the offences***

under investigation and should respect the right to the protection of personal data. Member States should ensure that personnel receive adequate training. Furthermore, the cross-border nature of money laundering activities requires a strong coordinated response and cooperation within and between the Member States, as well as with and among the competent Union agencies and bodies, including Eurojust and Europol, in order to counter money laundering. To that end, efficient use should be made of the available tools and resources for cooperation, such as joint investigation teams and coordination meetings facilitated by Eurojust. The global character of money laundering necessitates international action, requiring the Union and its Member States to strengthen cooperation with relevant third countries.

Amendment 18

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Money laundering, corruption, illicit financial flows and tax evasion and avoidance remain an obstacle to sustainable development, disproportionately affect developing countries and constitute a serious threat to their future. The Union, Member States and third countries have a shared responsibility to improve the coordination of measures taken to counter such negative and harmful conduct and align those measures with their development strategies and policies.

Amendment 19

**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 20

**Proposal for a directive
Recital 12 c (new)**

Text proposed by the Commission

Amendment

(12c) 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 21

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

This Directive respects the principles recognised by Article 2 TEU, respects fundamental rights and freedoms and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, including those set out in Titles II, III, V and VI which encompass, inter alia, the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the right to respect for private and family life, and the right to protection of personal data and the presumption of innocence, as well as the rights of suspects and accused persons to have access to a lawyer, the right not to incriminate one-self and the right to a fair trial. This Directive must be implemented in accordance with those rights and principles, also taking into account the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well the International Covenant on Civil and Political Rights, and other human rights obligations under international law.

Amendment 22

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

Text proposed by the Commission

Amendment

(b) terrorism, including any *of the* offences set out in Directive **2017/XX/EU**⁴⁰ ;

(b) terrorism, including any *relevant* offences set out in Directive (**EU**) **2017/541**;

⁴⁰ *Directive 2017/XX/EU of the European Parliament and of the Council of X X 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism (OJ x L, xx.xx.2017, p. x).*

Amendment 23

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) tax crimes relating to direct taxes and indirect taxes as defined by national law;

Amendment 24

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point v

Text proposed by the Commission

Amendment

(v) all offences, ***including tax crimes relating to direct taxes and indirect taxes as defined in the national law of the Member States***, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

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

Amendment 25

Proposal for a directive

Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the conversion or transfer of property, knowing that such property is

(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;

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, ***even if that assistance is given only*** to evade the legal consequences of that person's action;

Amendment 26

Proposal for a directive

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(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.

Amendment

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

Amendment 27

Proposal for a directive

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Each Member State shall ensure that the conduct referred to in paragraph 1 shall be a punishable criminal offence, when:

(a) the offender suspected or ought to have known that the property was derived from criminal activity or from an act of participation in such activity; and

(b) the offender has a contractual relationship with, and a responsibility towards, an obliged entity or is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849.

Amendment 28

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

Amendment 29

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) a prior or simultaneous conviction for the criminal activity that generated the property, ***where a judicial authority is convinced beyond any reasonable doubt and on the basis of specific circumstances and all the available evidence that the property derives from activities of a criminal nature;***

Amendment 30

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) the identity of the perpetrator of the criminal activity that generated the property;

Amendment 31

Proposal for a directive
Article 3 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) all the factual elements or all circumstances relating to the criminal

activity, where it is established that property has been derived from such activity;

Amendment 32

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 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

(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 ***activity*** under the national law of the Member State implementing or applying this Article had it been committed there. ***Member States may further require that the relevant conduct constitute a criminal offence under the national law of the other Member State or the third country where the conduct was committed, except where:***

- the relevant conduct constituted one of the crimes referred to in points (a) to (ha) and (l) to (n) of Article 2(1),***
- that third country is identified by the Commission as being ‘high risk’ within the meaning of Article 9 of Directive (EU) 2015/849.***

Amendment 33

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 ***five*** years.

Amendment 34

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

Text proposed by the Commission

Amendment

2a. Each Member State shall ensure that the offences referred to in Article 3 are punishable by a minimum term of imprisonment of at least two years where one of the aggravating factors referred to in Article 6 applies.

Amendment 35

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

Text proposed by the Commission

Amendment

2b. Each Member State shall ensure that the offences referred to in Article 4 shall be punishable by a maximum term of imprisonment of at least three years.

Amendment 36

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

Text proposed by the Commission

Amendment

2c. Each Member State shall take measures to ensure that natural persons who are responsible for the crimes referred to in Articles 3 and 4, including where those natural persons have acted through a legal person, are also liable to additional penalties, such as:

- (a) a temporary or permanent ban on entering into contracts with public authorities;**
- (b) temporary disqualification from the practice of commercial activities;**
- (c) where the conviction is final, a long-**

term ban on running for elected offices or holding a position of public servant where long-term is defined as the equivalent of two consecutive mandates or a minimum of ten years.

Amendment 37

Proposal for a directive Article 6 – paragraph 1 – point a

Text proposed by the Commission

(a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841¹; *or* ;

¹ *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

(a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/**JHA**;

Amendment 38

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

Text proposed by the Commission

(aa) *the property being laundered is derived from one of the crimes referred to in points (a) to (d) and points (f) and (m) of point (1) of Article 2, or the purpose of the laundering is to finance such crimes;*

Amendment 39

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

Text proposed by the Commission

(ab) *the offence was committed in whole or in part on the territory of a non-*

Amendment

cooperative jurisdiction listed by the Union or involving the use of an informal value transfer system, bearer shares, virtual currencies or cash couriers;

Amendment 40

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

Text proposed by the Commission

Amendment

(ac) the offender is a politically exposed person in accordance with the laws, regulations and administrative provisions transposing point (9) of Article 3 of Directive (EU) 2015/489; or

Amendment 41

Proposal for a directive Article 6 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the offender has a contractual relationship and a responsibility towards an obliged entity or is an obliged entity within the meaning of Article 2 of Directive 2015/849/EU and has committed the offence in the exercise of *their* professional activities.

(b) the offender has a contractual relationship and a responsibility towards an obliged entity or is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 and has committed the offence in the exercise of their professional activities;
or

Amendment 42

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

Text proposed by the Commission

Amendment

(ba) the property or money being laundered is of a value equal to or exceeding EUR 500 000.

Amendment 43

Proposal for a directive

Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

1. Each Member State shall ensure that legal persons can be held liable for any of the offences referred to in Articles 3 and 4 committed for the benefit of **those** legal persons by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

Amendment

1. Each Member State shall ensure that legal persons can be held liable for any of the offences referred to in Articles 3 and 4 committed for **their benefit or for** the benefit of **other natural or** legal persons by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:

Amendment 44

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 3 and 4 for the benefit of **that** legal **person** by a person under its authority.

Amendment

2. Member States shall ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 3 and 4 **for their benefit or** for the benefit of **other natural or** legal **persons** by a person under its authority.

Amendment 45

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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:

sanctions, such as:

Amendment 46

Proposal for a directive

Article 8 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

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

Amendment 47

Proposal for a directive

Article 8 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) a temporary or permanent ban on that legal person from entering into contracts with the public authorities;

Amendment 48

Proposal for a directive

Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8 a

Confiscation of property and of the proceeds of criminal activities

1. Each Member State shall provide for the confiscation of all property and proceeds derived from, and instrumentalities used or intended to be used in the commission of, any criminal activity as defined in this Directive, in accordance with Directive 2014/42/EU of the European Parliament and of the Council ^{1a}.

2. Each Member State shall provide for the confiscation of all property and

proceeds derived from, and instrumentalities used or intended to be used in the commission of, any criminal activity as defined in this Directive without a final criminal conviction where the case has lapsed due to the death of the offender.

3. This Article shall apply irrespective of whether the money laundering offence or the predicate offence was committed by a natural or a legal person.

4. Member States shall take the necessary measures to ensure cooperation in the freezing and confiscation of property derived from, and instrumentalities used or intended to be used in the commission or contribution to the commission of, any of the offences referred to in this Directive and, where appropriate, may refer to Eurojust and Europol for a swift and effective cooperation in accordance with Article 10.

^{1a} 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 L 127, 29.4.2014).

Amendment 49

Proposal for a directive Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the offender is one of its nationals.

Amendment

(b) the offender is one of its nationals *or a habitual resident; or*

Amendment 50

Proposal for a directive Article 9 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the offence is committed for the benefit of a natural or legal person established in its territory;

Amendment 51

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 3 and 4 committed outside its territory where:

deleted

(a) the offender is a habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory.

Amendment 52

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

Text proposed by the Commission

Amendment

2a. Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State and where any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offender, with the aim of centralising proceedings in a single Member State.

Account shall be taken of the following factors, in order of priority:

(a) the territory of the Member State

where the offence was committed;

(b) the nationality or residency of the offender;

(c) the country of origin of the victims

(d) the territory where the offender was found.

Member States may have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their actions.

Amendment 53

Proposal for a directive Article 10 – title

Text proposed by the Commission

Investigative tools

Amendment

Investigative tools ***and cooperation***

Amendment 54

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

Each Member State shall ensure that effective investigative tools, such as those used in countering organised crime or other serious crimes are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4.

Amendment

1. Each Member State shall ensure that effective investigative tools, ***sufficient personnel and adequate targeted training, resources and technological capacity*** such as those used in countering organised crime or other serious crimes are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4. ***Such tools and training shall be adapted to the latest evolutions in the field of cybercrime and money laundering***

Amendment 55

Proposal for a directive Article 10 – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. Member States shall take the necessary measures to improve data exchange and cooperation within the Union and to increase cooperation with third countries and international organisations countering money laundering and terrorist financing, while ensuring better coordination between themselves and the relevant Union institutions, bodies, offices and agencies, in order to efficiently combat money laundering and encourage third countries, in particular those identified by the Commission as being high-risk third countries within the meaning of Article 9 of Directive (EU) 2015/849, to adopt similar measures and reforms. In addition, each Member State shall undertake to carry out actions to improve the exchange of information at both Union and international level between Financial Information Units.

Amendment 56

Proposal for a directive Article 10 – paragraph 1b (new)

Text proposed by the Commission

Amendment

1b. Member States shall take the necessary measures to ensure that they do not refuse international cooperation in criminal proceedings regarding money laundering on the basis that its national law only considers tax evasion or fraud above a significant amount of undeclared amounts or unpaid taxes or the systematic use of fraudulent manoeuvres as constituting a criminal activity or a criminal offence.

Amendment 57

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after adoption] at the latest. They shall immediately communicate the text of those provisions to the Commission.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after adoption] at the latest. They shall immediately communicate the text of those provisions to the Commission.

Amendment 58

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

The Commission shall, by [24 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

Amendment

The Commission shall, by [12 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

The Commission shall also, by [36 months after the deadline for implementation of this Directive], submit a report to the European Parliament and to the Council assessing the added value of this Directive in countering money laundering. The report shall also cover the impact of this Directive on fundamental rights and freedoms including the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence or the right not to be tried or punished twice in criminal proceedings for the same criminal offence. On the basis of that report, the Commission shall, if necessary, decide on appropriate follow-up actions.