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*Committee on Development*

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**2016/0414(COD)**

26.7.2017

## **DRAFT OPINION**

of the Committee on Development

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: Ignazio Corrao

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## AMENDMENTS

The Committee on Development 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 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 bodies active in the fight against money laundering and terrorist financing. 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.

Or. it

### Amendment 2

#### 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

###### *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.***

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.

Or. it

### Amendment 3

#### 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 ***define*** money laundering ***as an intentional crime***. 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.

Or. it

### Amendment 4

#### Proposal for a directive Article 3 – title

*Text proposed by the Commission*

*Amendment*

Money laundering offences

*(Does not affect the English version.)*

Or. it

## **Amendment 5**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Each Member State shall ensure that the following conduct shall be a punishable criminal offence, ***when committed intentionally***:

1. Each Member State shall ensure that the following conduct shall be a punishable criminal offence:

Or. it

## **Amendment 6**

### **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 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;

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

Or. it

## Amendment 7

### 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 that such property was derived from criminal activity or from an act of participation in such an activity.

Or. it

## Amendment 8

### 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, ***in which connection it is sufficient merely for the value of the property itself to be disproportionate to the income of its owner, the burden of proof to demonstrate the origin of the property in legal proceedings being incumbent on the latter;***

Or. it

## Amendment 9

### Proposal for a directive

#### Article 3 – paragraph 2 – point c a (new)

##### *Text proposed by the Commission*

##### *Amendment*

***(ca) whether the criminal activity that generated the property was carried out in***

*the territory of a third country, when, under the national law of the Member State transposing this Article, the relevant conduct, had it been committed there, would have been a criminal offence falling into the categories of terrorism or financing of terrorism, organised crime, corruption, trafficking in human beings, sexual exploitation, enslavement or tax evasion;*

Or. it

## **Amendment 10**

### **Proposal for a directive**

#### **Article 3 – paragraph 2 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

*(cb) whether the criminal activity that generated the property was carried out in the territory of a third country identified by the Commission as being ‘high risk’, as referred to in Article 9 of Directive (EU) 2015/849, if the relevant conduct would have been a criminal offence under the national law of the Member State transposing this Article had it been committed there;*

Or. it

## **Amendment 11**

### **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,

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

proportionate and dissuasive criminal penalties.

effective, proportionate and dissuasive criminal penalties.

Or. it

## **Amendment 12**

### **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.

Or. it

## **Amendment 13**

### **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 is applicable.***

Or. it

## **Amendment 14**

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



*Text proposed by the Commission*

*Amendment*

**2b.** *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 they have acted under cover of a legal person, are also liable to additional penalties, such as:*

*(a) a permanent ban on entering into contracts with the public authorities;*

*(b) temporary or permanent disqualification from the practice of commercial activities.*

Or. it

## **Amendment 15**

**Proposal for a directive**

**Article 6 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) the money or property that is being laundered is derived from terrorist activities or arms trafficking or the purpose of the laundering is to finance terrorist activities or arms trafficking.*

Or. it

## **Amendment 16**

**Proposal for a directive**

**Article 6 – paragraph 1 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

*(bb) the property or money being laundered is of a value equal to or*

*exceeding EUR 500 000.*

Or. it

## **Amendment 17**

### **Proposal for a directive**

#### **Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. a permanent ban on entering into contracts with the public authorities;***

Or. it

## **Amendment 18**

### **Proposal for a directive**

#### **Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 8a***

#### ***Seizure of the proceeds of criminal activities***

***1. Each Member State shall provide for seizure of all property and proceeds derived from criminal acts as defined in Article 2 in the following cases:***

***(a) where commission of the crime of money laundering as defined in this Directive has been confirmed by a judgment which has become final in a Member State; or***

***(b) the crime from which the proceeds are derived (predicate offence) has been confirmed by a judgment delivered in a Member State or a third country, including where the offence has subsequently been declared no longer subject to prosecution due to lapse of***

*time.*

**2. This article shall apply irrespective of whether the laundering or the predicate offence have been committed by a natural or a legal person.**

Or. it

## **Amendment 19**

### **Proposal for a directive**

#### **Article 9 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) the perpetrator of the crime resides or is staying in the territory of that Member State and is not a citizen of another Member State;**

Or. it

## **Amendment 20**

### **Proposal for a directive**

#### **Article 9 – paragraph 1 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

**(bb) the offence is committed for the benefit of a legal person established in its territory;**

Or. it

## **Amendment 21**

### **Proposal for a directive**

#### **Article 9 – paragraph 1 – point b c (new)**

*Text proposed by the Commission*

*Amendment*

*(bc) the property being laundered or the proceeds from laundering are located in its territory or within its jurisdiction.*

Or. it

## **Amendment 22**

### **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.**

Or. it

## **Amendment 23**

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

*Text proposed by the Commission*

*Amendment*

**2a. Each Member State shall adopt legislation capable of resolving effectively and speedily any positive or negative conflict of jurisdiction.**

Or. it

## Amendment 24

### 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, 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; ***these should include adequate resources and staff and specific, targeted training.***

Or. it

## Amendment 25

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

*Text proposed by the Commission*

*Amendment*

**1a.** ***Each Member State shall adopt effective measures to intensify dialogue and cooperation with third countries and increase coordination between the Union and Member States to combat money laundering and to encourage, particularly in developing countries, reforms with a view to effective measures against money laundering and effective international cooperation regarding it, in accordance with the principle of sincere cooperation.***

Or. it

## **Amendment 26**

### **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.

Or. it

## **Amendment 27**

### **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.

Or. it