



**2016/0414(COD)**

7.11.2017

# **OPINION**

of the Committee on Economic and Monetary 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: Eva Joly

PA\_Legam

## AMENDMENTS

The Committee on Economic and Monetary 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/EU<sup>1</sup>, this Directive aims to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.

---

<sup>1</sup> 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*

(1) Money laundering and the **related** financing of terrorism and organised crime remain **very** 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 **and undermining trust among market players**. In order to tackle **those serious and urgent** problems and also reinforce the application of Directive 2015/849/EU<sup>1</sup>, this Directive aims to tackle money laundering by means of criminal law, allowing for better, **faster and more efficient** cross-border cooperation between competent authorities.

---

<sup>1</sup> 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 3

(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.

(3) Union action should ***go beyond*** the Financial Action Task Force (FATF) Recommendations and instruments of other international 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, 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**

#### **Proposal for a directive Recital 5**

(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,

(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 include a range of offences within each of the categories designated by the FATF, ***including tax evasion, fraud and***

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. 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.

*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. 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 4

##### 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 *or all the circumstances or factual elements relating to the criminal activity*, 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 *should also be able to* establish as a prerequisite the fact that the *relevant conduct* would have been a *predicate offence* in its national law, had it been committed there. *However, insofar as the relevant conduct constitutes a certain type of serious crime, Member States should not require that the relevant conduct be a criminal offence in the Member State or*

*country where that conduct took place.*

## Amendment 5

### 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/JHA<sup>37</sup> **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**.

##### *Amendment*

(11) In order to deter money laundering throughout the Union, Member States should lay down ***in a catalogue*** minimum types and levels of ***clearly defined*** penalties when the criminal offences defined in this Directive are committed. ***Minimum types and levels of penalties should also be laid down with respect to inciting, aiding and abetting the commission of such criminal offences. Member States should provide for aggravating circumstances in accordance with the applicable rules established by their legal systems in the following circumstances:*** the offence is committed within a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA<sup>37</sup>; the perpetrator ***abuses his or her*** professional position to enable money laundering; ***the money or property being laundered is derived from terrorist activities as defined in Directive 2017/541 of the European Parliament or of the Council<sup>37a</sup> or illicit arms trafficking; or the offender is a politically exposed person as defined by Directive 2015/849 or involved in corruption of elected officials.*** Member States should ***calculate the amount of fines*** in accordance with the ***gross principle, i.e. based on the profit stemming from the criminal action without deducting any costs incurred, so as to ensure that the penalty is higher than the economic value of the crime.*** ***Member states shall make arrangements for the effective implementation of those penalties.***

<sup>37</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42)

<sup>37</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42)

<sup>37a</sup> ***Directive 2017/541 of the European Parliament or 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 6**

### **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 7**

### **Proposal for a directive Article 2 – paragraph 1 – point 1 – point p a (new)**

*Text proposed by the Commission*

*Amendment*

***(pa) tax crimes relating to direct taxes and indirect taxes, including evading taxes by concealing income, earned legally or illegally, from detection and collection by the tax authorities;***

## **Amendment 8**

### **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 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 9

### 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 ***either*** at the time of ***the*** receipt ***or subsequently that such property*** was derived from criminal activity or from an act of participation in such activity,

## Amendment 10

### 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 ***from which*** the property ***was derived as referred to in paragraph 1***;

## Amendment 11

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

***(ba) all the circumstances or factual elements relating to a criminal activity,***



*where it is established that the property was derived from such activity as referred to in paragraph 1;*

## **Amendment 12**

### **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 *would constitute* a criminal *activity* under the national law of the Member *implementing or applying this Article had it been carried out there. Member States may, however, require that the relevant conduct, insofar as it does not fall within the categories referred to in points (a) to (d) and points (h), (l) and (pa) of point (1) of Article 2, constitute* a criminal offence under the national law of the *other* Member State *or of the third country;*

## **Amendment 13**

### **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 high-risk third country as referred to in Directive 2015/849, when the relevant conduct would constitute a criminal activity under the national law of the Member State implementing or applying this Article had it been carried out there;*

## **Amendment 14**

**Proposal for a directive**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

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 penalties.

*Amendment*

1. Member *States* shall ensure that the **criminal activities** referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive criminal penalties, **including fines based on the gross value of the total amount stemming from criminal activity**. Member *States* shall ensure respect for fundamental rights and the general principles of criminal law that protect the rights of defence and of the accused.

**Amendment 15**

**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 16**

**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 4 are punishable by a maximum term of imprisonment of at least three years.*

**Amendment 17**

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

*Text proposed by the Commission*

*Amendment*

**2b. Each Member State shall also ensure that the offences referred to in Articles 3 and 4 may be punishable, at the judge's discretion, by complementary, temporary or permanent sanctions including:**

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

**(b) a disqualification from the practice of certain commercial activities; and**

**(c) a ban on running for elected offices.**

## **Amendment 18**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

**(ba) the laundered money or property is derived from terrorist activities as defined in Directive 2017/541 or illicit arms trafficking;**

## **Amendment 19**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

**(bb) the offender is a politically exposed person as defined by Directive 2015/849 or involved in the corruption of elected officials; or**

## **Amendment 20**

**Proposal for a directive**

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

*(bc) the criminal activity was committed and funded by offshore companies; letterbox companies are involved in the criminal acts; illegal transfers of funds have taken place; money couriers and NGOs have been involved; there is a presumption of a professional activity as a money launderer if the person concerned is, for example, active in more than two money laundering syndicates or criminal groups.*

## **Amendment 21**

### **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 **a third person** 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 22**

### **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 **a third** person by a person under its authority.

## Amendment 23

### 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 sanctions, **such as**:

##### *Amendment*

***With strict respect for fundamental rights and the general principles of criminal law that protect the rights of defence and of the accused,*** 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 **and** non-criminal fines, **based on the gross value of the total amount stemming from criminal activity,** and **shall, at the judge's discretion,** include other **temporary or permanent** sanctions, **including**:

## Amendment 24

### 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 ***positions, contracts benefits or aid, including Union-related*** benefits or aid;

## Amendment 25

### Proposal for a directive

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

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

##### *Amendment*

***(1a) the exclusion of that person from entitlement to Union funds;***

## Amendment 26

**Proposal for a directive**  
**Article 8 – paragraph 1 – point 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**(1b) a ban on entering into contracts with public authorities;**

**Amendment 27**

**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) the temporary or permanent disqualification of that legal person from the practice of commercial activities, **including the withdrawal of business licences;**

**Amendment 28**

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

*Text proposed by the Commission*

*Amendment*

(a) the offence is committed in whole or in part in its territory;

(a) the offence is committed in whole or in part in its territory; **or**

**Amendment 29**

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

*Text proposed by the Commission*

*Amendment*

(b) the offender is one of its nationals.

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

**Amendment 30**

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

*Text proposed by the Commission*

*Amendment*

***(ba) the offence is committed outside its territory but the offender is a habitual resident in its territory; or***

## **Amendment 31**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 32**

**Proposal for a directive**

**Article 9 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where an offence 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, Member States shall take into account the following factors, listed in order of priority, in order to decide which of them will prosecute the offenders:***

***(a) the Member State in which the offence was committed;***

***(b) the nationality or residency of the offender;***

***(c) the country of origin of the victims;***

***(d) the Member State where the offender was found.***

## Amendment 33

### Proposal for a directive

#### Article 9 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***1b. Member States may have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their action.***

## Amendment 34

### 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 35

### Proposal for a directive

#### Article 10 – title

*Text proposed by the Commission*

*Amendment*

Investigative tools

Investigative tools ***and cooperation***

## Amendment 36

### Proposal for a directive

#### Article 10 – paragraph 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.

**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.

**2.** *Member States shall ensure, as soon as possible, the availability of adequate and sufficient financial resources and personnel, who shall be properly trained, to investigate and prosecute the offences referred to in Articles 3 and 4.*

**3.** *Member States shall ensure effective cooperation between the relevant authorities in each country and shall ensure that their national authorities investigating or prosecuting offences referred to in Articles 3 and 4 are empowered to cooperate with other national authorities and their counterparts in other Member States, as well as with the Union institutions.*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Countering money laundering by criminal law						
<b>References</b>	COM(2016)0826 – C8-0534/2016 – 2016/0414(COD)						
<b>Committee responsible</b> Date announced in plenary	LIBE 13.2.2017						
<b>Opinion by</b> Date announced in plenary	ECON 13.2.2017						
<b>Rapporteur</b> Date appointed	Eva Joly 11.4.2017						
<b>Date adopted</b>	6.11.2017						
<b>Result of final vote</b>	<table> <tr> <td>+: </td><td>41</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>2</td></tr> </table>	+:	41	–:	0	0:	2
+:	41						
–:	0						
0:	2						
<b>Members present for the final vote</b>	Hugues Bayet, Pervenche Berès, Esther de Lange, Markus Ferber, Jonás Fernández, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Petr Ježek, Othmar Karas, Wajid Khan, Georgios Kyrtos, Werner Langen, Bernd Lucke, Olle Ludvigsson, Fulvio Martusciello, Gabriel Mato, Bernard Monot, Luděk Niedermayer, Anne Sander, Alfred Sant, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Marco Valli						
<b>Substitutes present for the final vote</b>	Enrique Calvet Chambon, Mady Delvaux, Eva Joly, Jan Keller, Alain Lamassoure, Thomas Mann, Miguel Urbán Crespo, Lieve Wierinck						
<b>Substitutes under Rule 200(2) present for the final vote</b>	Pascal Durand, Maria Heubuch, Carlos Iturgaiz, Gabriele Preuß						

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<b>41</b>	<b>+</b>
ALDE	Enrique Calvet Chambon, Petr Ježek, Ramon Tremosa i Balcells, Lieve Wierinck
ECR	Bernd Lucke
EFDD	Marco Valli
GUE/NGL	Miguel Urbán Crespo
PPE	Markus Ferber, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Carlos Iturgaiz, Othmar Karas, Georgios Kyrtos, Alain Lamassoure, Werner Langen, Thomas Mann, Fulvio Martusciello, Gabriel Mato, Luděk Niedermayer, Anne Sander, Theodor Dumitru Stolojan, Esther de Lange
S&D	Hugues Bayet, Pervenche Berès, Mady Delvaux, Jonás Fernández, Neena Gill, Roberto Gualtieri, Jan Keller, Wajid Khan, Olle Ludvigsson, Gabriele Preuß, Alfred Sant, Pedro Silva Pereira, Peter Simon, Paul Tang
Verts/ALE	Pascal Durand, Maria Heubuch, Eva Joly, Molly Scott Cato

<b>0</b>	<b>-</b>
----------	----------

<b>2</b>	<b>0</b>
ECR	Kay Swinburne
ENF	Bernard Monot

Key to symbols:

+ : in favour

- : against

0 : abstention