



2016/0414(COD)

13.10.2017

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

PA_Legam

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 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.

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).

Amendment

(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 **this urgent problem** 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.

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).

Amendment 2

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

**Proposal for a directive
Recital 7 a (new)**

Text proposed by the Commission

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.

Amendment

(7a) Humanitarian aid is vital and is designed to provide, at a global level, aid and assistance to people in need. Measures aimed at tackling money laundering, the financing of terrorism and tax evasion should not prevent persons and organisations from providing humanitarian aid to persons in need.

Amendment 4

**Proposal for a directive
Recital 9**

Text proposed by the Commission

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.***

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

Amendment 5

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 6

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 7

Proposal for a directive Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Remittances represent an important contribution to family and community development and have de facto become a major source of external development finance. While recognising the importance of tackling tax evasion, the measures taken in that regard should not impede international remittance transfers. Such an impediment could adversely affect the human rights of people living in developing countries. It is crucial that the Union enforces counterterrorism policies so that remittances go to the right channels, and that it strengthens the formal remittance infrastructure, including by supporting access to banking services and shifting flows from the informal sector to the formal sector thereby contributing to the prevention of terrorism.

Amendment 8

Proposal for a directive Article 3 – title

Text proposed by the Commission

Amendment

Money laundering offences

(Does not affect the English version.)

Amendment 9

Proposal for a directive

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 10

Proposal for a directive

Article 3 – paragraph 1 – point a

Text proposed by the Commission

(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;

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

Amendment 11

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 **of the property and of its use in an economic or financial activity**, that such property was derived from criminal activity or from an act of participation in such an activity.

Justification

La consapevolezza circa l'illecita provenienza del bene potrebbe intervenire solo in un momento successivo rispetto alla ricezione del bene. In tal caso, la condotta di chi impieghi in attività economica o finanziaria un bene di origine illecita, essendo consapevole - al momento del suo impiego - della illecita provenienza dello stesso, appare comunque sanzionabile. La formulazione proposta (che si ispira al dettato dell'art. 648 ter del Codice Penale italiano) esclude comunque la sanzionabilità del mero godimento del provento dell'illecito, qualora non si avesse consapevolezza della sua provenienza illecita al momento della sua ricezione.

Amendment 12

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ca) whether the criminal activity from which the property derives was carried out in the territory of a third country, where, under the national law of the Member State implementing or applying 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, trafficking in waste or trafficking in wild species, or a tax offence;

Justification

Introducing dual criminal liability for certain offences would favour criminal activities or criminal groups which exploit loopholes in the law of certain third countries, in order then to invest the proceeds in Europe. The offences listed are so serious and the illegal nature of the conduct so obvious that the fact of having engaged in it in a legal order which does not define it as criminal is not such as to permit the invocation of the principle 'nullum crimen sine lege'.

Amendment 13

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Each Member State shall ensure

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that the conduct referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive criminal penalties.

that the conduct referred to in Articles 3 and 4 shall be punishable by ***autonomous***, effective, proportionate and dissuasive criminal penalties ***with strict respect for fundamental rights and the general principles of the criminal law which protect the rights of defence and of the accused.***

Amendment 14

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.

Amendment 15

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

Text proposed by the Commission

Amendment

2a. 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 temporary or permanent ban on entering into contracts with public authorities, excluding employment contracts;

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

Amendment 16

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

Text proposed by the Commission

Amendment

2b. *The Commission shall arrange for the harmonisation and coordination of the degree of severity of the penalties, both minimum and maximum, provided for in this field in the national laws of Member States, with due regard for the specific features of the legal system of each Member State.*

Amendment 17

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

Text proposed by the Commission

Amendment

2c. *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 18

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 derives from terrorist activities or arms trafficking or the purpose of the laundering is to finance terrorist activities or arms trafficking.*

Amendment 19

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.

Amendment 20

Proposal for a directive

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

Each Member State shall ensure that a legal person held liable for offences pursuant to Article 6 shall be punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, ***with strict respect for fundamental rights and the general principles of the criminal law which protect the rights of defence and of the accused***, such as:

Amendment 21

Proposal for a directive

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

Text proposed by the Commission

Amendment

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

Amendment 22

Proposal for a directive

Article 8 a (new)

Article 8a

Seizure of property and of the proceeds of criminal activities

1. Each Member State shall ensure that all property and proceeds derived from criminal activity as defined in Article 2 will be seized where, on the basis of the circumstances of the case and taking account of the specific facts and the available evidence, including, for example, the fact that the value of the property is disproportionate to the legitimate income of the person convicted, the judicial authorities are convinced that the property in question derives from criminal conduct in any of the following cases:

(a) the offence of money laundering as defined in this Directive has been committed as demonstrated by a conviction that has the force of res judicata in a Member State or, on account of a conviction that is not final, the time limit for conviction of the offender has passed or the case has lapsed due to the death of the offender; or

(b) the offence from which the proceeds derive (predicate offence) has been committed as demonstrated by a conviction handed down in a Member State or a third country or, on account of a conviction that is not final, the time limit for conviction of the offender has passed or the case has lapsed due to the death of the offender.

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

Amendment 23

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;

Amendment 24

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;

Amendment 25

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.

Amendment 26

Proposal for a directive

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

Text proposed by the Commission

Amendment

(bd) the offender was arrested in its

territory.

Amendment 27

Proposal for a directive Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9 a

Jurisdiction of more than one Member State

1. In order to facilitate cooperation between their judicial authorities and to coordinate their action, Member States shall ensure that cross-border cooperation and exchange of information is improved, including through Eurojust .

2. Each Member State shall adopt legislation ensuring that it is possible to resolve effectively and speedily any positive or negative conflict of jurisdiction. Where an offence falls within the jurisdiction of more than one Member State and can be prosecuted in more than one of those Member States on the basis of the same facts, those Member States shall cooperate in order to decide which of them is to have jurisdiction with the aim, if possible, of centralising proceedings in that Member State.

The Member States referred to in the first subparagraph shall include all Member States having jurisdiction or having established their jurisdiction in accordance with Article 9.

Amendment 28

Proposal for a directive Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Return of illegal funds and assets to the country of origin

Member States shall take all the necessary measures to return the funds and the assets which result from, or are the subject of, illegal activity to the third country of origin. Those funds and assets shall be returned to developing countries of origin provided that they are used to:

(a) improve the living conditions of the population of those countries, in particular the most vulnerable people on their territory,

(a) strengthen the rule of law in those countries with the aim of contributing to the fight against money laundering, the financing of terrorism and other criminal acts.

Amendment 29

**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

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 shall include adequate resources and staff and specific, targeted training.***

Amendment 30

**Proposal for a directive
Article 10 a (new)**

Text proposed by the Commission

Amendment

Article 10a

*Cooperation between Member States and
with the Union and third countries*

1. Each Member State shall adopt effective measures to increase coordination and exchange of information and cross-border cooperation between Member States and with the Union in order to prevent regulatory arbitrage, to intensify dialogue and cooperation with third countries, including by developing effective communication, and to combat money laundering.

2. Member States shall step up cooperation with third countries, in particular to promote good practices that aim at strengthening their financial systems. Member States shall encourage reforms with a view to implementing effective measures and mechanisms to counter money laundering and to develop effective international cooperation regarding money laundering, in accordance with the principle of sincere cooperation.

3. The Commission shall consider ways of improving international cooperation and supporting developing countries by means of effective measures, in particular the establishment of technical assistance programmes, in order to enable developing countries to improve their administrative and legal systems with the aim of combating money laundering more effectively.

Amendment 31

**Proposal for a directive
Article 12 – paragraph 1**

Text proposed by the Commission

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this

Amendment

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.

Directive by [12 months after adoption] at the latest. They shall immediately communicate the text of those provisions to the Commission.

Amendment 32

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.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Countering money laundering by criminal law
References	COM(2016)0826 – C8-0534/2016 – 2016/0414(COD)
Committee responsible Date announced in plenary	LIBE 13.2.2017
Opinion by Date announced in plenary	DEVE 13.2.2017
Rapporteur Date appointed	Ignazio Corrao 8.6.2017
Discussed in committee	30.8.2017
Date adopted	9.10.2017
Result of final vote	+: 11 –: 10 0: 4
Members present for the final vote	Beatriz Becerra Basterrechea, Ignazio Corrao, Doru-Claudian Frunzulică, Enrique Guerrero Salom, Maria Heubuch, György Hölvényi, Teresa Jiménez-Becerril Barrio, Arne Lietz, Norbert Neuser, Vincent Peillon, Maurice Ponga, Lola Sánchez Caldentey, Eleftherios Synadinos, Eleni Theocharous, Paavo Väyrynen, Bogdan Brunon Wenta, Anna Záborská, Joachim Zeller, Željana Zovko
Substitutes present for the final vote	Marina Albiol Guzmán, Thierry Cornillet, Brian Hayes, Cécile Kashetu Kyenge, Florent Marcellesi, Patrizia Toia

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

11	+
EFDD	Ignazio Corrao
GUE-NGL	Marina Albiol Guzmán, Lola Sánchez Caldentey
NI	Eleftherios Synadinos
S&D	Doru-Claudian Frunzuliță, Enrique Guerrero Salom, Cécile Kashetu Kyenge, Arne Lietz, Norbert Neuser, Vincent Peillon, Patrizia Toia

10	-
PPE	Brian Hayes, György Hölvényi, Teresa Jiménez-Becerril Barrio, Maurice Ponga, Bogdan Brunon Wenta, Joachim Zeller, Željana Zovko, Anna Záborská
Verts/ALE	Maria Heubuch, Florent Marcellesi

4	0
ALDE	Beatriz Becerra Basterrechea, Thierry Cornillet, Paavo Väyrynen
ECR	Eleni Theoharous

Key to symbols:

+ : in favour

- : against

0 : abstention