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*Plenary sitting*

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**A8-0405/2017**

20.12.2017

**\*\*\*I**  
**REPORT**

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ignazio Corrao

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0826),
  - having regard to Article 294(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0534/2016),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the contributions submitted by the Czech Chamber of Deputies, the Czech Senate and the Spanish Parliament on the draft legislative act,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and also the opinions of the Committee on Development, the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A8-0405/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### 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

*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

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>34</sup>, this Directive aims to tackle money laundering by means of criminal law, allowing for *better* cross-border cooperation between competent authorities.

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) 2015/849<sup>1</sup> *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*.

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<sup>34</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).

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<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 *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/JHA<sup>35</sup> 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.

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<sup>35</sup> 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/JHA<sup>35</sup> 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.***

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<sup>35</sup> 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 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*

(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 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)**

**(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

*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/EU<sup>3</sup>. 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.

derived from offences affecting the Union's financial interests, which is subject to specific rules as laid down in Directive 2017/XX/EU<sup>3</sup>. ***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.

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<sup>3</sup> 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).

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<sup>3</sup> 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 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 *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 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*

*Amendment*

(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.

(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*

*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/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.

(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>4</sup> 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<sup>4a</sup>, 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.

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<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)

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<sup>4</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>4a</sup> ***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

(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

technology from their territory, whether or not based in their territory.

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)**



***(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.***

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

***(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*

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

*Amendment*

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

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<sup>40</sup> *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*

(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,

*Amendment*

(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

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;

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*

(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 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***

*I 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*

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

*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*

*Amendment*

*(a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841<sup>1</sup>; or ;*

*(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)

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<sup>1</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).



*Text proposed by the Commission*

*Amendment*

*(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*

*Amendment*

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

(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.

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*

*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 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:

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*

*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

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.

*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 sanctions, such as:

###### *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:

#### **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)**

**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 <sup>1a</sup>.**

**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.**

**<sup>1a</sup> 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*

*Amendment*

Investigative tools

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*

*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.

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*

*Amendment*

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

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.

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.*



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

### 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/EU<sup>34</sup>, this Directive aims to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.

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<sup>34</sup> Directive (EU) 2015/849 of the

*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/EU<sup>34</sup>, this Directive aims to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.

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<sup>34</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).

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.

*(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*

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

*Amendment*

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

Money laundering offences

*Amendment*

*(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*

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. Each Member State shall ensure 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)

*Text proposed by the Commission*

*Amendment*

#### *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*

*Amendment*

Each Member State shall ensure that effective investigative tools, such as those used in countering organised crime or other

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.

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 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 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

<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	DEVE 13.2.2017
<b>Rapporteur</b> Date appointed	Ignazio Corrao 8.6.2017
<b>Discussed in committee</b>	30.8.2017
<b>Date adopted</b>	9.10.2017
<b>Result of final vote</b>	+: 11 –: 10 0: 4
<b>Members present for the final vote</b>	Beatriz Becerra Basterrechea, Ignazio Corrao, Doru-Claudian Frunzuliță, 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
<b>Substitutes present for the final vote</b>	Marina Albiol Guzmán, Thierry Cornillet, Brian Hayes, Cécile Kashetu Kyenge, Florent Marcellesi, Patrizia Toia

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

<b>11</b>	<b>+</b>
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

<b>10</b>	<b>-</b>
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

<b>4</b>	<b>0</b>
ALDE	Beatriz Becerra Basterrechea, Thierry Cornillet, Paavo Väyrynen
ECR	Eleni Theoharous

**Key to symbols:**

+ : in favour

- : against

0 : abstention

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

### 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.

*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.

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<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).

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<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

#### *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 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

##### *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 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*

(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 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

##### *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.

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.*

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<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)

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<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*

*Amendment*

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

(c) the acquisition, possession 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*

*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 ***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;***

(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*

*Amendment*

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

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*

*Amendment*

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

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.

*least in serious cases.*

## **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)**

*Text proposed by the Commission*

*Amendment*

*(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*

*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 the benefit of **those legal persons** by any person, acting either individually or as part of an organ of the

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

legal person, and having a leading position within the legal person, based on:

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*

*Amendment*

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

(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*

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

*Amendment*

(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*

(b) the offender is one of its nationals.

*Amendment*

(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)**



***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*

Investigative tools

*Amendment*

Investigative tools *and cooperation*

### Amendment 36

#### 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.

**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>	+: 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 Kyrtzos, 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 Kyrtzos, 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

15.9.2017

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur for opinion: Kostas Chrysogonos

### **SHORT JUSTIFICATION**

#### **I. Introduction**

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

#### **II. Position of the Rapporteur**

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

### **AMENDMENTS**

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

## Amendment 1

### Proposal for a directive

#### Recital 1

*Text proposed by the Commission*

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

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<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 2

*Text proposed by the Commission*

*Amendment*

(1) Money laundering and the **related** financing of terrorism and organised crime remain significant problems at the Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal security and the internal market of the Union. In order to tackle those problems and **to complement and** reinforce the application of Directive 2015/849/EU **of the European Parliament and of the Council**<sup>1</sup>, this Directive aims to tackle money laundering by means of criminal law, allowing for better **cross-border** cooperation between competent authorities **and with the Union agencies responsible, to improve the exchange of information and to identify those instigating terrorism.**

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<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).

(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.

(2) Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, have very limited effect. ***The current Union legal framework is neither comprehensive nor sufficiently coherent to be fully effective. While the Member States have criminalised money laundering, there are significant differences between them regarding the definition of money laundering, what constitutes predicate offences, and the level of sanctions. The differences in national legal frameworks can be exploited by criminals and terrorists, who can choose to carry out their financial transactions in Member States where they perceive measures to counter money laundering to be weakest.*** The measures adopted by the Union in countering money laundering should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora. ***This would create a strengthened Union legal framework making it possible to deal more effectively with terrorist funding and to reduce the threat from terrorist organisations by making it harder for them to finance their activities.***

### Amendment 3

#### Proposal for a directive Recital 3

*Text proposed by the Commission*

(3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international bodies active in the fight against money laundering and terrorist financing. The relevant Union legal acts should, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation

*Amendment*

(3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international ***organisations and*** bodies active in the fight against money laundering and terrorist financing. The relevant Union legal acts should, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of



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.

Terrorism and Proliferation adopted by the FATF in February 2012 (the ‘revised FATF Recommendations’). As a signatory to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), the Union should transpose the requirements of that Convention into its legal order.

#### **Amendment 4**

##### **Proposal for a directive**

##### **Recital 7**

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

(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/EU<sup>3</sup>. 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.

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<sup>3</sup> 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*

(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/EU<sup>3</sup>. ***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.

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

#### **Amendment 5**

##### **Proposal for a directive**

##### **Recital 8**

(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).***

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

## **Amendment 6**

### **Proposal for a directive**

#### **Recital 9**

(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. Member States may establish as a prerequisite the fact that the predicate offence would have been a crime in its national law, had it been committed there. ***This should not be interpreted as limiting the right to a fair trial.***

## Amendment 7

### Proposal for a directive Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) It is in the interests of justice that persons accused of an offence under this Directive have an opportunity to present their case and challenge the charges against them and have access to the submissions and evidence against them. While cases concerning terrorism and the financing of terrorism are of a serious nature, there is an overriding interest in the disclosure to persons of the essence of the case against them when they face the prospect of coercive measures by the Member State so that they can give effective instructions to their lawyer or to the special lawyer. This Directive should also comply with the principle of equality of arms between the parties.***

## Amendment 8

### Proposal for a directive Recital 11

*Text proposed by the Commission*

*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/JHA<sup>4</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.

(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>4</sup>, where the perpetrator abused their professional position to enable money laundering ***or where the perpetrator is a politically exposed person,*** Member States should provide for aggravating circumstances in accordance

with the applicable rules established by their legal systems.

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<sup>4</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)

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<sup>4</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)

## **Amendment 9**

### **Proposal for a directive Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) Member States should ensure that judges and courts have the possibility to take into account aggravating circumstances as defined in this Directive when determining sentences for offenders, although there is no obligation to increase the penalty. It is for the judges and courts to decide, in view of all the facts of the case, whether to take into account aggravating circumstances. Member States are not required to adduce aggravating circumstances in cases where sentences for the offences defined in Framework Decision 2008/841/JHA are determined separately under national law and can result in more severe penalties.***

## **Amendment 10**

### **Proposal for a directive Recital 12**

*Text proposed by the Commission*

*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

(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.

investigate and prosecute such activities. Member States should thereby ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology from their territory, whether or not based in their territory. ***Under the international human rights law concept of jurisdiction, states that are contracting parties to human rights treaties are obliged to secure the rights for persons falling within their jurisdiction, even if such persons are outside their territory.***

## **Amendment 11**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 12**

### **Proposal for a directive Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12b) Competent authorities, which supervise the compliance of credit and financial institutions with this Directive,***

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

### **Amendment 13**

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

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 14**

#### **Proposal for a directive Recital 12 d (new)**

*Text proposed by the Commission*

*Amendment*

*(12d) The principle of professional secrecy and the right to privacy and a fair trial should not be undermined or violated by the collection and transmission, based on a suspicion, of data or information*

*concerning ordinary transactions that occur in the private life of individuals.*

## **Amendment 15**

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

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 16**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 17**

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

*Text proposed by the Commission*

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

*Amendment*

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

*scientific value, and ivory and wildlife;*

## **Amendment 18**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point c**

*Text proposed by the Commission*

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

## **Amendment 19**

### **Proposal for a directive**

#### **Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 20**

### **Proposal for a directive**

#### **Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 21**

### **Proposal for a directive**

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### Article 3 – paragraph 2 – point b

*Text proposed by the Commission*

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

*Amendment*

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

### Amendment 22

#### Proposal for a directive

#### Article 3 – paragraph 2 – point c

*Text proposed by the Commission*

(c) whether the criminal activity that generated the property was carried out in the territory of another Member State or in that of a third country, when the relevant conduct is a criminal offence under the 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) ***it is not necessary to establish*** whether the criminal activity that generated the property was carried out in the territory of another Member State or in that of a third country, when the relevant conduct is a criminal offence under the national law of the Member State or the third country where the conduct was committed and would be a criminal offence under the national law of the Member State implementing or applying this Article had it been committed there;

### Amendment 23

#### Proposal for a directive

#### Article 3 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

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

### Amendment 24

#### Proposal for a directive

#### Article 4 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 25**

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

*Text proposed by the Commission*

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 conduct referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive criminal penalties **in full respect for fundamental rights**.

**Amendment 26**

**Proposal for a directive  
Article 5 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 27**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 28**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 29**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 30**

### **Proposal for a directive Article 8 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

## **Amendment 31**

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

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 32**

**Proposal for a directive**  
**Article 8 – paragraph 1 – point 2**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 33**

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

*Text proposed by the Commission*

(4) judicial winding-up;

*Amendment*

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

**Amendment 34**

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

*Text proposed by the Commission*

*Amendment*

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

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<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	JURI 13.2.2017
<b>Rapporteur</b> Date appointed	Kostas Chrysogonos 31.1.2017
<b>Discussed in committee</b>	29.5.2017
<b>Date adopted</b>	7.9.2017
<b>Result of final vote</b>	+: 20 –: 1 0: 0
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, Axel Voss, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Isabella Adinolfi, Sergio Gaetano Cofferati, Luis de Grandes Pascual, Angel Dzhambazki, Rainer Wieland, Tiemo Wölken
<b>Substitutes under Rule 200(2) present for the final vote</b>	Gabriel Mato, Andrey Novakov

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

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

1	-
ECR	Angel Dzhambazki

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Countering money laundering by criminal law			
<b>References</b>	COM(2016)0826 – C8-0534/2016 – 2016/0414(COD)			
<b>Date submitted to Parliament</b>	22.12.2016			
<b>Committee responsible</b> Date announced in plenary	LIBE 13.2.2017			
<b>Committees asked for opinions</b> Date announced in plenary	AFET 13.2.2017	DEVE 13.2.2017	ECON 13.2.2017	JURI 13.2.2017
<b>Not delivering opinions</b> Date of decision	AFET 30.1.2017			
<b>Rapporteurs</b> Date appointed	Ignazio Corrao 27.2.2017			
<b>Discussed in committee</b>	29.6.2017	28.9.2017	19.10.2017	11.12.2017
<b>Date adopted</b>	11.12.2017			
<b>Result of final vote</b>	+: 39 -: 0 0: 4			
<b>Members present for the final vote</b>	Asim Ademov, Jan Philipp Albrecht, Heinz K. Becker, Monika Beňová, Malin Björk, Caterina Chinnici, Cornelia Ernst, Laura Ferrara, Ana Gomes, Nathalie Griesbeck, Monika Hohlmeier, Brice Hortefeux, Eva Joly, Dietmar Köster, Monica Macovei, Barbara Matera, Claude Moraes, József Nagy, Ivari Padar, Judith Sargentini, Birgit Sippel, Branislav Škripek, Csaba Sógor, Sergei Stanishev, Valdemar Tomaševski, Bodil Valero, Marie-Christine Vergiat, Harald Vilimsky, Josef Weidenholzer, Tomáš Zdechovský			
<b>Substitutes present for the final vote</b>	Ignazio Corrao, Livia Járóka, Petr Ježek, Maite Pagazaurtundúa Ruiz, Emil Radev, Axel Voss			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Rosa D'Amato, Elisabetta Gardini, Peter Jahr, Thomas Mann, Georgi Pirinski, Francis Zammit Dimech, Joachim Zeller			
<b>Date tabled</b>	20.12.2017			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

<b>39</b>	<b>+</b>
ALDE	Nathalie Griesbeck, Petr Ježek, Maite Pagazaurtundúa Ruiz
ECR	Monica Macovei, Valdemar Tomaševski, Branislav Škripek
EFDD	Ignazio Corrao, Rosa D'Amato, Laura Ferrara
PPE	Asim Ademov, Heinz K. Becker, Elisabetta Gardini, Monika Hohlmeier, Brice Hortefeux, Peter Jahr, Lívia Járóka, Thomas Mann, Barbara Matera, József Nagy, Emil Radev, Csaba Sógor, Axel Voss, Francis Zammit Dimech, Tomáš Zdechovský, Joachim Zeller
S&D	Monika Beňová, Caterina Chinnici, Ana Gomes, Dietmar Köster, Claude Moraes, Ivari Padar, Georgi Pirinski, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
Verts/ALE	Jan Philipp Albrecht, Eva Joly, Judith Sargentini, Bodil Valero

<b>00</b>	<b>-</b>

<b>04</b>	<b>0</b>
ENF	Harald Vilimsky
GUE/NGL	Malin Björk, Cornelia Ernst, Marie-Christine Vergiat

Key to symbols:

+ : in favour

- : against

0 : abstention