Countering money laundering by criminal law

2016/0414(COD) - 21/12/2016 - Legislative proposal

PURPOSE: to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: according to United Nations estimates, the total amount of criminal proceeds in 2009 was approximately USD 2.1 trillion, or **3.6 % of global GDP**. The size of proceeds from criminal activity in the main illicit markets in the European Union for which evidence is available, has been estimated to amount to **EUR 110 billion**.

The cross-border dimension of money laundering and the need to address this phenomenon through judicial cooperation among Member States are confirmed by the number of cases registered by Member States and Liaison Prosecutors at Eurojust.

The Commission considers that the **current legislative framework is neither comprehensive nor sufficiently coherent** to be fully effective. The differences in legal frameworks can be exploited by criminals and terrorists, who can choose to carry out their financial transactions where they perceive anti-money laundering measures to be weakest.

At the operational level, the differences in the definitions, scope and sanctions of money laundering offences affect cross-border police and judicial cooperation between national authorities and the exchange of information.

The European agenda on security adopted in April 2015 called for additional measures in the area of terrorist financing and money laundering.

The Commission presented on 2 February 2016 an action plan to further step up the fight against the financing of terrorism. One of the key actions of the action plan was to consider a possible proposal for a Directive to introduce minimum rules regarding the definition of the criminal offence of money laundering (applying it to terrorist offences and other serious criminal offences) and to approximate sanctions.

The European Parliament resolution of 25 October 2016 on the fight against corruption also pointed out that participation in criminal activities may be linked to terrorist crimes and called for a reinforcement of EU legislation on combating organised crime and money-laundering for the fight against terrorism to be effective.

CONTENT: this proposal for a Directive aims to counter money laundering by means of criminal law. It aims to achieve this objective by **implementing international obligations in this area** and further aligning it with the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation adopted by the Financial Action Task Force (FATF).

The proposed Directive:

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establishes **minimum rules concerning the definition of criminal offences and sanctions** in the area of money laundering offences: the proposal provides definitions of the term "criminal activity" which constitute predicate offences for money laundering, while allowing Member States to maintain different approaches as regards predicate offences for money laundering (choosing between an all-crimes approach, lists of predicate offences, list of offences with a minimum penalty);

- provides that the three types of money laundering (conversion or transfer, concealment or disguise, and acquisition, possession or use) should be **criminalised** when committed intentionally;
- requires Member States to criminalise forms of **aiding and abetting, inciting and attempting many of the mentioned offences**. Aiding and abetting a money laundering offence may include a large variety of activities that range from facilitating or providing counselling to the provision of supportive services for the commission of these acts;
- requires Member States to apply effective, proportionate and dissuasive **criminal penalties** and sets the minimum maximum penalty at four years of imprisonment, at least for serious cases;
- qualifies **aggravating circumstances** as when the offence was committed within a criminal organisation or when the perpetrator abused their professional position to enable money laundering, this is considered an aggravating circumstance;
- requires Member States to ensure the **liability of legal persons**, while that such liability is alternative to that of natural persons;
- aims at ensuring that **investigative tools** which are provided for in national law for organised crime or other serious crime cases can also be used in cases of money laundering.