Countering money laundering by criminal law

2016/0414(COD) - 12/11/2018 - Final act

PURPOSE: to subject money laundering to effective, proportionate and dissuasive criminal penalties in all Member States.

LEGISLATIVE ACT: Directive (EU) 2018/1673 of the European Parliament and of the Council on combating money laundering by criminal law.

CONTENT: the Directive establishes minimum rules on the definition of criminal offences and penalties in the field of money laundering. It complements and reinforces Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

The main elements of the Directive are as follows:

European definitions of crimes related to money laundering

Member States shall have to ensure that all offences punishable by imprisonment under the Directive are considered predicate offences for money laundering. Tax crimes relating to direct and indirect taxes are included in the definition of criminal activity, in accordance with the revised recommendations of the Financial Action Task Force (FATF).

Money laundering offences

The Directive criminalises any act of money laundering if committed intentionally and with the knowledge that the property was derived from criminal activity. Being an accomplice, inciting and attempting to commit a money laundering offence shall also constitute a criminal offence punishable by penalties.

As the Directive provides for minimum rules on the definition of criminal offences and penalties in the field of money laundering, Member States shall be free to adopt or maintain stricter criminal rules in this field.

Sanctions against natural persons

Money laundering activities shall be punishable by a maximum term of imprisonment of at least 4 years, and judges may impose additional measures and sanctions such as fines, exclusion from access to finance, temporary prohibition from engaging in commercial activity or running for elected office or from holding public office.

Aggravating circumstances shall be recognised in cases involving criminal organisations or for offences committed in the exercise of certain professional activities.

Legal perons

The Directive also provides for the possibility of holding legal persons liable for certain money laundering activities and applying a series of sanctions to them, such as exclusion from public aid, placing them under judicial supervision, a judicial winding-up measure or the temporary or permanent closure of the establishment used to commit the offence.

Judicial and police cooperation

The Directive removes obstacles to cross-border judicial and police cooperation by introducing common provisions to improve the conduct of investigations.

In cross-border cases, the new rules establish more precisely which Member State exercises jurisdiction and define cooperation between the Member States concerned, as well as how to involve Eurojust. Where an offence falls within the jurisdiction of more than one Member State, the Member States concerned shall cooperate to decide which of them will prosecute the offender with the aim of centralising prosecution in a single Member State.

ENTRY INTO FORCE: 2.12.2018.

TRANSPOSITION: no later than 3.12.2020.