Countering money laundering by criminal law

2016/0414(COD) - 20/12/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Ignazio CORRAO (EFDD, IT) on the proposal for a directive of the European Parliament and of the Council on countering money laundering by criminal law.

The committee recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Objective and scope: Members stressed the need for 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.

The definition of criminal activity within the meaning of the Directive shall include any type of criminal involvement in carry out the offences set out in Directive (EU) 2017/541 on combating terrorism and related criminal tax offences, direct and indirect taxes, as defined by national law.

Members pointed out that Member States shall 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).

Sanctions applicable to natural persons: whereas the Commission proposed that money laundering offences should be punishable by a maximum term of imprisonment of at least four years, at least in serious cases, Members considered that the offences shall be punishable by a maximum term of imprisonment of at least five years and a minimum term of imprisonment of at least two years where one of the aggravating factors referred to in the Directive applies.

Incitement, aiding and abetting, and attempt: each Member State shall ensure that inciting, aiding and abetting and attempting an offence 3 shall be punishable by a maximum term of imprisonment of at least three years.

Penalties for natural persons: each Member State shall also ensure that the offences may be punishable, at the judges 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.

As for legal persons, they could be excluded from the entitlement to public aid or benefits, in particular from European Union programmes or funds, or be banned, temporarily or permanently, from concluding contracts with the public authorities.

Aggravating circumstances: the following shall be qualified as an aggravating circumstance:

- 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;
- the offence was committed in whole or in part on the territory of a non-cooperative jurisdiction listed by the Union;
- the offender is a politically exposed person;
- the property or money being laundered is of a value equal to or exceeding EUR 500 000.

Confiscation of property and of the proceeds of criminal activities: 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. They 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.

Jurisdiction: 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, 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.

Investigative tools: sufficient personnel and adequate targeted training, resources and technological capacity shall be made available to the services responsible for investigating or prosecuting the offences.

Lastly, Member States are called on to 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.