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2016/0414 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on countering money laundering by criminal law

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The recent terrorist attacks in the European Union and beyond, underline the need for the EU to work across all policies to prevent and fight terrorism. Terrorist organisations and organised crime need financing – to maintain their criminal networks, to recruit new members, and to commit terrorist acts themselves. Cutting off their sources of finance, making it harder for terrorists to escape detection when using these funds, and exploiting relevant information from financial transactions all make crucial contributions to the fight against terrorism and organised crime.

The challenge of terrorist financing is not new. 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 nature of terrorism financing is however evolving over time, and the EU needs determined, swift and comprehensive actions to modernise existing legislation, to ensure it is fully implemented by all relevant actors, and to address identified gaps. The Union also needs greater cooperation between competent authorities, across borders and with relevant EU agencies to improve the dissemination of information and track down those who finance terrorism.

This proposal for a Directive, announced in the Commission's Action Plan to strengthen the fight against terrorist financing of 2 February 2016¹ aims to counter money laundering by means of criminal law. The proposed Directive achieves this objective by implementing international obligations in this area including 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).

Existing instruments at EU level (and in particular Framework Decision 2001/500/JHA²) are limited in scope and do not ensure a comprehensive criminalisation of money laundering offences. All Member States criminalise money laundering but there are significant differences in the respective definitions of what constitutes money laundering, on which are the predicate offences – i.e. the underlying criminal activity which generated the property laundered – as well as the level of sanctions. 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.

More significantly, 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. For instance, differences in the scope of predicate offences make it difficult for Financial Intelligence Units (FIUs) and law enforcement authorities in one Member State to coordinate with other EU jurisdictions to tackle cross-border money laundering (e.g. as regards money laundering related to tax

¹ COM(2016) 50 final, 2 February 2016.

² 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, 05.07.2001).

crimes). As part of the consultation carried out to prepare this proposal, practitioners - including agencies such as Europol and Eurojust - reported that differences in criminalising this offence in Member States' legislation pose obstacles to effective police co-operation and cross-border investigations.

The activities of criminals and criminal organisations are designed to generate profit. In essence, money laundering uses the earnings generated through a multitude of cross-border illegal activities - such as drug trafficking, trafficking in human beings, illicit arms trafficking, corruption - to acquire, convert or transfer property, while hiding the true nature of its origin, in order to use the revenues of these crimes in the legitimate economy. Money laundering allows criminal organisations to benefit from their illegal activities and maintain their operations. A strengthened criminal response to money laundering contributes to countering the financial incentive which drives crime.

At global level, according to United Nations estimates, the total amount of criminal proceeds in 2009 was approximately USD 2.1 trillion, or 3.6% of global GDP³. 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 €110 billion⁴. The amount of money currently being recovered in the EU is only a small proportion of the estimated criminal proceeds⁵.

Individuals and groups involved in terrorist acts use criminal networks or engage in crime themselves to fund their activities, after which they use money laundering schemes to convert, conceal the illicit nature of, or acquire funds to finance their operations. This greatly increases the attractiveness of organised crime. Many of the terrorist cells operating in Europe raise funds from criminal sources such as drug trafficking, trafficking in cultural goods or fraudulent loan applications. Large terrorist organisations also resort to criminal activities in different forms in order to finance terrorist activities. In addition, terrorists could take advantage of criminal organisations to supply their logistical needs, by purchasing false documents or firearms from these criminal groups, which can in turn launder the benefits from these operations. A strengthened EU legal framework would therefore contribute to tackling terrorist financing more effectively and reduce the threat from terrorist organisations by hindering their capacity to finance their activities.

The introduction of minimum rules to define the criminal offence of money laundering, applying this definition to terrorist offences and other serious criminal activities, and approximating the sanctions involved, will reinforce the EU's existing criminal framework against money laundering across Europe. The proposed Directive will improve existing cross border cooperation, the exchange of information between competent authorities and will help prevent criminals from exploiting the differences between national legislations to their advantage. These measures will provide for a strengthened legal framework to combat money laundering in the EU, improve enforcement and act as a greater deterrent to terrorist and criminal activity. They will thus tackle organised crime and terrorist financing more effectively, enhancing in this way the internal security of the EU and the safety of its citizens.

³ United Nations Office on Drugs and Crime, "Estimating illicit financial flows resulting from drug trafficking and other transnational organised crime", October 2011.

⁴ From illegal markets to legitimate businesses: the portfolio of organised crime in Europe, Final report of Project OCP – Organised Crime Portfolio, March 2015.

⁵ Report 'Does crime still pay? Criminal asset recovery in the EU. Survey of statistical information 2010-2014', Europol, July 2016.

- **Need to implement relevant international standards and obligations and address money laundering in an effective manner**

This proposal aims to implement international requirements emanating from the Warsaw Convention as well as the recommendations of the Financial Action Task Force as regards the criminalisation of money laundering.

Recommendation 3 of the Financial Action Task Force (FATF⁶) calls on countries to criminalise money laundering on the basis of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) of 1988 and the UN Convention Against Transnational Organized Crime (Palermo Convention) of 2001. The recommendation requests countries to criminalise the laundering of proceeds of all serious offences, with a view to including the widest range of predicate offences (providing a list of predicate offence categories such as terrorism, including terrorist financing, trafficking in human beings and migrant smuggling, illicit arms trafficking, environmental crime, fraud, corruption or tax crimes), while leaving countries discretion in how to achieve this. The Recommendation allows countries not to apply the offence of money laundering to the person who committed the predicate offence and requires countries to ensure effective, proportionate and dissuasive criminal sanctions for natural persons, criminal (or civil or administrative) liability and sanctions for legal persons. The Recommendation also calls for the criminalisation of ancillary activities such as participation in, association with or conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling, unless this is not permitted by fundamental principles of domestic law.

The Warsaw Convention constitutes the most comprehensive international convention on money laundering (including provisions related to the criminalisation of money laundering but also provisions on asset freezing and confiscation as well as international cooperation). The Warsaw Convention requests parties to adopt legislative measures to facilitate the prevention, investigation and prosecution of money laundering as well as the effective freezing and confiscation of proceeds and instrumentalities of crime. This convention goes in several respects beyond the requirements of the FATF Recommendation, by making irrelevant whether the predicate offence was subject to the criminal jurisdiction of the country where the money laundering offence took place, allowing countries to apply a lower level of intent and requiring countries to ensure that a prior or simultaneous conviction for the predicate offence and the precise establishment of the predicate offence are not a prerequisite for a conviction for money laundering.

The Warsaw Convention was signed by 26 EU Member States, of which only 17 have so far ratified it. The EU has signed but not yet ratified. The present proposal for a Directive would be an important step towards EU ratification of the Warsaw Convention.

This proposal aims at implementing the abovementioned international requirements. In certain areas, it goes beyond these requirements: it establishes the minimum level of the maximum sanctions and criminalises self-laundering - i.e. cases in which the person laundering property derived from criminal activity is also the perpetrator of the underlying predicate offence, although self-laundering is limited to conversion or transfer and concealment or disguise. In addition to the general categories of crime as provided in the list of predicate offences established by FATF and the Warsaw Convention, the list provided in this proposal includes

⁶ The FATF is the most important international standard setter for AML/CFT. The European Commission and 15 Member States are Members of FATF and the remaining 13 are members of "MONEYVAL", the FATF-style regional body that conducts self and mutual assessment exercises of the AML/CFT measures in place in Council of Europe Member States.

cybercrime and the crimes where there is legislation at EU level defining the predicate offences, by making a reference to the relevant EU legislative acts.

- **Consistency with existing policy provisions in the policy area**

This proposal is embedded in the global fight against money laundering and terrorism financing by implementing Recommendation 3 of the Financial Action Task Force (FATF), the intergovernmental body defining and promoting the implementation of international standards in this area, and by implementing relevant international conventions. It is also part of the broader efforts at EU level to combat money laundering and terrorists financing by reinforcing the repressive action against criminal organisations and financiers of terrorism.

The European Agenda on Security adopted in April 2015⁷ called for additional measures in the area of terrorist financing and money laundering. Highlighting that "the primary goal of organised crime is profit", the European Agenda on Security called for a strengthening of the capacity of law enforcement to tackle the finance of organised crime, underlining that "international criminal networks use legal business structures to conceal the source of their profits, so action is needed to address the infiltration of the licit economy by organised crime." The European Agenda on Security also aimed at tackling the nexus between terrorism and organised crime, highlighting that organised crime feeds terrorism through channels like the supply of weapons, financing through drug smuggling, and the infiltration of financial markets.

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 rationale set out was that terrorists often resort to criminal proceeds to fund their activities and use money laundering schemes in that process. Criminalisation of money laundering would thus contribute to tackling terrorist financing.

The European Parliament resolution of 25 October 2016 on the fight against corruption and follow-up of the CRIM resolution (2015/2110(INI))⁸ 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.

This proposal will also reinforce the measures in place aimed at detecting, disrupting and preventing the abuse of the financial system for money laundering and terrorist financing purposes, notably the 4th Anti-Money Laundering Directive⁹ (4AMLD), which sets out rules which are designed to prevent the abuse of the financial system for money laundering and terrorist financing purposes, and the Transfer of Funds Regulation¹⁰. The transposition date for the 4AMLD and Regulation (EU)2015/847 has been anticipated to 1 January 2017. A number of amendments to the 4AMLD have been presented on 5 July 2016¹¹ in order to reinforce the preventive framework against money laundering, in particular by addressing

⁷ COM (2015) 185 final of 28 April 2015.

⁸ European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (2013/2107(INI)).

⁹ Directive 2015/849/EU on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141, 5.6.2015).

¹⁰ Regulation (EU)2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015).

¹¹ COM(2016) 450 final of 5 July 2016.

emerging risks and increasing the capacity of competent authorities to access and exchange information.

These legal instruments help prevent money laundering and facilitate investigations into money laundering cases. They do not however tackle the issue of the present initiative, which is the absence of a uniform definition of the crime of money laundering and the differences in the type and level of sanctions for this crime throughout the Union. After adoption by colegislators of the proposed directive, the Commission will assess whether it will be necessary to revise the 4AMLD with a view to aligning the definition of “criminal activity” as reflected in this directive.

Furthermore, this proposal also reinforces and complements the criminal law framework with regard to offences relating to terrorist groups, in particular the proposal for a Directive on combating terrorism¹², which sets a comprehensive definition of the crime of terrorist financing, covering not only terrorist offences, but also terrorist-related offences such as recruitment, training and propaganda.

The present proposal also reinforces the fight against organised crime by complementing the Directive 2014/42/EU¹³ that aims at creating a common set of minimum rules for the detection, tracing and confiscation of proceeds of crime across the EU and the Council Framework Decision 2008/841/JHA¹⁴ which criminalises the participation in an organised criminal group and racketeering.

Additionally, the current proposal would complement different pieces of EU legislation that require Member States to criminalise some forms of money laundering. It will partially replace Council Framework Decision 2001/500/JHA¹⁵ as regards the Member States bound by this proposal. That Framework Decision aims at approximating national rules on confiscation and on certain forms of money laundering which Member States were required to adopt in accordance with the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from crime.

- **Consistency with other Union policies**

The proposed Directive is in line with policy aims pursued by the Union, and in particular:

- The fight against crimes affecting the Union's financial interests. The Second Protocol, drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities' financial interests, requires Member States to criminalise the laundering of the proceeds of crimes affecting the Union's financial interests, such as fraud and corruption, as defined in the Convention on the protection of the European Communities' financial interests and its protocols. In July 2012¹⁶ the Commission proposed a Directive on the fight against fraud to the Union's financial interests by means of criminal law which should replace the Convention and its protocols for the participating Member States. It would introduce new criminal offences affecting the Union's financial interests and

¹² COM(2015) 625 final of 2 December 2015.

¹³ 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).

¹⁴ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).

¹⁵ 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, p. 1–2).

¹⁶ COM (2012) 363 final of 11 June 2012.

foresees that the laundering of the proceeds of such crimes should be criminalised. This proposal is without prejudice to those criminal law rules on money laundering.

- The fight against drug trafficking, consumption and availability, as set out in the EU Drugs Strategy (2013-20)¹⁷.
- Combating criminal activities such as wildlife trafficking. In the 2016 Commission Communication “EU Action Plan against Wildlife Trafficking”¹⁸, the Commission called upon Member States to revise their national legislation on money laundering to ensure that offences connected to wildlife trafficking can be treated as predicate offences.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 83(1) TFEU, which identifies money laundering as one of the crimes with a particular cross-border dimension. It enables the European Parliament and the Council to establish the necessary minimum rules on the definition of money laundering by means of directives adopted in accordance with the ordinary legislative procedure.

• Variable geometry

Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime currently in force is applicable to all Member States.

In accordance with Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaties, the United Kingdom and Ireland may decide to take part in the adoption of this proposal. They also have this option after adoption of the proposal.

Under Protocol 22 on the position of Denmark, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU (with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas"). Therefore, under the arrangements currently in force, Denmark does not take part in the adoption of this proposal and will not be bound by it.

• Subsidiarity (for non-exclusive competence)

Criminals and the financiers of terrorism can move their funds easily across borders with a view to disguising their illicit origins. Criminal organisations and terrorist networks operate across different Member States. Illicit proceeds are widely laundered in the European legal economy. Evidence of organised crime investments is found in almost all EU Member States¹⁹.

Organised crime groups increasingly hide and reinvest assets in Member States other than the one where the crime originating the property was committed²⁰. This makes it much more

¹⁷ EU Drugs Strategy (2013-20), (OJ C 402, 29.12.2012).

¹⁸ COM (2016)87 final of 26 February 2016.

¹⁹ From illegal markets to legitimate businesses: the portfolio of organised crime in Europe, Final report of Project OCP – Organised Crime Portfolio, March 2015.

²⁰ Idem.

complicated for competent authorities to fight cross-border serious and organised crime in the EU as a whole, and affects the functioning of the Internal Market by distorting competition with legitimate businesses and undermining trust in the financial system.

The cross-border dimension of money laundering is experienced by public authorities and practitioners dealing with money laundering cases in their day-to-day work: Financial Intelligence Units (FIUs) of the EU Member States, in charge of analysing transactions suspected of links to money laundering and terrorist financing and disseminating the results of the analysis to competent authorities, collaborate on a regular basis in order to fulfil their mission. An indication is the number of requests for information and cooperation transmitted through FIU.Net, the information exchange tool of EU Financial Intelligence Units: in 2014 there were 12,076 information exchanges, a number which increased to 17,149 in 2015²¹. The proportion of Suspicious Transaction Reports (STRs) involving other EU Member States varies greatly depending on the Member State. Most Member States do not have exact data, but a large number of Member States have estimated the number of STRs with a cross-border dimension to be between 30% and 50% of the STRs disseminated to competent authorities²².

Criminal investigations on money laundering involving several EU Member States are frequent. Estimates in one Member State suggest that between 10 to 15% of cases have a cross border dimension. In two Member States the same estimate is 20%, and in a couple of Member States it reaches 70%. Five Member States estimate that the proportion of money laundering investigations with a cross-border element ranges between 38% and 50%. One Member State has indicated that around 50% of predicate criminal offences were committed abroad²³.

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. Eurojust registered 724 cases on money laundering between 2012 and July 2015, rising from 193 cases in 2013 to 286 money laundering cases in 2015. Between 1 January and 30 September 2016, Eurojust registered 212 cases. Of the 160 coordination meetings organised by Eurojust between January and April 2015, 1/8th (12.5%) related to money laundering, double the percentage of 2014. Money laundering represents an area of continuing growth in Eurojust's casework.

If no action is taken at EU level, the scale of the money laundering problem is likely to increase significantly in coming years. Judicial and law enforcement authorities would continue to face difficulties in dealing with the more complex money laundering cases, allowing perpetrators opportunities to possibly 'forum shop' for EU jurisdictions which do not capture, or capture less effectively and comprehensively, certain criminal activities within their anti-money-laundering legislative framework. Continued money laundering activity would ultimately result in a wider societal cost through continued criminal activity and lost tax revenues and could also facilitate the continued funding of terrorist groups.

- **Proportionality**

In accordance with the principle of proportionality, as set out in Article 5(4) TEU, the proposed new Directive is limited to what is necessary and proportionate to implement international obligations and standards, in particular as regards the criminalisation of money laundering, in line with the FATF recommendations and the Warsaw Convention. The latter

²¹ Source: Europol.

²² Responses by Member States as part of the consultation process.

²³ Idem.

goes beyond the FATF Recommendation by making irrelevant whether the predicate offence was subject to the criminal jurisdiction of the country where the money laundering offence took place and requiring countries to ensure that a prior or simultaneous conviction for the predicate offence and the precise establishment of the predicate offence are not a prerequisite for a conviction for money laundering.

The proposal elaborates these obligations when necessary, in order to improve cross-border cooperation and exchange of information and to prevent criminals from exploiting the differences between national legislations to their advantage (for instance by criminalising self-laundering – although limited to conversion or transfer and concealment or disguise – and imposing minimum thresholds for maximum sanctions). The list of predicate offences established in this proposal is also based on the categories of predicate offences of the FATF Recommendations and the appendix to the Warsaw convention, with two exceptions: this proposal also includes cyber-crime and misappropriation as predicate offences.

The proposal defines the scope of the money laundering offences with a view to covering all relevant conduct while limiting it to what is necessary and proportionate.

- **Choice of the instrument**

In accordance with Article 83(1) TFEU, the establishment of minimum rules concerning the definition of criminal offences and sanctions in the area of serious crime with a cross-border dimension, including money laundering can only be achieved by means of a Directive of the European Parliament and the Council adopted in accordance with the ordinary legislative procedure.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

No ex-post evaluations have been carried out in existing provisions regarding the criminalisation of money laundering (i.e. point (b) of Article 1 and Article 2 of Framework Decision 2001/500/JHA).

- **Stakeholder consultations**

The Commission has taken into account the outcome of a survey carried out by an external consultant in 2013 which assessed, inter alia, the Member States' compliance with the FATF Recommendations, including the recommendation on the criminalisation of the money laundering offence. A majority of the respondents to the online questionnaire, conducted in 2013, believed an EU-wide definition of money laundering would be effective in tackling cross-border aspects of money laundering. The survey also showed overall support for harmonisation as regards the range of predicate offences and indicated that the differences in this respect give criminals opportunities to launder money in jurisdictions where anti-money laundering measures are perceived to be weakest. This creates practical problems for competent authorities at a cross-border level. The survey also reflected overall support among stakeholders to harmonising the criminalisation of self-laundering via an EU measure.

In October 2016 the Commission consulted Member States about their existing provisions at national level regarding the criminalisation of money laundering, by requesting updated information on the basis of a country fiche for each Member State. The results of this consultation exercise were reviewed during a meeting with Member States in November 2016 in which the different approaches to aspects such as the predicate offences, the requirement of prior conviction or establishment of the predicate offence, the criminalisation of self-laundering and the level of sanctions were discussed.

The Commission also consulted representatives of legal associations in November 2016 in order to seek their views on the Commission's outline for a proposed Directive as presented in the roadmap. Overall stakeholders stressed the need for harmonisation of money laundering offences and sanctions in order to tackle money laundering across the EU in a comprehensive and effective way. Stakeholders indicated that there were frequent cases when differing definitions hinder effective cross-border cooperation in the prosecution of money laundering offences. The elimination of significant differences in respective definitions of the money laundering and offence would allow for better cross border information exchange and cooperation between law enforcement authorities. Aligning the level of sanctions imposed for money laundering offences would also provide for more effective enforcement and deterrence across the EU.

The Commission has also consulted EU Agencies in charge of supporting police and judicial cooperation between Member States.

Other data such as Eurostat's updated report on money laundering as well as the findings of the ECOLEF project²⁴ were also taken into account. The Commission has also relied on other relevant reports by these organisations, such as the recent typologies report on laundering the proceeds of crime issued by Moneyval of 2015²⁵.

• **Impact assessment**

Given that the proposal for a Directive mainly incorporates international obligations and standards, this proposal is exceptionally presented without an impact assessment.

This proposal nevertheless builds on the evidence gathered through external studies and assessments described in the earlier section and the various stakeholder consultations.

Various approaches were considered using the available evidence:

- 1) Non-legislative action at EU or national level, including guidelines, exchange of best practices, training and the development of correspondence tables for predicate offences;
- 2) Limiting the proposal to FATF Recommendations, tailoring the EU definition of money laundering in line with international standards while allowing Member States a large margin of discretion in other areas;
- 3.1) A proposal transposing the provisions of the Warsaw Convention; alleviating the requirements as to the proof of the predicate offence underlying the money laundering offence;
- 3.2) A proposal transposing the provisions of the Warsaw Convention but going beyond international obligations in certain aspects, to include a definition of the predicate offences, criminalising self-laundering and imposing minimum and/or maximum thresholds for sanctions;
- 4) A proposal defining the various conditions and elements of the money laundering offence (including definitions of conversion/transfer of property, concealment, acquisition, possession

²⁴ Unger, B (a.o.), Final report of the ECOLEF (The Economic and Legal Effectiveness of Anti Money Laundering and Combating Terrorist Financing Policy) project, "The economic and legal effectiveness of Anti-Money Laundering and Combatting Terrorist Financing policy", February 2013.

²⁵ Typologies report on laundering the proceeds of organised crime, Moneyval, April 2015.

and use of proceeds of crime), imposing an all-crimes approach and criminalising negligent money laundering.

On the basis of the evidence gathered and previous assessments described above, the Commission has opted for an approach which proposes minimum harmonisation in line with the provisions of the Warsaw Convention, going beyond international obligations only in those areas where action has demonstrable benefits in terms of cross-border cooperation while respecting national traditions and case-law and ensuring consistency with EU law, i.e. by making sure that all of the offences as defined in EU legislative acts qualify as predicate offences for money laundering.

- **Regulatory fitness and simplification**

The proposal aims at introducing international obligations and standards in the EU legal order and updating the legal framework so as to adequately respond to the cross-border phenomenon of money laundering. This will help Member States when transposing and implementing the relevant provisions.

- **Fundamental rights**

The establishment, implementation and application of criminalisation have to be carried out in full respect of fundamental rights obligations. Any limitation on the exercise of fundamental rights and freedoms is subject to the conditions set out in Article 52(1) of the Charter of Fundamental Rights, namely be subject to the principle of proportionality with respect to the legitimate aim of genuinely meeting objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others, be provided for by law and respect the essence of those rights and freedoms.

A variety of fundamental rights and freedoms enshrined in the Charter of Fundamental Rights have to be taken into account in this respect. Rights which are particularly relevant in relation to the proposed measures include, but are not limited to, the rights included in Title I of the Charter on liberty and security (Article 6 of the Charter), the right to property (Article 17 of the Charter), the right to an effective remedy and a fair trial (Article 47 of the Charter), the presumption of innocence and the right of defence (Article 48 of the Charter), the principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter) and the right not to be tried or punished twice in criminal proceedings for the same criminal offence (*ne bis in idem*, Article 50 of the Charter).

All measures adopted by the Union and its Member States in relation to the criminalisation of money laundering as provided for in this Directive, and the determination of criminal and non-criminal sanctions thereof, must be subject to the principle of legality and proportionality of criminal offences and penalties, to the presumption of innocence and to the rights of defence, and should exclude any forms of arbitrariness.

The respect of fundamental rights in general and the principle of proportionality is respected in limiting the scope of the offences to what is strictly necessary to allow for the effective prosecution of acts that pose a particular threat to the EU's internal security.

4. BUDGETARY IMPLICATIONS

This proposal has no immediate budgetary implications for the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Directive will be monitored by the Commission on the basis of the information provided by the Member States on the measures taken to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive.

The Commission shall, after two years following 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.

- **Explanatory documents (for directives)**

No explanatory documents on the transposition are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Article 1: Subject matter and scope. – This provision sets out the purpose and scope of the draft Directive, in particular that it establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering offences..

Article 2: Definitions. – This provision provides definitions for "property" (in relation to the offences of money laundering cf. Article 3) in line with EU acquis²⁶ and "legal persons" (in relation to the obligation to establish liability of legal persons cf. Article 6).

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), this provision provides definitions of the term "criminal activity" which constitute predicate offences for money laundering. The range of criminal activities that generate the property which is laundered, as listed in this provision, is in line with Recommendation 3 of the Financial Action Task Force which requires, irrespective of the approach adopted to describe the predicate offences, the inclusion of offences from a list of designated categories of offences. The list in this provision is also in line with Article 9 (4) of 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), which requires parties to the Convention to apply the money laundering offence to the categories of predicate offences in the appendix to the Convention. The categories designated by the Financial Action Task Force and the categories in the appendix to the Convention correspond to the range of criminal activities listed in Article 2 of this proposal, with one exception: this article also includes cyber-crime as a predicate offence, as explained below.

However, these categories are simply listed and not defined by the FATF or in the 2005 Convention, leaving wide scope for national differences in the range of predicate offences. This leads in some Member States to a rather limited scope of predicate offences included in national provisions. In addition, there is no comprehensive common understanding among Member States of the underlying criminal activities that generate the property laundered.

²⁶ Identical to Article 2 (3) of 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. 85).

According to the consultation with Europol, different views on what crimes can lead to money laundering make it difficult to prevent financial transactions related to money laundering and to prosecute cross-border money laundering to identify whether money laundering took place. In the same line, as part of the consultation process Eurojust referred to the difficulties that Member States face in the context of investigating and prosecuting cross-border money laundering cases due to the ancillary nature of this type of offence. Other stakeholders have also indicated that the differences as regards the predicate offences lead to obstacles in cross-border cooperation. Since Member States, when requested to cooperate in investigations or prosecutions regarding money laundering often require that the underlying predicate offence would also have been a predicate offence in their own jurisdiction, had it been committed in their Member State, cooperation is not always possible, and criminals successfully launder their criminal proceeds.

Whenever there is existing legislation in the EU acquis defining any of the predicate offences, a reference to the relevant EU legislative act is included in order to ensure that all of the offences as defined in that EU legislative act qualify for money laundering. This will contribute to reducing existing discrepancies and fostering a more extensive common understanding.

In addition, there is a need to address the growing menace of cybercrime and attacks against information systems, in particular attacks linked to organised crime. Computer crime is the only area of crime mentioned in Article 83 TFEU which is not listed in the categories of offences designated by the Financial Action Task Force and the Warsaw Convention. The financial impact of cybercrime and the size of related proceeds are hard to quantify, in the absence of reliable data and research, but cases show that proceeds from cybercrime are laundered through sophisticated schemes, involving both traditional and new payment methods²⁷. In order to disrupt the financial incentive that drives many cybercrime activities, this provision qualifies cybercrime, including any of the offences set out in Directive 2013/40/EU²⁸, as a predicate offence for money laundering.

Article 3: Money laundering offences. – This provision defines which offences should be considered as money laundering offences in the Member States.

This provision implements Article 9(1) of the Warsaw Convention by defining the material elements of what constitutes money laundering, i.e. the conversion or transfer of property derived from criminal activity with the purpose of concealing or disguising its illicit origin (point (a) of paragraph 1), and the concealment or disguise of its true nature, source, location, disposition, movement, rights with respect to, or ownership of the property (point (b) of paragraph 1).

In addition, this provision goes beyond the FATF Recommendation and the Warsaw Convention by making obligatory the criminalisation of the acquisition, possession or use of the property derived from criminal activity, which in the Warsaw Convention is a possibility subject to the constitutional principles and the basic concepts of the legal system of each country. The mere possession of criminal proceeds is not considered money laundering in most Member States²⁹. This proposal respects the different legal traditions of Member States

²⁷ Moneyval Research report, Criminal money flows on the Internet: methods, trends and multi-stakeholder counteraction, March 2012.

²⁸ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, (OJ L 218, 14.8.2013, p. 8).

²⁹ Unger, B. (a.o.), Final report of the ECOLEF project, "The economic and legal effectiveness of Anti-Money Laundering and Combatting Terrorist Financing policy", February 2013, p.16.

by enabling the exclusion of self-laundering as to this type of money laundering (see below on paragraph 3 of Article 3).

The three types of money laundering (conversion or transfer, concealment or disguise, and acquisition, possession or use) should be criminalised when committed intentionally in line with the Warsaw Convention. No element of negligence is introduced. Article 9 (3) of the Warsaw Convention allows discretion for parties to criminalise cases where the offender "(a) suspected that the property was proceeds; and (b) ought to have assumed that the property was proceeds." Diverging approaches to negligent money laundering exist in Member States, reflecting the differences in national legal traditions as to the subjective element required for the offence, but these divergences have not been identified as a substantial problem for cross-border cooperation. As this Directive only sets minimum rules, Member States are not prevented to criminalise negligent money laundering.

Furthermore, paragraph 2 of this provision makes irrelevant for the money laundering offences as described above to be punishable whether there is or not a prior or simultaneous conviction for the underlying criminal activity or whether it can be established in detail who is the perpetrator of the criminal activity that generated the property or other circumstances of that criminal activity. By doing so, this provision implements paragraphs 5 and 6 of Article 9 of the Warsaw Convention by ensuring that money laundering is criminalised even when there is no previous or simultaneous conviction for the predicate offence and without necessarily establishing precisely which offence the property originated from.

Eurojust and other stakeholders have indicated that the requirement for the precise establishment of the predicate offences is an important obstacle that can make the cross-border fight against money laundering particularly difficult. According to Europol, most law enforcement authorities are required to demonstrate the predicate offence. Linking suspicious funds to a specific predicate offence is reported by law enforcement authorities as the most significant problem when investigating money laundering: in a multi-jurisdictional case supported by Europol, the country in which the predicate offence was committed failed to answer mutual legal assistance requests. All countries involved in this case highlighted that the main barrier was linking funds to a specific predicate offence.

Even in Member States where a money laundering conviction can be obtained simply by proving that the money could not have derived from a legal source, indicators of criminality will usually be required in order to secure a conviction or confiscation. Therefore, the approach taken in this provision is consistent with the requirement of the Warsaw Convention as well as with national practices.

Moreover, the Warsaw Convention stipulates that it should not be a problem to prosecute money laundering even if the criminal activity that generated the funds was committed in another country. Point (c) of paragraph 2 of this proposal establishes that it is irrelevant 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, while allowing Member States discretion to apply the double criminality criterion, i.e. that the predicate offence should be criminal in the country where it was committed and that it would also be criminal in the Member State prosecuting the money laundering offence, had the predicate offence been committed there.

Finally, this provision requires Member States to criminalise self-laundering. Eurojust indicates that the fact that 'self-laundering' is not criminalised in all jurisdictions may cause difficulties for some Member States to establish a prosecutable offence and to investigate and trace the flow of "black money". Paragraph 3 of this Article clarifies that the obligation to criminalise self-laundering is limited to conversion or transfer and concealment or disguise and is not applied to mere possession or use. This approach takes into account that prosecuting a person for the mere 'personal enjoyment' of the proceeds of the own crime for

which he has already been judged, in some Member States, is considered to infringe the principle of *ne bis in idem*, i.e. that a person cannot be judged twice for the same criminal conduct³⁰. On the other hand, when the money laundering activity involves converting and transferring as well as concealing and disguising through the financial system, these activities are clearly an additional criminal act distinguishable from the predicate offence which moreover causes additional or a different type of damage than that already caused by the predicate offence. This approach is in line with the case law of Member States³¹.

Article 4: Incitement, aiding and abetting, and attempt. – This is a provision applicable to the offences mentioned above, which 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.

This provision ensures alignment with the definitions in international standards referred to above.

In addition, in order to ensure effective deterrence, it is necessary to criminalise incitement, making punishable the act of soliciting others to carry out the offences mentioned above.

Article 5: Penalties for natural persons. – This provision is applicable to all offences and requires Member States to apply effective, proportionate and dissuasive criminal penalties.

In addition, the provision establishes the minimum level of the maximum sanction. Framework Decision 2001/500/JHA already sets a minimum threshold for a maximum penalty of four years for some type of money laundering. This proposal sets the minimum maximum penalty also at four years of imprisonment, at least for serious cases. The definition of the minimum threshold also takes into account the existing rules in Member States.

Setting a minimum level of the maximum penalty at EU level will facilitate international police and judicial cooperation and enhance deterrence. Different analyses have highlighted the low level of sanctions/fines and the low prosecution rates³². While this may have a number of reasons, including limited access, capacity or resources of the competent authorities to access and analyse the relevant information in particularly complex cases, a narrow definition of the money laundering offence, low level of sanctions and evidentiary hurdles must be regarded as contributing to this problem. In addition to enforcement gaps, this situation creates a risk of “forum-shopping” by offenders, i.e. criminals carrying out financial transactions where they perceive anti-money laundering measures to be weakest.

Article 6: Aggravating circumstances. – This is a provision applicable to the money laundering offences as defined in Article 3 to ensure that when the offence was committed within a criminal organisation in the sense of Council Framework Decision 2008/841/JHA³³ or when the perpetrator abused their professional position to enable money laundering, this is considered an aggravating circumstance.

Article 7: Liability of legal persons. – This is a provision applicable to all offences mentioned above, which requires Member States to ensure the liability of legal persons, while excluding

³⁰ FATF and Moneyval Mutual evaluation reports and results of the consultation process with Member States.

³¹ Idem.

³² FATF and Moneyval Mutual Evaluation Reports.

³³ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42)

that such liability is alternative to that of natural persons. The provision is in line with Article 10 of the Warsaw Convention.

This provision follows a standard formula that can be found in other EU legal instruments, obliging Member States to ensure that legal persons can be held liable for offences referred to in Articles 1 to 4 committed for their benefit by any person with certain leading positions, within the legal person. It is not required that such liability be exclusively criminal.

Article 8: Sanctions for legal persons. – This provision is applicable to sanctions for legal persons. It follows a standard formula that can be found in other EU legal instruments.

Article 9: Jurisdiction. – This provision applicable to all offences mentioned above, requires the existence of competence bases for the judicial authorities which allow them to initiate investigation, pursue prosecutions and bring to judgment the offences defined in this Directive.

Article 10: Investigative tools. – This provision 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.

Article 11: Replacement of certain provisions of Framework Decision 2001/500/JHA– This provision replaces the current provisions in the area of the criminalisation of money laundering contained in point (b) of Article 1 and Article 2 of Framework Decision 2001/500/JHA in relation to Member States participating in this Directive.

The provisions related to confiscation included in point (a) of Article 1 and Articles 3 and 4 of Framework Decision 2001/500/JHA were replaced by Directive 2014/42/EU.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on countering money laundering by criminal law

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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/EU¹, this Directive aims to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.
- (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.
- (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.

¹ 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).

- (4) Council Framework Decision 2001/500/JHA² 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.
- (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.
- (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.
- (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/EU³. 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.
- (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).
- (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.

² 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).

³ 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).

- (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.
- (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/JHA⁴ 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.
- (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.
- (13) This Directive should replace certain provisions of Framework Decision 2001/500/JHA⁵ for the Member States bound by this Directive.
- (14) Since the objective of this Directive, namely to subject money laundering in all Member States to effective, proportionate and dissuasive criminal penalties, cannot be sufficiently achieved by Member States but can rather, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (14) [In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.
- (15) AND/OR
- (16) In accordance with Articles 1 and 2 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption and application of this Directive and are not bound by it or subject to its application.]

⁴ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42)

⁵ 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).

- (17) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Framework Decision 2001/500/JHA⁶ shall continue to be binding upon and applicable to Denmark,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

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

Article 2
Definitions

For the purposes of this Directive, the following definitions apply:

(1) "criminal activity" means any kind of criminal involvement in the commission of the following crimes:

- (a) participation in an organised criminal group and racketeering, including any of the offences set out in Council Framework Decision 2008/841/JHA;
- (b) terrorism, including any of the offences set out in Directive 2017/XX/EU⁷;
- (c) trafficking in human beings and migrant smuggling, including any of the offences set out in Directive 2011/36/EU⁸ and Council Framework Decision 2002/946/JHA⁹;
- (d) sexual exploitation, including any of the offences set out in Directive 2011/93/EU¹⁰;
- (e) illicit trafficking in narcotic drugs and psychotropic substances, including any of the offences set out in Council Framework Decision 2004/757/JHA¹¹;
- (f) illicit arms trafficking;

⁶ Idem

⁷ 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.).

⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.04.2011, p.1).

⁹ Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).

¹⁰ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ 335 L, 17.12.2011, p. 1).

¹¹ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 335 L, 11.11.2004, p. 8).

- (g) illicit trafficking in stolen goods and other goods;
- (h) corruption, including any of the offences set out in the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union¹² and in Council Framework Decision 2003/568/JHA¹³;
- (i) fraud, including any of the offences set out in Council Framework Decision 2001/413/JHA¹⁴;
- (j) counterfeiting of currency, including any of the offences set out in Directive 2014/62/EU¹⁵;
- (k) counterfeiting and piracy of products;
- (l) environmental crime, including any of the offences set out of Directive 2008/99/EC¹⁶ or in Directive 2009/123/EC¹⁷;
- (m) murder, grievous bodily injury;
- (n) kidnapping, illegal restraint and hostage-taking;
- (o) robbery or theft;
- (p) smuggling (including in relation to customs and excise duties and taxes);
- (q) extortion;
- (r) forgery;
- (s) piracy;
- (t) insider trading and market manipulation, including any of the offences set out in Directive 2014/57/EU¹⁸;
- (u) cybercrime, including any of the offences set out in Directive 2013/40/EU¹⁹;
- (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

¹² Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union.

¹³ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.20004, p. 54).

¹⁴ Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ 149 L, 2.6.2001, p. 1).

¹⁵ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ 151 L, 21.5.2014, p. 1).

¹⁶ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ 328 L, 6.12.2008, p. 28).

¹⁷ Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ 280 L, 27.10.2009, p.52).

¹⁸ Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (OJ 173 L, 12.6.2014, p. 179).

¹⁹ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months;

- (2) "property" means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets;
- (3) "legal person" means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 3

Money laundering offences

1. Each Member State shall ensure that the following conduct shall be a punishable criminal offence, when committed intentionally:
 - (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;
 - (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;
 - (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.
2. In order for an offence referred to in paragraph 1 to be punishable, it shall not be necessary to establish:
 - (a) a prior or simultaneous conviction for the criminal activity that generated the property;
 - (b) the identity of the perpetrator of the criminal activity that generated the property or other circumstances relating to that criminal activity;
 - (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;
3. The offences referred to in points (a) and (b) of paragraph 1 shall also apply to persons who committed or participated in the criminal activity from which the property was derived.

Article 4

Incitement, aiding and abetting, and attempt

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

Article 5
Penalties for natural persons

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.
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.

Article 6
Aggravating circumstances

Member States shall ensure that the following circumstances shall be regarded as aggravating circumstances, in relation to the offences referred to in Articles 3 and 4 when:

- (a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841²⁰; or
- (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.

Article 7
Liability of legal persons

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:
 - (a) a power of representation of the legal person;
 - (b) the authority to take decisions on behalf of the legal person; or
 - (c) the authority to exercise control within the legal person.
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.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who incite the commission of or are perpetrators of , or are accessories to any of the offences referred to in Articles 3 and 4.

²⁰ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, (OJ L 300, 11.11.2008, p. 42).

Article 8
Sanctions for legal persons

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:

- (1) the exclusion of that legal person from entitlement to public benefits or aid;
- (2) the temporary or permanent disqualification of that legal person from the practice of commercial activities;
- (3) the placing of that legal person under judicial supervision;
- (4) judicial winding-up;
- (5) the temporary or permanent closure of establishments which have been used for committing the offence.

Article 9
Jurisdiction

1. Each Member State shall establish its jurisdiction over the offences referred to in Articles 3 and 4 where:
 - (a) the offence is committed in whole or in part in its territory;
 - (b) the offender is one of its nationals.
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:
 - (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.

Article 10
Investigative tools

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.

Article 11
Replacement of certain provisions of Framework Decision 2001/500/JHA

1. This Directive replaces point (b) of Article 1 and Article 2 of Framework Decision 2001/500/JHA in respect of the Member States bound by this Directive, without prejudice to the obligations of those Member States relating to the date for transposition of that Framework Decision into national law.
2. For the Member States bound by this Directive, references to Framework Decision 2001/500/JHA shall be construed as references to this Directive.

Article 12
Transposition

1. 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.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13
Reporting

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.

Article 14
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

Article 15
Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President