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NOTE

From: Presidency
To: Delegations

Subject: Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law
- exchange of views on the LIBE orientation vote of 11 December 2017

The orientation vote of the LIBE Committee on the proposal for a Directive on countering money laundering by criminal law took place on 11 December 2017. In order to facilitate the first examination of the position of the European Parliament, the Presidency has compiled an unofficial consolidated version of the outcome of the LIBE vote. For a better overview, the unofficial consolidated version was included in a 4-column comparison table (in the Annex). While awaiting the official outcome from the EP LIBE Committee orientation vote (that will also undergo an examination by the lawyer-linguists) and keeping in mind there might be some adjustments of the EP text, the annexed table will be only used for the purposes of the discussion at the DROIPEN meeting on 20 December.

The Presidency would like to highlight the following main issues from the outcome of the LIBE vote that differ from the Council general approach:

Article 2 (Definitions)

The text is largely in line with the COM proposal. There is no mention of “a range of offences” in the operative part, almost all EU offences are covered (with the exception of the Directive on combatting terrorism, where only the relevant offences are covered). Like the Council GA, tax offences have been added to the list of specific categories of offences and taken out from the "catch all" clause (Article 2(1)(v) of the COM proposal).

Article 3 (Money Laundering Offences)

- Negligent money laundering

According to the EP position Member States would be required to ensure that money laundering, where the offender suspected or ought to have known that the property derived from criminal activity would be a criminal offence when 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.

- No double criminality in certain circumstances

According to the EP’s text, the general rule is that Member States can require double criminality when the criminal activity was committed in another Member State or in a third country. There are however two exceptions, where the Member States would be prohibited from requiring double criminality:

- When the offence falls within certain categories listed in Article 2 (this includes most of the categories and would also include tax offences)
- When the criminal activity was committed in a “high risk” country as referred to in Article 9 of Directive 2015/849

Article 5 (Penalties for natural persons)

- Higher maximum terms of imprisonment

The EP's text requires the offences in Article 3 to be punishable by a maximum term of imprisonment of at least 5 years (compared to 4 years in the Council's GA). The EP has also included a maximum term of imprisonment of at least 3 years for the offences in Article 4 (compared to no specific requirements in the Council's GA).

- Minimum sanctions

The offences in Article 3 shall be punishable by a minimum term of imprisonment of at least 2 years, when there are aggravating circumstances according to the EP position.

- Additional sanctions

The EP has introduced additional sanctions for natural persons such as:

- a ban on entering into contracts with the public authorities;
- temporary disqualification from the practice of commercial activities;
- a ban on running for elected offices or holding a position of a public servant.

Article 8a (new) (Confiscation of property and of the proceeds of criminal activities)

The EP have added a new article concerning confiscation. There is a precedent for making a reference to the Directive on freezing and confiscation (2014/42/EU) in the Directive on combatting terrorism (Directive 2017/541 article 20(2)), which could form the basis for a possible compromise.

The current text would also require Member States to provide for confiscation without a final conviction when the offender has died. This would go substantially further than the regulation in the 2014 Directive on freezing and confiscation.

Delegations are invited to express their views on the main issues outlined above, as well as to indicate their initial views on the issues outlined in the Annex.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on countering money laundering by criminal law

COM proposal (doc. 15782/16)	Council GA (doc. 9718/17)	LIBE orientation vote	Observations
Recitals			
(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 ¹ , this Directive	(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 also reinforce the application of Directive 2015/849/EU, this Directive aims	(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, public safety and the individual safety of EU citizens. In order to tackle those growing problems and to complement	

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).

COM proposal (doc. 15782/16)	Council GA (doc. 9718/17)	LIBE orientation vote	Observations
<p>aims to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.</p>	<p>to tackle money laundering by means of criminal law, allowing for better cross-border cooperation between competent authorities.</p>	<p>and reinforce the application of Directive 2015/849/EU 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 European authorities and with the Union agencies responsible, to improve the exchange of information and to identify those instigating terrorism.</p>	
<p>(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.</p>	<p>(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.</p>	<p>(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</p>	

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		<p>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.</p>	

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<p>(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.</p>	<p>(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 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.</p>	<p>(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, where appropriate, be further aligned with the International Standards on Combating Money Laundering and the Financing of</p>	

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		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 EU action in this field, EU Member States who signed, but not ratified the Convention yet, shall do so without delay.	
(4) Council Framework Decision 2001/500/JHA ² lays down requirements on the criminalisation of money laundering. That Framework Decision is not comprehensive	(4) Council Framework Decision 2001/500/JHA lays down requirements on the criminalisation of money laundering. That Framework Decision is not comprehensive	(4) Council Framework Decision 2001/500/JHA lays down requirements on the criminalisation of money laundering. That Framework Decision is not comprehensive	

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).

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<p>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.</p>	<p>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.</p>	<p>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 this is the increase in cybercrimes linked to money laundering and to the use of digital currencies, a type of offence which in the past used hardly to exist.</p>	
<p>(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</p>	<p>(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 apply the crime of money laundering to all offences that are punishable with imprisonment of a level defined in this Directive. Moreover, to the extent that the</p>	<p>(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</p>	

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<p>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.</p>	<p>application of these penalty thresholds does not already do so, Member States should include a range of offences within each of the categories designated by this Directive. In this case, Member States may decide how to delimit the range of offences within the respective categories. Where categories of offences, such as terrorism or environmental crimes, include offences set out in Union law, this Directive refers to such legislation. Member States should, consistent with the delimitation mentioned above, consider any offence set out in this EU legislation as predicate offence. The expression “any offence” does not necessarily require that all offences defined in the existing EU instruments should be considered predicate offences. (...). Any kind of punishable involvement in the commission of a predicate offence, as criminalised in</p>	<p>extent that the application of these 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,</p>	

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	<p>accordance with national law is also to 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.</p>	<p>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.</p>	
		<p>(5a) For the purpose of this Directive, illicit trafficking in stolen goods and other goods means, inter alia, illicit 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, as well as ivory and wildlife.</p>	

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<p>(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.</p>	<p>(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.</p>	<p>(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. Whereas 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.</p>	
<p>(7) This Directive should not apply to money laundering as regards property derived from offences affecting the Union's financial interests, which is</p>	<p>(7) This Directive should not apply to money laundering as regards property derived from offences affecting the Union's financial interests, which is</p>	<p>(7) This Directive should not apply to money laundering as regards property derived from offences affecting the Union's financial interests, which is</p>	

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<p>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.</p>	<p>subject to specific rules as laid down in Directive 2017/XX/EU. This is without prejudice to the possibility for Member States to transpose the two directives through a single comprehensive framework at national level. 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.</p>	<p>subject to specific rules as laid down in Directive 2017/XX/EU³. 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.</p>	
<p>(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</p>	<p>(8) Member States should ensure that certain types of money laundering activities are also punishable when committed by the perpetrator of the criminal activity that generated that property (self-laundering). Where, in such</p>	<p>(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”).</p>	

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).

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<p>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).</p>	<p>cases, the money laundering activity does not simply amount to the mere possession or use, but also involves the transfer, conversion, concealing or disguise of property and results in further damage than that already caused by the predicate offence, (...) for instance by bringing the property derived from criminal activity into circulation and, by doing so, concealing its unlawful origin, that activity should be punishable.</p>	<p>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.</p>	
<p>(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</p>	<p>(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</p>	<p>(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</p>	

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<p>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.</p>	<p>conviction for that crime. Member States may, in line with their national legal system ensure this through other means than legislation. 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. (...)</p>	<p>mere fact that the predicate offence was committed in another Member State or third country, subject to the conditions set out in this Directive.</p>	
		<p>(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</p>	

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		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.	
		(9a) 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.	
(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	(10) This Directive aims to criminalise money laundering when committed intentionally and with the knowledge that the property has been derived from criminal activity. In this context it does not make a difference whether the property has been derived directly or indirectly from such activity, in line with the broad definition of "proceeds", as laid down in Directive 2014/42/EU. Intention and knowledge may be	(10) This Directive aims to criminalise money laundering when committed intentionally and with the knowledge that the property had been derived from criminal activity. Intention and knowledge may be inferred from objective, factual circumstances. In each concrete case, when considering whether the property is derived from criminal activity and whether the accused person knew this, the specific circumstances of	

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constitutes a criminal offence.	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.	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.	
		(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	

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		being used to launder money to finance terrorist activities.	
<p>(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.</p>	<p>(11) In order to deter money laundering throughout the Union, Member States should ensure that this conduct is punishable by a maximum term of imprisonment of at least four years. This obligation is without prejudice to the individualisation and application of penalties and execution of sentences in accordance with the concrete circumstances in each individual case. (...) .</p>	<p>(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 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 2017/541; or where the offender is a Politically Exposed person as defined by Directive 2015/849, Member States should provide for aggravating circumstances in</p>	

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)

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		accordance with the applicable rules established by their legal systems.	
	<p>(11a) Member States should ensure that the judge or the court can take the aggravating circumstances as defined in this Directive into account when sentencing offenders, although there is no obligation to increase the sentence. It remains within the discretion of the judge or the court to determine whether to apply the specific aggravating circumstance, taking into account all the facts of the particular case. Member States are not obliged to provide for an aggravating circumstance, where national law provides for the criminal offences as defined in Framework Decision 2008/841/JHA to be punishable as a separate criminal offence and this may lead to more severe sanctions.</p>	<p>(11a) The Union and the Member States should provide the necessary legal measures for the protection of whistleblowers that report information in relation to money laundering, including in third countries.</p>	

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<p>(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.</p>	<p>(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.</p>	<p>(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. 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 organized crime or</p>	

COM proposal (doc. 15782/16)	Council GA (doc. 9718/17)	LIBE orientation vote	Observations
		<p>other serious crimes. These tools should be adapted to the latest evolutions in the field of cybercrime and money laundering, such as 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.</p>	
	<p>(12a) To ensure the success of investigations and the prosecution of money laundering offences, those responsible for investigating or prosecuting such offences should have the possibility to make use of effective</p>	<p>(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</p>	

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	<p>investigative tools such as those which are used in combating organised crime or other serious crimes. 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.</p>	<p>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.</p>	
		<p>(12b) 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 to counter money laundering, including Eurojust and Europol. To that end, efficient use of the available tools and resources for</p>	

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		<p>cooperation should be made, 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.</p>	
		<p>(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</p>	

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		<p>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.</p>	
		<p>(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.</p>	
(13) This Directive should replace certain provisions of	(13) This Directive should replace certain provisions of	(13) This Directive should replace certain provisions of	

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Framework Decision 2001/500/JHA ⁵ for the Member States bound by this Directive.	Framework Decision 2001/500/JHA for the Member States bound by this Directive.	Framework Decision 2001/500/JHA for the Member States bound by this Directive.	
		<p>(13a) 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, 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 privacy and data protection and the presumption of innocence, as well as rights of suspects and accused persons to have access to a lawyer, right</p>	

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).

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		<p>not to incriminate one-self and the right to a fair trial. This Directive has to be implemented in accordance with those rights and principles taking also 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.</p>	
<p>(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.</p>	<p>(14) Since the objective of this Directive (...) 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</p>	<p>(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.</p>	

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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.	beyond what is necessary to achieve that objective. (...)	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.		(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		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	(15) 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	(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	

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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.]	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 .	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.]	
(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/JHA shall continue to be binding upon and applicable to Denmark,	(16) 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/JHA ⁶ shall continue to be binding upon and applicable to Denmark,	(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/JHA shall continue to be binding upon and applicable to Denmark,	

⁶ Idem

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Article 1 Subject matter and scope			
<p>1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.</p> <p>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.</p>	<p>1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.</p> <p>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 .</p>	<p>1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.</p> <p>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.</p>	Identical
Article 2 Definitions			
<p>For the purposes of this Directive, the following definitions apply:</p> <p>(1) "criminal activity" means any kind of criminal involvement in the commission of the following</p>	<p>For the purposes of this Directive, the following definitions apply:</p> <p>(1) "criminal activity" means any kind of criminal involvement in the commission of all offences,</p>	<p>For the purposes of this Directive, the following definitions apply:</p> <p>(1) "criminal activity" means any kind of criminal involvement in the commission of the following</p>	<p>The EP's position is largely in line with the COM proposal. This also means that unlike the GA all EU offences would be covered with the exception of the offences in the Directive on combatting terrorism, where only <i>relevant</i></p>

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crimes:	<p>(...), which in accordance with national legislation 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.</p> <p>Member States shall take the necessary measures to ensure that a range of offences within the categories listed hereunder shall be considered a criminal activity for the purposes of this Directive:</p>	crimes:	<p>offences must be covered.</p> <p>Unlike the text of the GA, there is no mention of the words “range of offences” (there is still mention of “range of offences” in recital 5). Although this was also the same in the COM’s proposal, it might leave the scope of predicate offence ambiguous.</p> <p>Tax crimes have been added to the list of predicate offences like in the Council GA.</p>

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<p>(a) participation in an organised criminal group and racketeering, including any of the offences set out in Council Framework Decision 2008/841/JHA;</p> <p>(b) terrorism, including any of the offences set out in Directive 2017/XX/EU⁷ ;</p> <p>(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</p>	<p>(a) participation in an organised criminal group and racketeering, including any offence set out in Council Framework Decision</p> <p>(b) terrorism, including any offence set out in Directive 2017/XX/EU ;</p> <p>(c) trafficking in human beings and migrant smuggling, including any offence set out in Directive 2011/36/EU and Council Framework Decision 2002/946/JHA ;</p> <p>(d) sexual exploitation,</p>	<p>(a) participation in an organised criminal group and racketeering, including any of the offences set out in Council Framework Decision 2008/841/JHA;</p> <p>(b) terrorism, including any relevant offences set out in Directive 2017/541/EU;</p> <p>(c) trafficking in human beings and migrant smuggling, including any of the offences set out in Directive 2011/36/EU and Council Framework Decision 2002/946/JHA;</p> <p>(d) sexual exploitation, including</p>	

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).

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<p>(d) sexual exploitation, including any of the offences set out in Directive 2011/93/EU¹⁰ ;</p> <p>(e) illicit trafficking in narcotic drugs and psychotropic substances, including any of the offences set out in Council Framework Decision 2004/757/JHA¹¹ ;</p> <p>(f) illicit arms trafficking;</p> <p>(g) illicit trafficking in stolen goods and other goods;</p>	<p>including any offence set out in Directive 2011/93/EU ;</p> <p>(e) illicit trafficking in narcotic drugs and psychotropic substances, including any offence set out in Council Framework Decision 2004/757/JHA ;</p> <p>(f) illicit arms trafficking;</p> <p>(g) illicit trafficking in stolen goods and other goods;</p>	<p>any of the offences set out in Directive 2011/93/EU;</p> <p>(e) illicit trafficking in narcotic drugs and psychotropic substances, including any of the offences set out in Council Framework Decision 2004/757/JHA;</p> <p>(f) illicit trafficking of arms;</p> <p>(g) illicit trafficking in stolen goods and other goods;</p>	

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).

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<p>(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 ;</p> <p>(i) fraud, including any of the offences set out in Council Framework Decision 2001/413/JHA¹⁴ ;</p>	<p>(h) corruption, including any offence set out in the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and in Council Framework Decision 2003/568/JHA ;</p> <p>(i) fraud, including any offence set out in Council Framework Decision 2001/413/JHA ;</p>	<p>(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 Union and in Council Framework Decision 2003/568/JHA;</p> <p>(ha) tax crimes relating to direct taxes and indirect taxes as defined by national law;</p> <p>(i) fraud, including any of the offences set out in Council Framework Decision 2001/413/JHA14;</p>	

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).

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<p>(j) counterfeiting of currency, including any of the offences set out in Directive 2014/62/EU¹⁵ ;</p> <p>(k) counterfeiting and piracy of products;</p> <p>(l) environmental crime, including any of the offences set out of Directive 2008/99/EC¹⁶ or in Directive 2009/123/EC¹⁷ ;</p> <p>(m) murder, grievous bodily injury;</p> <p>(n) kidnapping, illegal restraint</p>	<p>(j) counterfeiting of currency, including any offence set out in Directive 2014/62/EU ;</p> <p>(k) counterfeiting and piracy of products;</p> <p>(l) environmental crime, including any offence set out of Directive 2008/99/EC or in Directive 2009/123/EC ;</p> <p>(m) murder, grievous bodily injury;</p> <p>(n) kidnapping, illegal restraint</p>	<p>(j) counterfeiting of currency, including any of the offences set out in Directive 2014/62/EU15;</p> <p>(k) counterfeiting and piracy of products;</p> <p>(l) environmental crime, including any of the offences set out of Directive 2008/99/EC16 or in Directive 2009/123/EC17;</p> <p>(m) murder, grievous bodily injury;</p> <p>(n) kidnapping, illegal restraint</p>	

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).

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<p>and hostage-taking;</p> <p>(o) robbery or theft;</p> <p>(p) smuggling (including in relation to customs and excise duties and taxes);</p> <p>(q) extortion;</p> <p>(r) forgery;</p> <p>(s) piracy;</p> <p>(t) insider trading and market manipulation, including any of the offences set out in Directive 2014/57/EU¹⁸;</p>	<p>and hostage-taking;</p> <p>(o) robbery or theft;</p> <p>(p) smuggling (...);</p> <p>(pa) tax crimes relating to direct taxes and indirect taxes, as defined in the national law of the Member States;</p> <p>(q) extortion;</p> <p>(r) forgery;</p> <p>(s) piracy;</p> <p>(t) insider trading and market manipulation, including any offence set out in Directive 2014/57/EU ;</p>	<p>and hostage-taking;</p> <p>(o) robbery or theft;</p> <p>(p) smuggling (including in relation to customs and excise duties and taxes);</p> <p>(q) extortion;</p> <p>(r) forgery;</p> <p>(s) piracy;</p> <p>(t) insider trading and market manipulation, including any of the offences set out in Directive 2014/57/EU;</p>	

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

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<p>(u) cybercrime, including any of the offences set out in Directive 2013/40/EU¹⁹ ;</p> <p>(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;</p>	<p>(u) cybercrime, including any offence set out in Directive 2013/40/EU ;</p> <p>(v) (...)</p>	<p>(u) cybercrime, including any of the offences set out in Directive 2013/40/EU;</p> <p>(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 punishable by deprivation of liberty or a detention order for a minimum of more than six months;</p>	

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).

<p align="center">COM proposal (doc. 15782/16)</p>	<p align="center">Council GA (doc. 9718/17)</p>	<p align="center">LIBE orientation vote</p>	<p align="center">Observations</p>
<p>(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;</p> <p>(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.</p>	<p>(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;</p> <p>(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.</p>	<p>(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;</p> <p>(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.</p>	

COM proposal (doc. 15782/16)	Council GA (doc. 9718/17)	LIBE orientation vote	Observations
Article 3 Money laundering offences			
<p>1. Each Member State shall ensure that the following conduct shall be a punishable criminal offence, when committed intentionally:</p> <p>(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;</p> <p>(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing</p>	<p>1. Member States shall take the necessary measures to ensure that the following conduct shall be a punishable criminal offence, when committed intentionally:</p> <p>a) the conversion or transfer of property, knowing that such property is derived from criminal 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;</p> <p>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</p>	<p>1. Each Member State shall ensure that the following conduct shall be a punishable criminal offence, when committed intentionally</p> <p>(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;</p> <p>(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;</p>	<p>The impact of the addition of <i>even if only</i> in Art 3(1)(a) is not clear. It would appear that this addition would mean that purpose “<i>to evade the legal consequences of that person's action</i>” is no longer required and it is just a mere example of a possible purpose.</p> <p>In other terms this would in principle mean that the following would have to be a criminal offence:</p> <p><i>“the conversion or transfer of property, knowing that such</i></p>

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<p>that such property is derived from criminal activity or from an act of participation in such an activity;</p> <p>(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.</p>	<p>criminal activity (...);</p> <p>c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity (...).</p>	<p>(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.</p> <p>1 a. Each Member State shall ensure that the conduct referred to in paragraph 1 shall be a punishable criminal offence, when:</p> <p>(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</p> <p>(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.</p> <p>2. In order for an offence referred to in paragraph 1 and 1a to be punishable, it shall not be necessary to establish:</p>	<p><i>property is derived from criminal activity or from an act of participation in such activity, for the purpose of [...] assisting any person who is involved in the commission of such an activity [...]</i>".</p> <p>The addition of paragraph 1a introduces negligent money laundering for obliged entities and persons who have a contractual relationship and a responsibility towards an obliged entity. While "ought to have known" would infer to negligence, "suspected" on the other hand could also be considered as indirect intent or <i>dolus eventualis</i>.</p> <p>The relationship between the addition made by EP in art 3(2)(a) and the added art 3(2)(ba) would need some clarification.</p>

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<p>2. In order for an offence referred to in paragraph 1 to be punishable, it shall not be necessary to establish:</p> <p>(a) a prior or simultaneous conviction for the criminal activity that generated the property;</p>	<p>2. Member States shall take the necessary measures to ensure that:</p> <p>(a) a prior or simultaneous conviction for the criminal activity from which the property was derived, is not a prerequisite for a conviction for the offences, referred to in paragraph 1;</p>	<p>(a) a prior or simultaneous conviction for the criminal activity that generated the property, where a court 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;</p> <p>(b) the identity of the perpetrator of the criminal activity that generated the property (...);</p> <p>(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;</p> <p>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</p>	<p>Also, a novel term “activities of a criminal nature” is used in art 3(2)(a). Otherwise the idea and purpose of art 3(2)(ba) seems to be similar to that of art 3(2)(b) of the GA.</p> <p>For art 3(c) (double criminality) the EP’s position clearly goes further than the GA as it states two situations where the Member States would not be allowed to require double criminality:</p> <p>First they make a reference to most of the listed offences (excluded are fraud, counterfeiting of currency or products, robbery or theft and smuggling). It should be noted that tax crimes are also included in the list.</p>

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<p>(b) the identity of the perpetrator of the criminal activity that generated the property or other circumstances relating to that criminal activity;</p>	<p>(b) a conviction for the offences, referred to in paragraph 1 is possible where it is established that the property has been derived from a criminal activity, referred to in Article 2 (1), without it being necessary to establish all the factual elements or all circumstances relating to such activity;</p>	<p>(...) implementing or applying this Article had it been committed there. Member States may further require that the relevant conduct constitutes a criminal offence under the national law of the other Member State or the third country where the conduct was committed, except when:</p> <ul style="list-style-type: none"> • the relevant conduct falls within the categories of crimes referred to in Article 2 (1) points (a) to (ha) and (l) to (n) • that third country is identified by the Commission as being ‘high risk’, as referred to in Article 9 of Directive (EU) 2015/849; <p>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.</p>	<p>Second, if the country of location of the criminal activity is listed as a high risk country. It could be questioned whether or not the fact that a country is listed as being high risk should have any relevance in the issue of double criminality.</p>

COM proposal (doc. 15782/16)	Council GA (doc. 9718/17)	LIBE orientation vote	Observations
<p>(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;</p> <p>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.</p>	<p>(c) the offences referred to in paragraph 1 extend to property derived from conduct that occurred in the territory of another Member State or in that of a third country, when the relevant conduct would constitute a criminal activity had it occurred domestically. Member States may further require that the relevant conduct constitutes a criminal offence under the national law of the other Member State or that of the third country .</p> <p>3. Member States shall take the necessary measures to ensure that the conduct, referred to in points (a) and (b) of paragraph 1 shall be a punishable criminal offence when committed by persons who committed or were involved in the criminal activity from which the property was derived</p>		

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Article 4 Incitement, aiding and abetting, and attempt			
<p>Each Member State shall ensure that inciting, aiding and abetting and attempting an offence referred to in Article 3 shall be punishable.</p>	<p>Member States shall take the necessary measures to ensure that inciting, aiding and abetting and attempting an offence referred to in Article 3 shall be punishable.</p>	<p>Each Member State shall ensure that inciting, aiding and abetting and attempting an offence referred to in Article 3 shall be punishable.</p>	
Article 5 Penalties for natural persons			
<p>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.</p> <p>2. Each Member State shall ensure that the offences referred to in Article 3 shall be punishable</p>	<p>1. Member States shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 shall be punishable by effective, proportionate and dissuasive criminal penalties.</p> <p>2. Member States shall take the necessary measures to ensure that the conduct referred to in Article 3 shall be punishable by a</p>	<p>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.</p> <p>2. Each Member State shall ensure that the offences referred to in Article 3 shall be punishable</p>	<p>The EP's position has gone further than the Council GA in many respects.</p> <p>In addition to a higher maximum term of imprisonment for the offences in art 3 (5 years vs 4 years) and the 3 year maximum term of imprisonment for the offences in art 4, the EP has</p>

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by a maximum term of imprisonment of at least four years, at least in serious cases.	maximum term of imprisonment of at least four years (...).	<p>by a maximum term of imprisonment of at least five years (...).</p> <p>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 is applicable.</p> <p>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.</p> <p>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 they have acted under cover of a legal person, are also liable to additional penalties, such as:</p> <p>(a) the temporary or permanent ban on entering into contracts with the public authorities;</p>	<p>introduced a minimum term of imprisonment (2 years) for aggravating circumstances. This would be a precedent in EU criminal law.</p> <p>Another EU-novelty is the proposed additional penalties for natural persons.</p>

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		<p>(b) temporary disqualification from the practice of commercial activities.</p> <p>(c) when 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 2 consecutive mandates or a minimum of 10 years.</p>	
<p>Article 6</p> <p>Aggravating circumstances</p>			
<p>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:</p> <p>(a) the offence was committed within the framework of a criminal organisation within the</p>	<p>1. Member States shall take the necessary measures to ensure that when the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841 , this may, in accordance with national law, be regarded as an aggravating circumstance, in relation to the</p>	<p>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:</p> <p>(a) the offence was committed within the framework of a criminal organisation within the</p>	<p>The EP has included many additional aggravating circumstances that either describe the criminal activity (aa), the location of the act (ab), the offender (ae) or the value of laundered proceeds (bb).</p>

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meaning of Framework Decision 2008/841 ²⁰ ; or	conduct referred to in Articles 3 and 4.	<p>meaning of Framework Decision 2008/841; (...)</p> <p>(aa) the property being laundered is derived from criminal activities referred to in Article 2, paragraph 1 (a), (b), (c), (d), (f) and (m), or the purpose of the laundering is to finance such criminal activities</p> <p>(ab) the offence was committed in whole or in part on the territory of a non-cooperative jurisdiction listed by the EU or involving the use of an informal value transfer system, bearer shares, virtual currencies or cash couriers;</p> <p>(ae) the offender is a politically exposed person in accordance with national law transposing the definition provided in Article 3 (9) of the Directive 2015/489/EU; or</p>	

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).

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<p>(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.</p>	<p>2. Member States may provide that when 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, this may be regarded as an aggravating circumstance, as referred to in paragraph 1.</p>	<p>(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, or</p> <p>(bb) the property or money being laundered is of a value equal to or exceeding EUR 500 000.</p>	

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Article 7 Liability of legal persons			
<p>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:</p> <p>(a) a power of representation of the legal person;</p> <p>(b) the authority to take decisions on behalf of the legal person; or</p> <p>(c) the authority to exercise control within the legal person.</p>	<p>1. Member States shall take the necessary measures to ensure that legal persons can be held liable for any of the conduct referred to in Articles 3 and 4 committed for their benefit 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 one of the following:</p> <p>a) a power of representation of the legal person;</p> <p>(b) an authority to take decisions on behalf of the legal person; or</p> <p>(c) an authority to exercise control within the legal person.</p>	<p>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:</p> <p>(a) a power of representation of the legal person;</p> <p>(b) the authority to take decisions on behalf of the legal person; or</p> <p>(c) the authority to exercise</p>	<p>This amendment would require further clarification from the EP.</p> <p>The addition of “<i>or for the benefit of other natural or legal persons</i>” has eliminated the link that usually forms the basis of the liability of a legal person (committing the act for the benefit of the legal person).</p> <p>The text of the EP could be read as requiring Member States to ensure that a legal person can be held liable regardless of whether the act was committed for the benefit of the legal person or not.</p>

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<p>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.</p> <p>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</p>	<p>2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission of any of the conduct referred to in Articles 3 and 4 for the benefit of that legal person by a person under its authority.</p> <p>3. Liability of legal persons under paragraphs 1 and 2 of this Article shall not exclude criminal proceedings against natural persons who (...) are perpetrators, inciters or accessories in, (...) any of the conduct referred to in Articles 3 and 4.</p>	<p>control within the legal person.</p> <p>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 (...) their benefit or for the benefit of other natural or (...) legal persons by a person under its authority.</p> <p>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</p>	

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and 4.		in Articles 3 and 4.	
Article 8 Sanctions for legal persons			
<p>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:</p> <p>(1) the exclusion of that legal person from entitlement to public benefits or aid;</p>	<p>Member States shall take the necessary measures to ensure that a legal person held liable (...) pursuant to Article 7 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:</p> <p>(1) exclusion (...) from entitlement to public benefits or aid;</p>	<p>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:</p> <p>(1) the exclusion of that legal person from entitlement to public benefits or aid including EU programmes or funds;</p>	<p>The amendments by the EP do not seem to be substantial given that the list is illustrative of other sanctions that may but do not have to be in place.</p>

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<p>(2) the temporary or permanent disqualification of that legal person from the practice of commercial activities;</p> <p>(3) the placing of that legal person under judicial supervision;</p> <p>(4) judicial winding-up;</p> <p>(5) the temporary or permanent closure of establishments which have been used for committing</p>	<p>(2) temporary or permanent disqualification (...) from the practice of commercial activities;</p> <p>(3) placing (...) under judicial supervision;</p> <p>(4) a judicial winding-up order;</p>	<p>(1a) the temporary or permanent ban on entering into contracts with the public authorities;</p> <p>(2) the temporary or permanent disqualification of that legal person from the practice of commercial activities;</p> <p>(3) the placing of that legal person under judicial supervision;</p> <p>(4) judicial winding-up;</p> <p>(5) the temporary or permanent closure of establishments which have been used for committing the offence.</p>	

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the offence.	(5) temporary or permanent closure of establishments which have been used for committing the offence		
Article 8a (new) Confiscation of property and of the proceeds of criminal activities			
		<p>1. Each Member State shall provide for 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.</p> <p>2. Each Member State shall provide for 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</p>	<p>The article on confiscation is a substantial change to the COM's proposal. There is a precedent for making a reference to the directive on freezing and confiscation (2014/42/EU) in the directive on combatting terrorism (directive 2017/541 article 20(2)), which could form the basis of a possible compromise.</p> <p>The scope of the article is rather wide, considering that it covers all criminal activity as defined in</p>

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		<p>the death of the offender.</p> <p>3. This Article shall apply irrespective of whether the laundering or the predicate offence have been committed by a natural or a legal person.</p> <p>4. Member States shall take the necessary measures to ensure cooperation in 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 of this Directive.</p>	<p>this Directive.</p> <p>It should be noted that paragraph 2 goes significantly further than the directive on freezing and confiscation, requiring for confiscation in the case of death of the offender.</p>

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<p>Article 9</p> <p>Jurisdiction</p>			
<p>1. Each Member State shall establish its jurisdiction over the offences referred to in Articles 3 and 4 where:</p> <p>(a) the offence is committed in whole or in part in its territory;</p> <p>(b) the offender is one of its nationals.</p>	<p>1. Each Member State shall take the necessary measures to establish its jurisdiction over the conduct referred to in Articles 3 and 4 where:</p> <p>(a) the offence is committed in whole or in part in its territory;</p> <p>(b) the offender is one of its nationals.</p>	<p>1. Each Member State shall establish its jurisdiction over the offences referred to in Articles 3 and 4 where:</p> <p>(a) the offence is committed in whole or in part in its territory; or</p> <p>(b) the offender is one of its nationals or a habitual resident; or</p> <p>(bb) the offence is committed for the benefit of a natural or legal person established in its territory;</p> <p>2a. When an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State and when 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</p>	<p>The paragraph on conflicts of jurisdiction is similar to that in Article 19 of the Directive on combatting terrorism (2017/541)</p>

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		<p>aim of centralising proceedings in a single Member State.</p> <p>The following factors shall be taken into account, by order of priority:</p> <ul style="list-style-type: none"> (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. <p>Member States may have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their actions.</p> <p>(...)</p>	

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<p>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:</p> <p>(a) the offender is a habitual resident in its territory;</p> <p>(b) the offence is committed for the benefit of a legal person established in its territory.</p>	<p>2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the conduct referred to in Articles 3 and 4 committed outside its territory where:</p> <p>(a) the offender is a habitual resident in its territory;</p> <p>(b) the offence is committed for the benefit of a legal person established in its territory.</p>		

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Article 10 Investigative tools			
<p>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.</p>	<p>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 conduct referred to in Articles 3 and 4.</p>	<p style="text-align: center;">Article 10</p> <p style="text-align: center;">Investigative tools and cooperation</p> <p>1. Each Member State shall ensure that effective investigative tools, sufficient personnel, 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.</p> <p>2. Member States shall take the necessary measures to improve data exchange and cooperation</p>	<p>The text of the second paragraph might be better suited in the recitals.</p> <p>The EP has added a specific paragraph dealing with international cooperation where the criminal activity is a tax offence or fraud.</p>

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		<p>within the Union, as well as to increase cooperation with third countries and international organizations countering money laundering and terrorism 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, particularly those identified by the Commission as being high-risk third countries as referred to in 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 exchanges of information at both European and international level between Financial Information Units.</p> <p>3a. 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</p>	

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		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 criminal activity or a criminal offence.	
Article 11 Replacement of certain provisions of Framework Decision 2001/500/JHA			
<p>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.</p> <p>2. For the Member States bound by this Directive, references to Framework Decision 2001/500/JHA shall be construed</p>	<p>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.</p> <p>2. For the Member States bound by this Directive, references to Framework Decision 2001/500/JHA shall be construed</p>	<p>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.</p> <p>2. For the Member States bound by this Directive, references to Framework Decision 2001/500/JHA shall be construed</p>	

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as references to this Directive.	as references to this Directive.	as references to this Directive.	
Article 12 Transposition			
<p>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.</p> <p>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.</p>	<p>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.</p> <p>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.</p>	<p>1. 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. (...)</p> <p>2. 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.</p> <p>3. Member States shall communicate</p>	<p>EP has changed the transposition date to 12 months.</p>

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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.	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.	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.	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.	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. 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	

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		<p>Directive with regard to 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 this evaluation, the Commission shall, if necessary, decide on appropriate follow-up actions.</p>	
<p>Article 14</p> <p>Entry into force</p>			
<p>This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p>	<p>This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p>	<p>This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p>	

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Article 15 Addressees			
This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	
