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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law - Outcome of the European Parliament's first reading (Strasbourg, 10-13 September 2018)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Ignazio CORRAO (EFDD, IT) presented the compromise amendment (amendment 59) to the proposal for Regulation, on behalf of the Committee on Committee on Civil Liberties, Justice and Home Affairs.

This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 12 September, the plenary adopted the compromise amendment (amendment 59) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Countering money laundering by criminal law *I**

European Parliament legislative resolution of 12 September 2018 on the proposal for a directive of the European Parliament and of the Council on countering money laundering by criminal law (COM(2016)0826 – C8-0534/2016 – 2016/0414(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0826),
 - having regard to Article 294(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0534/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the contributions submitted by the Czech Chamber of Deputies, the Czech Senate and the Spanish Parliament on the draft legislative act,
 - having regard to the provisional agreement approved by the responsible committee under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 7 June 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and also the opinions of the Committee on Development, the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A8-0405/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2016)0414

Position of the European Parliament adopted at first reading on 12 September 2018 with a view to the adoption of Directive (EU) 2018/... of the European Parliament and of the Council on combating money laundering by criminal law

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure³,

³ *Position of the European Parliament of 12 September 2018.*

Whereas:

- (1) Money laundering and the *related* financing of terrorism and organised crime remain significant problems at Union level, thus damaging the integrity, stability and reputation of the financial sector and threatening the internal market and the internal security of the Union. In order to tackle those problems and *to complement and* reinforce the application of Directive (EU) 2015/849 of the European Parliament and of the Council⁴, this Directive aims to combat money laundering by means of criminal law, enabling *more efficient and swifter* cross-border cooperation between competent authorities.

⁴ 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).

- (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 to combat money laundering should therefore be compatible with, and at least as stringent as, other actions undertaken in international fora.
- (3) Union action should continue to take particular account of the Financial Action Task Force (FATF) Recommendations and instruments of other international *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, the Union should transpose the requirements of that Convention into its legal order.

- (4) Council Framework Decision 2001/500/JHA⁵ lays down requirements with regard to the criminalisation of money laundering. However, that Framework Decision is not comprehensive enough and the current criminalisation of money laundering is not sufficiently coherent to effectively combat money laundering across the Union and results in enforcement gaps and in obstacles to cooperation between the competent authorities in different Member States.

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, p. 1).

- (5) The definition of criminal activities which constitute predicate offences for money laundering should be sufficiently uniform in all Member States. Member States should ***ensure that all offences that are punishable by a term of imprisonment as set out in this Directive are considered predicate offences for money laundering. Moreover, to the extent that the application of those penalty thresholds does not already do so, Member States should*** include a range of offences within each of the categories of offences listed in ***this Directive. In that case, Member States should be able to decide how to delimit the range of offences within each category.*** Where a category of offences, such as terrorism or environmental offences, ***includes offences*** set out in legal acts of the Union, this Directive should refer to those legal acts. ***Member States should, however, consider any offence set out in those legal acts as constituting a predicate offence for money laundering. Any kind of punishable involvement in the commission of a predicate offence as criminalised in accordance with national law should also be considered as a criminal activity for the purposes of this Directive.*** In cases where Union law allows Member States to provide for sanctions other than criminal sanctions, this Directive should not require Member States to classify the offences in those cases as predicate offences for the purposes of this Directive.

- (6) *The use of virtual currencies presents new risks and challenges from the perspective of combating money laundering. Member States should ensure that those risks are addressed appropriately.*
- (7) *Due to the impact of money laundering offences committed by public office holders on the public sphere and on the integrity of public institutions, Member States should be able to consider including more severe penalties for public office holders in their national frameworks in accordance with their legal traditions.*
- (8) Tax crimes relating to direct and indirect taxes should be covered by the definition of criminal activity, in line with the revised FATF Recommendations. Given that different tax crimes in each Member State can constitute a criminal activity punishable by the sanctions referred to in this Directive, the definitions of tax crimes might diverge in national law. The aim of this Directive, however, is not to harmonise the definitions of tax crimes in national law.

- (9) *In criminal proceedings regarding money laundering, Member States should assist each other in the widest possible way and ensure that information is exchanged in an effective and timely manner in accordance with national law and the existing Union legal framework. Differences between the definitions of predicate offences in national law should not hinder international cooperation in criminal proceedings regarding money laundering. Cooperation with third countries should be intensified, in particular by encouraging and supporting the establishment of effective measures and mechanisms to combat money laundering and by ensuring better international cooperation in this field.*
- (10) This Directive does not apply to money laundering involving property derived from criminal offences affecting the Union's financial interests, which is subject to specific rules as laid down in Directive (EU) 2017/1371 of the European Parliament and of the Council⁶. *This is without prejudice to the possibility for Member States to transpose this Directive and Directive (EU) 2017/1371 by means of a single comprehensive framework at national level.* In accordance with Article 325(2) of the Treaty on the Functioning of the European Union (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.

⁶ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (11) *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 the property ('self-laundering'). In such cases, where, , the money laundering activity does not simply amount to the mere possession or use of property, but also involves the transfer, conversion, concealment or disguise of property ■ and results in further damage than that already caused by the criminal activity, for instance by putting the property derived from criminal activity into circulation and, by doing so, concealing its unlawful origin, that money laundering activity should be ■ punishable ■ .*

- (12) In order for *criminal law measures* to be effective against money laundering, a conviction should be possible without it being necessary to establish precisely which criminal activity generated the property, or for there to be a prior or simultaneous conviction for that criminal activity, while taking into account all relevant circumstances and evidence. It should be possible for Member States, in line with their national legal systems, to ensure this by means other than legislation. Prosecutions for money laundering should also not be impeded by the fact that the criminal activity was committed in another Member State or in a third country, subject to the conditions set out in this Directive.

- (13) This Directive aims to criminalise money laundering when it is committed intentionally *and with the knowledge that the property was derived from criminal activity. In that context, this Directive should not distinguish between situations where property has been derived directly from criminal activity and situations where it has been derived indirectly from criminal activity, in line with the broad definition of "proceeds" as laid down in Directive 2014/42/EU of the European Parliament and of the Council⁷. In each case, when considering whether the property is derived from criminal activity and whether the person knew that, the specific circumstances of the case should be taken into account, such as the fact that the value of the property is disproportionate to the lawful income of the accused person and that the criminal activity and acquisition of property occurred within the same time frame.* Intention and knowledge can be inferred from objective, factual circumstances. As this Directive provides for minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering, Member States are free to adopt or maintain more stringent criminal law rules in that area. Member States should be able, for example, to provide that money laundering committed recklessly or by serious negligence constitutes a criminal offence. *References in this Directive to money laundering committed by negligence should be understood as such for Member States that criminalise such conduct.*

⁷ *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).*

- (14) In order to deter money laundering throughout the Union, Member States should *ensure that it is punishable by a maximum term of imprisonment of at least four years. That obligation is without prejudice to the individualisation and application of penalties and the execution of sentences in accordance with the concrete circumstances in each individual case. Member States should also provide for additional sanctions or measures, such as fines, temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, temporary disqualifications from the practice of commercial activities or temporary bans on running for elected or public office. That obligation is without prejudice to the discretion of the judge or the court to decide whether to impose additional sanctions or measures or not, taking into account all the circumstances of the particular case.*

- (15) *While there is no obligation to increase sentences, Member States should ensure that the judge or the court is able to take the aggravating circumstances set out in this Directive into account when sentencing offenders. It remains within the discretion of the judge or the court to determine whether to increase the sentence due to the specific aggravating circumstances, taking into account all the facts of the particular case. Member States should not be obliged to provide for aggravating circumstances where national law provides for the criminal offences laid down in Council Framework Decision 2008/841/JHA⁸ or for offences committed by natural persons acting as obliged entities in the exercise of their professional activities to be punishable as separate criminal offences and this may lead to more severe sanctions.*

⁸ *Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).*

(16) *The freezing and confiscation of the instrumentalities and proceeds of crime remove the financial incentives which drive crime. Directive 2014/42/EU lays down minimum rules on the freezing and confiscation of the instrumentalities and proceeds of crime in criminal matters. That Directive also requires the Commission to report to the European Parliament and to the Council on its implementation and make adequate proposals if necessary. Member States should, as a minimum, ensure the freezing and confiscation of the instrumentalities and proceeds of crime in all cases provided for in Directive 2014/42/EU. Member States should also strongly consider enabling confiscation in all cases where it is not possible to initiate or conclude criminal proceedings, including in cases where the offender has died. As requested by the European Parliament and the Council in the statement accompanying Directive 2014/42/EU, the Commission will submit a report analysing the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, including in the absence of a conviction of a specific person or persons for those activities. Such analysis will take into account the differences between the legal traditions and systems of the Member States.*

- (17) 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 such technology is based on their territory or not.
- (18) ***Under Council Framework Decision 2009/948/JHA⁹ and Council Decision 2002/187/JHA¹⁰, the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts involving the same person are, with the assistance of Eurojust, to enter into direct consultations with one another, in particular to ensure that all offences covered by this Directive are prosecuted.***

⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

¹⁰ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

- (19) *To ensure the successful investigation and prosecution of money laundering offences, those responsible for investigating or prosecuting such offences should have the possibility to make use of effective investigative tools such as those which are used in combating organised crime or other serious crimes. It should thereby be ensured that sufficient personnel and targeted training, resources and up-to-date technological capacity are available. 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.*
- (20) This Directive replaces certain provisions of Framework Decision 2001/500/JHA for the Member States bound by this Directive.

(21) This Directive respects the principles recognised by Article 2 of the Treaty on European Union (TEU), respects fundamental rights and freedoms and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union, including those set out in Titles II, III, V and VI thereof which encompass, inter alia, the right to respect for private and family life and the right to protection of personal data, the principles of legality and proportionality of criminal offences and penalties, covering also the requirement of precision, clarity and foreseeability in criminal law, the presumption of innocence, as well as the rights of suspects and accused persons to have access to a lawyer, the right not to incriminate oneself 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, the International Covenant on Civil and Political Rights, and other human rights obligations under international law.

(22) 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 TEU. 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.

I

(23) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

- (24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, 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 continues to be binding upon and applicable to Denmark,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of money laundering.
2. This Directive does not apply to money laundering as regards property derived from criminal offences affecting the Union's financial interests, which is subject to specific rules laid down in Directive (EU) 2017/1371.

Article 2
Definitions

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

- (1) "criminal activity" means any kind of criminal involvement in the commission *of any offence punishable, in accordance with national law, 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 systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than six months. In any case, offences within the following categories are considered a criminal activity:*
- (a) participation in an organised criminal group and racketeering, including any *offence* set out in Framework Decision 2008/841/JHA;
 - (b) terrorism, including any *offence* set out in Directive (EU) 2017/541 of the European Parliament and of the Council¹¹;

¹¹ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

- (c) trafficking in human beings and migrant smuggling, including any offence set out in Directive 2011/36/EU of the European Parliament and of the Council¹² and Council Framework Decision 2002/946/JHA¹³;
- (d) sexual exploitation, including any offence set out in Directive 2011/93/EU of the European Parliament and of the Council¹⁴;
- (e) illicit trafficking in narcotic drugs and psychotropic substances, including any offence set out in Council Framework Decision 2004/757/JHA¹⁵;
- (f) illicit arms trafficking;

¹² 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, 15.4.2011, p. 1).

¹³ 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).

¹⁴ 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).

¹⁵ 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 L 335, 11.11.2004, p. 8).

- (g) illicit trafficking in stolen goods and other goods;
- (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 Union¹⁶ and in Council Framework Decision 2003/568/JHA¹⁷;
- (i) fraud, including any offence set out in Council Framework Decision 2001/413/JHA¹⁸;
- (j) counterfeiting of currency, including any offence set out in Directive 2014/62/EU of the European Parliament and of the Council¹⁹;
- (k) counterfeiting and piracy of products;

¹⁶ Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 1).

¹⁷ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

¹⁸ Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).

¹⁹ 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 L 151, 21.5.2014, p. 1).

- (l) environmental crime, including any offence set out in Directive 2008/99/EC of the European Parliament and of the Council²⁰ or in Directive 2009/123/EC of the European Parliament and of the Council²¹;
- (m) murder, grievous bodily injury;
- (n) kidnapping, illegal restraint and hostage-taking;
- (o) robbery or theft;
- (p) smuggling ■ ;

²⁰ 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 L 328, 6.12.2008, p. 28).

²¹ 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 L 280, 27.10.2009, p. 52).

- (q) *tax crimes relating to direct and indirect taxes, as laid down in national law;*
- (r) extortion;
- (s) forgery;
- (t) piracy;
- (u) insider trading and market manipulation, including any offence set out in Directive 2014/57/EU of the European Parliament and of the Council²²;
- (v) cybercrime, including any offence set out in Directive 2013/40/EU of the European Parliament and of the Council²³.

■

²² Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (OJ L 173, 12.6.2014, p. 179).

²³ 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).

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

Article 3

Money laundering offences

1. ■ Member *States* shall ***take the necessary measures to*** ensure that the following conduct, when committed intentionally, is punishable as a criminal offence:
 - (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;
 - (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 ■ ;
 - (c) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity ■ .

2. *Member States may take the necessary measures to ensure that the conduct referred to in paragraph 1 is punishable as a criminal offence where the offender suspected or ought to have known that the property was derived from criminal activity.*
3. *Member States shall take the necessary measures to ensure that:*
 - (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 paragraphs 1 and 2;*
 - (b) *a conviction for the offences referred to in paragraphs 1 and 2 is possible where it is established that the property was derived from a criminal activity, without it being necessary to establish all the factual elements or all circumstances relating to that criminal activity, including the identity of the perpetrator;*

(c) *the offences referred to in paragraphs 1 and 2 extend to property derived from conduct that occurred on the territory of another Member State or of a third country, where that conduct would constitute a criminal activity had it occurred domestically.*

4. *In the case of point (c) of paragraph 3 of this Article, Member States may further require that the relevant conduct constitutes a criminal offence under the national law of the other Member State or of the third country where that conduct was committed, except where that conduct constitutes one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2 and as defined in the applicable Union law.*

5. *Member States shall take the necessary measures to ensure that the conduct referred to in points (a) and (b) of paragraph 1 is punishable as a criminal offence when committed by persons who committed, or were involved in, the criminal activity from which the property was derived.*

Article 4

Aiding and abetting, inciting and attempting

■ Member *States* shall ***take the necessary measures to*** ensure that aiding and abetting, inciting and attempting an offence referred to in Article 3(1) ***and*** (5) is punishable as a criminal offence.

Article 5

Penalties for natural persons

1. ■ Member *States* shall ***take the necessary measures to*** ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.
2. ■ Member *States* shall ***take the necessary measures to*** ensure that the ***offences*** referred to in Article 3(1) ***and*** (5) are punishable by a maximum term of imprisonment of at least four years ■ .
3. ***Member States shall also take the necessary measures to ensure that natural persons who have committed the offences referred to in Articles 3 and 4 are, where necessary, subject to additional sanctions or measures.***

Article 6

Aggravating circumstances

- 1.** Member States shall ***take the necessary measures to*** ensure that, in relation to the ***offences*** referred to in Article 3(1) and (5) and Article 4, ***the following circumstances are to*** be regarded as aggravating ***circumstances***:
- (a) the offence was committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA, or
 - (b) the offender **■** is an obliged entity within the meaning of Article 2 of Directive (EU) 2015/849 and has committed the offence in the exercise of their professional activities.

2. *Member States may provide that, in relation to the offences referred to in Article 3(1) and (5) and Article 4, the following circumstances are to be regarded as aggravating circumstances:*
- (a) the laundered property is of considerable value; or*
 - (b) the laundered property derives from one of the offences referred to in points (a) to (e) and (h) of point (1) of Article 2.*

Article 7

Liability of legal persons

1. ■ Member *States* shall ***take the necessary measures to*** ensure that legal persons can be held liable for any of the *offences* referred to in Article 3(1) ***and (5)*** and Article 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 ***any of the following***:
 - (a) a power of representation of the legal person;
 - (b) *an* authority to take decisions on behalf of the legal person; or
 - (c) *an* authority to exercise control within the legal person.
2. Member States shall ***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 *offences* referred to in Article 3(1) ***and (5)*** and Article 4 for the benefit of that legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 ***of this Article*** shall not preclude criminal proceedings from being brought against natural persons who ■ are perpetrators, *inciters* or accessories *in* any of the *offences* referred to in Article 3(1) ***and (5)*** and Article 4.

Article 8
Sanctions for legal persons

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:

- (1) exclusion from entitlement to public benefits or aid;
- (2) ***temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;***
- (3) temporary or permanent disqualification from the practice of commercial activities;
- (4) placing under judicial supervision;
- (5) ***a*** judicial winding-up ***order;***
- (6) temporary or permanent closure of establishments which have been used for committing the offence.

Article 9
Confiscation

Member States shall take the necessary measures to ensure, as appropriate, that their competent authorities freeze or confiscate in accordance with Directive 2014/42/EU, the proceeds derived from and instrumentalities used or intended to be used in the commission or contribution to the commission of the offences as referred to in this Directive.

Article 10
Jurisdiction

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

2. A Member State shall inform the Commission where it decides to extend its jurisdiction to **offences** referred to in Articles 3 and 4 which have been committed outside its territory where:

(a) the offender is a habitual resident on its territory;

(b) the offence is committed for the benefit of a legal person established on its territory.

3. ***Where an offence referred to in Articles 3 and 4 falls within the jurisdiction of more than one Member State and where any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offender, with the aim of centralising proceedings in a single Member State.***

Account shall be taken of the following factors:

(a) ***the territory of the Member State on which the offence was committed;***

- (b) the nationality or residency of the offender;*
- (c) the country of origin of the victim or victims; and*
- (d) the territory on which the offender was found.*

The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust.

Article 11

Investigative tools

Member States shall take the necessary measures to ensure that effective investigative tools, such as those used in combating organised crime or other serious crimes are available to the persons, units or services responsible for investigating or prosecuting the offences referred to in Article 3(1) and (5) and Article 4.

Article 12

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

Point (b) of Article 1 and Article 2 of Framework Decision 2001/500/JHA are replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.

With regard to the Member States bound by this Directive, references to the provisions of Framework Decision 2001/500/JHA referred to in the first paragraph shall be construed as references to this Directive.

Article 13
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [24 months after the date of entry into force of this Directive] . They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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

Article 14

Reporting

The Commission shall, by ... [48 months after the date of entry into force 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 ... [60 months after the date of entry into force of this Directive], submit a report to the European Parliament and to the Council assessing the added value of this Directive with regard to combating money laundering as well as its impact on fundamental rights and freedoms. On the basis of that report, the Commission shall, if necessary, present a legislative proposal to amend this Directive. The Commission shall take into account the information provided by Member States.

Article 15
Entry into force

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

Article 16
Addressees

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

Done at ...

For the European Parliament

The President

For the Council

The President
