# Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law

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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 procedure[(1)],

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 Council[(2)], this Directive aims to combat money laundering by means of criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities.

(2) Measures adopted solely at national or even at Union level, without taking into account international coordination and cooperation, would have very limited effect. The measures adopted by the Union 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.

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(4) Council Framework Decision 2001/500/JHA[(3)] 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) 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 Council[(4)]. 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.

(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 Council[(5)]. 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

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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.

(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/JHA[(6)] 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.

(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/JHA[(7)] and Council Decision 2002/187/JHA[(8)], 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.

(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.

(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