

ASSEMBLY OF THE PORTUGUESE REPUBLIC

EUROPEAN AFFAIRS COMMITTEE

Opinion

COM(2016) 450

PART I - INTRODUCTION

Pursuant to Article 7 of Law No 43/2006 of 25 August 2006 on the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic on matters relating to the process of EU integration, as amended by Law No 21/2012 of 17 May 2012, and in accordance with the Guidelines for the Scrutiny of EU Initiatives approved on 1 March 2016, the European Affairs Committee has received the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC [COM(2016) 450].

The above initiative was referred to the Committee for Budgetary and Financial Affairs and Administrative Reform which, in view of its subject matter, decided not to issue an opinion.

PART II - RECITALS

1. This initiative concerns a Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC.
2. Directive (EU) 2015/849 of the European Parliament and the Council¹ constitutes the main legal instrument in the prevention of the use of the Union's financial system for the purposes of money laundering and terrorist financing. The Directive, which is to be transposed by 26 June 2017, sets out a comprehensive framework to address the collection of money or property for terrorist purposes by requiring Member States to identify, understand and mitigate risks related to money laundering and terrorist financing.
3. According to the initiative, the adoption of the updated Anti-Money Laundering rules in May 2015 represented a significant step in improving the effectiveness of the EU's efforts to combat the laundering of money from criminal activities and to counter the financing of terrorist activities.
4. It is worth recalling that recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations. Certain modern technology services are becoming more and more popular as alternative financial systems and remain outside the scope of Union legislation or benefit from exemptions that may no longer be justified.

In order to keep pace with evolving trends, further measures to improve the existing preventive framework should be taken.

5. It should also be noted that in the European Agenda on Security² the Commission identified as a priority the upgrading of the EU legal framework to address terrorism.

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 of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Agenda on Security, COM(2015) 185 final.

The conclusions of the Justice and Home Affairs Council on 20 November 2015³, the Economic and Financial Affairs Council of 8 December 2015⁴, as well as the European Council of 18 December 2015⁵ all stressed the need to further intensify work in this field, building on the improvements made in Directive 2015/849.

6. While the aims of Directive 2015/849 should be pursued, any amendments to it should be consistent with the Union's ongoing action in the field of countering terrorism and terrorism financing.

7. This initiative accordingly aims to provide a harmonised approach to swiftly strengthen the EU's existing framework for the prevention of moneylaundering.

The lack of an effective preventive legal framework in one Member State may be exploited by criminals and terrorists, and have consequences in another Member State. Therefore, it is important to have a harmonised framework at EU level.

8. The European Agenda on Security⁶ indicated the need for measures to address terrorist financing in a more effective and comprehensive manner, highlighting that infiltration of financial markets allows the financing of terrorism.

The European Council conclusions of 17 and 18 December 2015 also stressed the need to rapidly take further action against terrorist finance in all domains.

9. This initiative sets out a series of measures to better counter the financing of terrorism and to ensure increased transparency of financial transactions and of corporate entities under the preventive legal framework in place in the Union.

In the light of the provisions contained in this proposal, the following must be considered:

a) Legal basis

Articles 114 and 50 TFEU.

b) Principle of subsidiarity

The existing legal framework enabling the financial system to prevent the financing of terrorism was set up at Union level. Improvement of the existing legal framework cannot be achieved by the Member States acting individually. As organised crime and terrorism financing can damage the stability and reputation of the financial sector and threaten the internal market, any measures adopted solely at national level could have adverse effects on the EU Single Market: the absence of coordinated rules across all Member States aimed at protecting their financial systems could be inconsistent with the functioning of the internal market and result in fragmentation.

³ <http://www.consilium.europa.eu/en/press/press-releases/2015/11/20-jha-conclusions-counter-terrorism/>

⁴ <http://www.consilium.europa.eu/en/press/press-releases/2015/12/08-ecofm-conclusions-corporate-taxation/>

⁵ <http://www.consilium.europa.eu/en/press/press-releases/2015/12/18-euco-conclusions/>

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Agenda on Security, COM(2015) 185 final.

Given the cross-border nature of the terrorist threats, the scope of this initiative needs to be sufficiently aligned, coherent and consistent at Union level to be truly effective.

Therefore, since the objective of this Directive cannot be sufficiently achieved by the Member States - as individual measures adopted by Member States to protect their financial systems could be inconsistent with the functioning of the internal market and with the prescriptions of the rule of law and Union public policy - but can rather, by reason of the scale and effects of the action, 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.

Consequently, the principle of subsidiarity has been complied with.

The proposed amendments are limited to what is necessary to achieve the objectives of tackling terrorist financing and increasing corporate transparency, and build on rules already in force, in line with the principle of proportionality.

PART III - OPINION

In the light of the information set out above, the European Affairs Committee is of the opinion that:

1. This initiative does not breach the principle of subsidiarity, in so far as the objective pursued will be achieved more effectively by means of action at Union level.
2. The European Affairs Committee will continue to monitor the legislative process in relation to this initiative by exchanging information with the Government, in accordance with Article 5 of Law No 43/2006 of 25 August 2006 as amended by Law No 21/2012 of 17 May 2012.

Palácio de São Bento, 25 October 2016

Signed: Rapporteur, Duarte Marques

Committee Chair, Regina Bastos