

**REPORT 11/2017 OF 30 MARCH 2017 FROM THE JOINT COMMITTEE ON THE EUROPEAN UNION CONCERNING THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY IN THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COUNTERING MONEY LAUNDERING BY CRIMINAL LAW [COM (2016) 826 FINAL] [2016/0414 (COD)]**

**BACKGROUND**

**A.** The Protocol on the application of the principles of subsidiarity and proportionality annexed to the 2007 Lisbon Treaty, which has been in force since 1 December 2009, introduced a control procedure whereby national parliaments check whether draft EU legislation complies with the principle of subsidiarity. Spain implemented this Protocol by means of Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. More specifically, Articles 3(j), 5 and 6 of Law 8/1994 constitute the legal basis for this report.

**B.** The Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law has been approved by the European Commission and submitted to the national parliaments. The parliaments have eight weeks, until 31 March 2017, to check whether the proposal complies with the principle of subsidiarity.

**C.** On 21 February 2017, the Bureau and Spokespersons of the Joint Committee on the European Union decided to examine the Proposal for a Directive, appointed José Zaragoza Alonso (MP) as rapporteur, and requested that the Government provide a report, as provided for in Article 3(j) of Law 8/1994.

**D.** This report has now been received from the Government, which concludes that the Proposal respects the principle of subsidiarity. A report has also been received from the Basque Parliament concluding that the Proposal respects the principle of subsidiarity, as well as written communications from the Parliaments of Galicia, Cantabria, La Rioja and Catalonia indicating either that the matter has been closed, no reasoned opinion has been issued or the Proposal has been noted.

**E.** At its meeting on 30 March 2017, the Joint Committee on the European Union approved the following:

**REPORT**

**1.** - Article 5(1) of the Treaty on European Union states that *'the use of Union competences is governed by the principles of subsidiarity and proportionality'*. Under Article 5(3) of the same Treaty, *'under the principle of subsidiarity the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can be better achieved, by reason of the scale or effects of the proposed action, at Union level'*.

**2.** - The Proposal for a Directive analysed is based on Article 83 of the Treaty on the Functioning of the European Union, which states as follows:

*'Article 83*

*1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.*

*These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.*

*On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.*

*2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.*

*3. Where a member of the Council considers that a draft directive as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.*

*Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.'*

**3.** - The Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law is a big step forward in European cooperation initiatives to combat the financing of terrorism and organised crime. It is a major step towards the modernisation and continuous updating of the current legal framework that are needed to combat the threat of terrorism and that linked to new technologies being used in financial transactions. Innovation is constant in financial services leading to clear benefits for society as a whole. However, it also leads to new ways of financing criminal activities, in particular terrorism, due to the increasing globalisation of terrorist organisations.

The Proposal for a Directive has made progress in very important areas, such as the harmonisation of the definition of money laundering offences to stop criminal

organisations from taking advantage of differences in national laws. Obstacles are also being removed to judicial and cross-border police cooperation and EU law is implementing the EU's international obligations under the Warsaw Convention of the Council of Europe. In addition, controls are being strengthened on cash flows and on persons entering or leaving the EU with more than 10 000 euros; action can also be taken for smaller amounts if criminal activities are suspected. These controls include controls on cash sent in postal packages or freight transports, as well as on commodities such as gold. Moreover, the Proposal for a Directive offers a single legal instrument for recognising freezing and confiscation orders in other EU countries that will improve the speed and effectiveness of freezing orders throughout the EU, and make it easier for victims to enforce their right to be compensated and have their possessions returned.

In addition, the Proposal for a Directive will not create obstacles to the normal use of the financial system and includes adequate safeguards with regard to economic freedoms and fundamental rights, in particular data protection.

Thus, increasing the legal remedies available to the EU by strengthening controls and tracing financial transactions, as well as increasing police cooperation and the exchange of information, will hinder or, in many cases, prevent the financing of criminal activities, as well as help with detecting terrorist networks and supporting investigations.

In short, the Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law is essential to update the current legal framework and improve international coordination and cooperation to stop money laundering and dirty money possibly being used by criminal organisations.

## CONCLUSION

**In view of the above, the Joint Committee on the European Union finds that the Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law complies with the subsidiarity principle set out in the current Treaty on European Union.**