

**Proposal for a Directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (COM/2017/0489)**

**FINAL DOCUMENT**

The Committee on Justice of Italy's Chamber of Deputies,

Having examined, pursuant to Rule 127(2) of the Chamber of Deputies' Rules of Procedure, the Proposal for a Directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (COM/2017/0489)

*Whereas:*

- The European Union considers activities involving fraud and counterfeiting of non-cash means of payment to be a serious matter that can generate widespread social alarm; these are crimes which can hinder the development of the digital single market, cause important direct economic losses, erode consumer trust and ultimately cause economic losses;
- This is a field for priority action to be taken, and the Committee therefore fully welcomes the initiative of the European Commission to update the present legal framework to combat fraud and counterfeiting of non-cash means of payment, in order to keep abreast of the latest advances in technology which enable payments to be increasingly made through mobile devices and using virtual currencies within a computerised ecosystem which is continually offering individuals and companies new opportunities and digital services that can improve the quality of social and economic life, while at the same time exposing business and financial institutions to the likelihood of falling victim to predatory crimes perpetrated by individuals and organised crime;
- The Committee welcomes the approach taken in the proposed directive to set up a new technologically neutral regime that can be applied to the present and the likely future non-cash payment instruments, thanks to continually improving information and communications systems.
- Equally welcome are the declared aims of this proposal regarding the measures designed to facilitate investigations and prosecutions of fraud and falsification to the detriment of non-cash payments and to improve measures to counter these crimes, with particular reference to raising the awareness of users of electronic payment services;
- The Committee also endorses the measures to enhance the exchange of information between the Member States through the new provisions regarding the functions and procedures affecting national operational contact points, and the new instruments to facilitate and increase reports of fraud-related crimes or suspected fraud to the competent authorities;
- Lastly, the Committee approves the intention of the Commission to provide new instruments to assist natural and legal persons damaged by these crimes, consistently with the provisions of general European law on the victims of crime, and to adopt initiatives to sensitise the general public in order to reduce the risk of falling victim to fraud;

Noting that:

- The new regime on the minimum and incomplete harmonisation of national law provisions on combating and preventing the aforementioned crimes, is based, by decision adopted of the European Commission, on article 83 of the Treaty on the Functioning of the European Union which defines the scope of European criminal law;
- The importance of this matter, also for the purposes of ensuring the sound functioning of the internal market, suggests the advisability of incorporating reference to the provisions of the Treaty on the Internal Market into the legal basis of the new discipline, in order to achieve a higher degree of harmonisation, at least in substantive law by greatly contributing to the aim of superseding the marked differences that currently exist between the laws of individual Member States;
- The provisions of article 11 on the jurisdictional competence of the Member States, lay down a series of mandatory and optional criteria for establishing jurisdiction according to the particular nature of the crimes

concerned, that could be applied cumulatively for the same crime and thereby increase the risk of conflicts of jurisdiction between different Member States. This would not only be detrimental to the principle of the need to expedite the administration of justice, but could also give rise to the aberrant situation of contradictory judgments being passed. The possibility of violating the *ne bis in idem* principle is all the more likely when considering that general European legislation on the settlement of conflicts of jurisdiction only provides for consultation between the authorities of the Member States party to the conflict in an attempt to reach agreement on an effective solution. When a conflict of jurisdiction cannot be settled even after this procedure, the question is referred to Eurojust (the European authority for judicial co-operation in criminal matters) which, nevertheless, is not empowered to settle a dispute but only to issue a mere opinion;

*expresses a positive judgement*

*with the following qualifications:*

- a) With reference to article 2, while agreeing with the Commission's approach regarding the use of a definition of "virtual payment" that can also include future technological developments, the Committee considers that any reference to specific examples in paragraph (b) should be deleted;
- b) On article 4(b) and (c), the Committee suggests deleting the words "in order for it to be used fraudulently" which would raise problems regarding the burden of proof needed to show the specific intention, and would not ensure the possibility of punishment for an action which is already autonomously deemed to constitute a crime;
- c) On article 5 (Offences related to information systems), the Committee suggests restoring the present wording of article 3 of decision of the Framework Decision 2001/413/JHA that defines the crime by reference to "intentionally causing an unauthorised loss of property for another person" in order to make it explicitly clear that it refers to the removal of money or other similar useful property of the lawful holder;
- d) On article 8 (Penalties for natural persons) it is necessary to provide adequate levels of penalties both to be able to use effective investigatory tools, such as wiretapping, and to be able to enforce preventive or injunctive measures. With specific reference to the provisions of paragraph 4(a) of the same article, the meaning of the words "within the framework of a criminal organisation" should be more clearly specified in order to be able to impose harsher penalties on individuals who, while not being stable members of a criminal organisation, perform the actions described in the previous articles in full knowledge of the fact that they are aiding and abetting the criminal organisation, albeit only occasionally or temporarily;
- e) On article 11, appropriate remedies must be supplied with regard to establishing jurisdictional competence, in order to reduce the risk of parallel court proceedings and conflicting judgments, if possible by providing rules of precedence to establish the jurisdiction of one Member State over another interested Member State;
- f) Applying the same reasoning, with reference to article 13 regarding the Exchange of information, the Committee suggests inserting a specific reference to the obligation on the Member States to engage in consultations to coordinate their respective procedures in order to ensure effective criminal prosecutions, and restoring the previous provisions of the current legal framework;

*and with the following recommendation to the Government:*

- to rapidly implement all the procedures for adopting the necessary legislative measures to ensure the comprehensive reception of current and future European law on fraud and counterfeiting of non-cash means of payment, in order to guarantee Italian investors the same level of protection enjoyed by investors in other Member States.