REPORT


Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sylvia-Yvonne Kaufmann
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in bold italics in the left-hand column. Replacements are indicated in bold italics in both columns. New text is indicated in bold italics in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in bold italics. Deletions are indicated using either the symbol or strikeout. Replacements are indicated by highlighting the new text in bold italics and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2017)0489),
– 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 (C8-0311/2017),
– 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 Rule 59 of its Rules of Procedure,
– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0276/2018),

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.

Amendment 1

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) Council Framework Decision 2001/413/JHA needs to be updated and complemented by further provisions on offences, penalties and cross-border cooperation.

Amendment

(3) Council Framework Decision 2001/413/JHA needs to be updated and complemented in order to include further provisions on offences, in particular relating to computer-related fraud,
penalties, *prevention and assistance to victims* and cross-border cooperation.


Amendment 2

Proposal for a directive
Recital 4

*Text proposed by the Commission*

(4) Significant gaps and differences in Member States’ laws in the area of fraud and counterfeiting of non-cash means of payment *may hamper the fight against* this type of crime and other serious and organised crimes related to and enabled by it, and *may complicate* effective police and judicial cooperation in this area.

*Amendment*

(4) Significant gaps and differences in Member States’ laws in the area of fraud and counterfeiting of non-cash means of payment *obstruct the prevention, detection and sanctioning of* this type of crime and other serious and organised crimes related to and enabled by it, and *complicate effective police and judicial cooperation in this area with a direct impact on citizens’ security.*

Amendment 3

Proposal for a directive
Recital 6 a (new)

*Text proposed by the Commission*

(6a) The use of new types of payment instruments creates opportunities for consumers and businesses but also increases opportunities for fraud. Fraud is not only used to fund criminal groups, it also limits the development of the digital single market and makes citizens more reluctant to make online purchases.

*Amendment*


Proposal for a directive
Recital 7

Text proposed by the Commission

(7) Common definitions in this area are important to ensure a consistent approach in Member States’ application of this Directive. The definitions need to cover new types of payment instruments, such as electronic money and virtual currencies.

Amendment

(7) Common definitions in this area are important to ensure a consistent approach in Member States’ application of this Directive and to facilitate information exchange and cooperation between competent authorities. The definitions need to cover new types of payment instruments, such as electronic money and virtual currencies.

Amendment 5

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

(7 a) Fake invoices with which payment credentials can be abstracted should be considered as an attempt at unlawful appropriation as referred to in Article 4 of this Directive.

Amendment

(7 a) Fake invoices with which payment credentials can be abstracted should be considered as an attempt at unlawful appropriation as referred to in Article 4 of this Directive.

Amendment 6

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) Effective and efficient criminal law measures are essential to protect non-cash means of payment against fraud and counterfeiting. In particular, a common criminal law approach is needed to the constituent elements of criminal conduct that contribute to or prepare the way for the actual fraudulent use of means of payment. Behaviour such as the collection and possession of payment instruments with the intention to commit fraud, through, for instance, phishing or skimming, and their

Amendment

(9) Effective and efficient criminal law measures are essential to protect non-cash means of payment against fraud and counterfeiting. In particular, a common criminal law approach is needed to the constituent elements of criminal conduct that contribute to or prepare the way for the actual fraudulent use of means of payment. Behaviour such as the collection of payment instruments with the intention to commit fraud, through, for instance, phishing or skimming, and their
distribution, for example by selling credit card information on the internet, should thus be made a criminal offence in its own right without being directly linked to the actual fraudulent use of means of payment. So such criminal conduct should also cover circumstances where possession, procurement or distribution does not necessarily lead to fraudulent use of such payment instruments, if the offender is aware of such a possibility (dolus eventualis). This Directive does not sanction the legitimate use of a payment instrument, including and in relation to the provision of innovative payment services, such as services commonly developed by fintech companies.

Amendment 7
Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The sanctions and penalties for fraud and counterfeiting of non-cash means of payment should be effective, proportionate and dissuasive throughout the Union.

Amendment

(10) The sanctions and penalties for fraud and counterfeiting of non-cash means of payment should be effective, proportionate and dissuasive throughout the Union in order to discourage fraud of this type and to prevent similar offences. This Directive does not prevent Member States from applying stricter rules and sanctions with regard to fraud and counterfeiting of non-cash means of payment.
Amendment 8
Proposal for a directive
Recital 11

Text proposed by the Commission

(11) It is appropriate to provide for more severe penalties where the crime is committed by a criminal organisation, as defined in Council Framework Decision 2008/841/JHA\(^45\), or where a crime is conducted on a large scale, thus involving extensive or considerable damage to the victims or an aggregate advantage for the offender of at least EUR 20 000.


Amendment

(11) It is appropriate to provide for more severe penalties where the crime is committed by a criminal organisation, as defined in Council Framework Decision 2008/841/JHA\(^45\), or where a crime is conducted on a large scale, thus involving extensive or considerable damage to the victims. The fact that an offence involves a significant aggregate financial advantage or a high number of victims should be considered an aggravating circumstance.


Amendment 9
Proposal for a directive
Recital 12

Text proposed by the Commission

(12) Jurisdictional rules should ensure that the offences laid down in this Directive are prosecuted effectively. In general, offences are best dealt with by the criminal justice system of the country in which they occur. Member States should therefore establish their jurisdiction over offences committed on their territory, over offences committed by their nationals and over offences that cause damage in their territory.

Amendment

(12) Jurisdictional rules should ensure that the offences laid down in this Directive are prosecuted effectively and in accordance with a clear set of criteria. In general, offences are best dealt with by the criminal justice system of the country in which they occur. Member States should therefore establish their jurisdiction over offences committed on their territory, over offences committed by their nationals and over offences that cause damage in their territory. Where an offence falls within the jurisdiction of more than one Member State, the Member States concerned should cooperate with one another in
order to decide which of them are to investigate the case, bearing in mind the principle of ne bis in idem. To that end, it should be possible for the Member States to have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and coordination of their actions.

Amendment 10
Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Given the need for special tools to effectively investigate fraud and counterfeiting of non-cash means of payment, and their relevance for effective international cooperation between national authorities, investigative tools that are typically used for cases involving organised crime and other serious crime should be available to competent authorities in all Member States for the investigation of such offences. Taking into account the principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and gravity of the offences under investigation. In addition, law enforcement authorities and other competent authorities should have timely access to relevant information in order to investigate and prosecute the offences laid down in this Directive.

Amendment

(15) Given the need for special tools to effectively investigate fraud and counterfeiting of non-cash means of payment, and their relevance for effective international cooperation between national authorities, adequate investigative tools should be available to competent authorities in all Member States for the investigation of such offences. Taking into account the principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and gravity of the offences under investigation. In addition, law enforcement authorities and other competent authorities should have timely access to relevant information in order to investigate and prosecute the offences laid down in this Directive. Adequate human and financial resources should be allocated to the competent authorities in order to properly investigate and prosecute the offences laid down in this Directive.

Amendment 11
Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

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(15a) The cross-border nature of the offences laid down in this Directive requires a strong coordinated response and cooperation within and between Member States. To that end, an efficient use of the available tools and resources for cooperation should be made, such as mutual recognition and legal assistance in relation to the offences covered by this Directive, irrespective of the threshold for penalties provided for those offences in national law.

Amendment 12
Proposal for a directive
Recital 16

Text proposed by the Commission

(16) In many cases, criminal activities underlie incidents that should be notified to the relevant national competent authorities under Directive (EU) 2016/1148 of the European Parliament and the Council. Such incidents may be suspected to be of criminal nature even if the evidence of a criminal offence is not sufficiently clear from the outset. In this context, relevant operators of essential services and digital service providers should be encouraged to share the reports required under Directive (EU) 2016/1148 with law enforcement authorities so as to form an effective and comprehensive response and to facilitate attribution and accountability by the perpetrators for their actions. In particular, promoting a safe, secure and more resilient environment requires systematic reporting of incidents of a suspected serious criminal nature to law enforcement authorities. Moreover, when relevant, Computer Security Incident Response Teams designated under Article 9 of Directive (EU) 2016/1148 should be involved in law enforcement investigations with a view to providing information, as considered appropriate at national level, and also

Amendment

(16) In many cases, criminal activities underlie incidents that should be notified to the relevant national competent authorities under Directive (EU) 2016/1148 of the European Parliament and the Council. Such incidents may be suspected to be of criminal nature even if the evidence of a criminal offence is not sufficiently clear from the outset. In this context, relevant operators of essential services and digital service providers should share the reports required under Directive (EU) 2016/1148 with law enforcement authorities and financial intelligence units so as to form an effective and comprehensive response and to facilitate attribution and accountability by the perpetrators for their actions. In particular, promoting a safe, secure and more resilient environment requires systematic reporting of incidents of a suspected serious criminal nature to law enforcement authorities. Moreover, when relevant, Computer Security Incident Response Teams designated under Article 9 of Directive (EU) 2016/1148 should be involved in law enforcement investigations with a view to providing information, as considered appropriate at national level,
providing specialist expertise on information systems.


Amendment 13
Proposal for a directive
Recital 17

Text proposed by the Commission

(17) Major security incidents as defined in Article 96 of Directive (EU) 2015/2366 of the European Parliament and the Council\(^{(17)}\) may be of criminal origin. Where relevant, payment service providers should be encouraged to share with law enforcement authorities the reports they are required to submit to the competent authority in their home Member State under Directive (EU) 2015/2366.

Amendment

(17) Major security incidents as defined in Article 96 of Directive (EU) 2015/2366 of the European Parliament and the Council\(^{(17)}\) may be of criminal origin. Where relevant, payment service providers should be encouraged to share with law enforcement authorities and financial intelligence units the reports they are required to submit to the competent authority in their home Member State under Directive (EU) 2015/2366.

Amendment 14
Proposal for a directive
Recital 18


(18) A number of instruments and mechanisms exist at Union level to enable the exchange of information among national law enforcement authorities to investigate and prosecute crimes. To facilitate and speed up cooperation among national law enforcement authorities and make sure that those instruments and mechanisms are used to their fullest extent, this Directive should strengthen the importance of the operational points of contact introduced by Council Framework Decision 2001/413/JHA. Member States may decide to make use of the existing network of operational points of contact, such as that set up in Directive 2013/40/EU of the European Parliament and of the Council\(^\text{48}\). They should provide effective assistance, for example facilitating the exchange of relevant information and the provision of technical advice or legal information. To ensure the network runs smoothly, each point of contact should be able to communicate quickly with the point of contact of another Member State. Given the significant trans-border dimension of this area of crime and in particular the volatile nature of the electronic evidence, Member States should be able to promptly deal with urgent requests from this network of points of contact and provide feedback within eight hours.

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Amendment 15

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) Reporting crime without undue delay to public authorities is of great importance in combating fraud and counterfeiting of non-cash means of payment, as it is often the starting point of the criminal investigation. Measures should be taken to encourage reporting by natural and legal persons, in particular financial institutions to law enforcement and judicial authorities. These measures can be based on various types of action, including legislative ones, such as obligations to report suspected fraud, or non-legislative ones, such as setting up or supporting organisations or mechanisms favouring the exchange of information, or awareness raising. Any such measure that involves processing of the personal data of natural persons should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council. In particular, any transmission of information regarding preventing and combating offences relating to fraud and counterfeiting of non-cash means of payment should comply with the requirements laid down in Regulation (EU) 2016/679, notably the lawful grounds for processing.

Amendment

(19) Reporting crime without undue delay to public authorities is of great importance in combating fraud and counterfeiting of non-cash means of payment, as it is often the starting point of the criminal investigation. Measures should be taken to encourage reporting by natural and legal persons, in particular financial institutions, to law enforcement and judicial authorities and should include the establishment of an effective and secure national online fraud-reporting system in order to facilitate the immediate reporting of crime. The use of standardised reporting templates at Union level should allow for better analysis of threats and should facilitate the work and cooperation of national competent authorities. The measures can be based on various types of action, including legislative ones, such as obligations to report suspected fraud, or non-legislative ones, such as setting up or supporting organisations or mechanisms favouring the exchange of information, or awareness raising. Any such measure that involves processing of the personal data of natural persons should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council. In particular, any transmission of information regarding preventing and combating offences relating to fraud and counterfeiting of non-cash means of payment should comply with the requirements laid down in Regulation (EU) 2016/679, notably the lawful grounds for processing.

49 Regulation (EU) 2016/679 of the

Amendment 16
Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

(19 a) Investigation and prosecution of all types of fraud and counterfeiting of non-cash means of payment, including those involving small amounts of money, are particularly important in order to proactively combat that phenomenon. Reporting obligations, information exchange and statistical reports are efficient ways to detect fraudulent activities, especially similar activities that involve small amounts of money when considered separately. It is also essential that relevant information on fraud and counterfeiting of non-cash means of payment be transmitted in a timely manner to the national financial intelligence units in order to enable further analysis and detection of criminal financial flows.

Amendment 17
Proposal for a directive
Recital 20

Text proposed by the Commission

(20) Fraud and counterfeiting of non-cash means of payment can result in serious economic and non-economic consequences for its victims. Where such fraud involves identity theft, its
consequences are often aggravated because of reputational damage and serious emotional harm. Member States should adopt measures of assistance, support and protection aimed at mitigating these consequences.

Amendment 18
Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

(20 a) It often takes a considerable amount of time for victims to find out that they have suffered a loss from fraud and counterfeiting offences. During this time a spiral of interlinked crimes might develop, thereby aggravating the negative consequences for the victims.

Amendment 19
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) Natural persons who are victims of fraud related to non-cash means of payment have rights conferred under Directive 2012/29/EU of the European Parliament and the Council. Member States should adopt measures of assistance and support to such victims which build on the measures required by Directive 2012/29/EU but respond more directly to the specific needs of victims of fraud related to identity theft. Such measures should include, in particular, specialised psychological support and advice on financial, practical and legal matters, as well as assistance in receiving available compensation. Specific information and advice on protection against the negative consequences are often aggravated because of reputational and professional damage, damage to an individual’s credit rating as well as serious emotional harm. Member States should adopt measures of assistance, support and protection aimed at mitigating these consequences.

Amendment 19
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) Natural persons who are victims of fraud related to non-cash means of payment have rights conferred under Directive 2012/29/EU of the European Parliament and the Council. Member States should adopt measures of assistance and support to such victims which build on the measures required by Directive 2012/29/EU but respond more directly to the specific needs of victims of fraud related to identity theft. Such measures should include, in particular, the provision of a list of dedicated institutions covering different aspects of identity-related crime and victim support, specialised psychological support and advice on financial, practical and legal matters, as
consequences of such crime should be offered to legal persons as well.

well as assistance in receiving available compensation. Member States should also be able to set up a national single online information tool to facilitate access to assistance and support for victims. Specific information and advice on protection against the negative consequences of such crime should be offered to legal persons as well.


Amendment 20
Proposal for a directive
Recital 21 a (new)

Text proposed by the Commission

Amendment

(21 a) Victims of fraud related to non-cash means of payment should also have the right to free legal aid, at least those who lack sufficient resources to pay for it. Member States should be able to determine this lack of resources through a means test in which due account should be taken of all relevant and objective factors, such as the income, capital and family situation of the person concerned, the costs of legal aid and the standard of living in the relevant Member State.

Amendment 21
Proposal for a directive
Recital 23
(23) Member States should establish or strengthen policies to prevent fraud and counterfeiting of non-cash means of payment, and measures to reduce the risk of becoming victims of such offences, by means of information and awareness-raising campaigns and research and education programmes.

Amendment 22
Proposal for a directive
Recital 23 a (new)

(23 a) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission with regard to the development of a standardised Union reporting template as referred to in Article 14 and in accordance with Article 16 a. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

Amendment 23
Proposal for a directive
Recital 24

(24) There is a need to collect comparable data on the offences laid down in this Directive. Relevant data should be made available to the competent specialised Union agencies and bodies, such as Europol, in line with their tasks and
information needs. The aim would be to gain a more complete picture of the problem of fraud and counterfeiting of non-cash means of payment and issues relating to payment security at Union level, and so contribute to formulating a more effective response. Member States should make full use of Europol’s mandate and capacity to provide assistance and support to relevant investigations, by submitting information on the offenders’ modus operandi to Europol for the purpose of conducting strategic analyses and threat assessments of fraud and counterfeiting of non-cash means of payment in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council. Providing information can help better understand present and future threats and assist the Council and the Commission in laying down strategic and operational priorities of the Union for fighting crime and in the ways of implementing those priorities.


Amendment 24

Proposal for a directive

Recital 24 a (new)

Text proposed by the Commission

(24a) The prevention and combat of crime, whether organised or not, must be achieved through closer cooperation between police authorities and other competent authorities in the Member

Amendment
Amendment 25

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of fraud and counterfeiting of non-cash means of payment.

Amendment

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of fraud and counterfeiting of non-cash means of payment. It facilitates the prevention of such offences, assists and supports victims and improves cooperation between judicial and other competent authorities.

Amendment 26

Proposal for a directive
Article 3 – title

Text proposed by the Commission

Fraudulent use of payment instruments

Amendment

Fraudulent use of non-cash payment instruments

Amendment 27

Proposal for a directive
Article 4 – introductory part

Text proposed by the Commission

Member States shall take the necessary measures to ensure that, when committed intentionally, the following are punishable as a criminal offence:

Amendment

Member States shall take the necessary measures to ensure that the following are punishable as a criminal offence:
Amendment 28
Proposal for a directive
Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) theft or other unlawful appropriation of a payment instrument;

Amendment

(a) theft or other unlawful appropriation of a payment instrument when committed intentionally;

Amendment 29
Proposal for a directive
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) counterfeiting or falsification of a payment instrument in order for it to be used fraudulently;

Amendment

(b) counterfeiting or falsification of a payment instrument, when committed intentionally, in order for it to be used fraudulently;

Amendment 30
Proposal for a directive
Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) possession, procurement for use, import, export, sale, transport, distribution or otherwise making available of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument in order for it to be used fraudulently.

Amendment

(c) procurement for oneself or another, including import, export, sale and transport, distribution of a payment instrument which has been stolen or otherwise unlawfully appropriated or of a payment instrument counterfeited or falsified, when committed intentionally, in order for it to be used fraudulently;

Amendment 31
Proposal for a directive
Article 4 – paragraph 1 – point c a (new)
Text proposed by the Commission

Amendment

(ec a) possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified, payment instrument, knowing at the time of receipt that such instrument is derived from criminal activity or from an act of participation in such an activity.

Amendment 32

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall take the necessary measures to ensure that performing or causing a transfer of money, monetary value or virtual currencies in order to make an unlawful gain for the perpetrator or a third party is punishable as a criminal offence, when committed intentionally by:

Amendment

Member States shall take the necessary measures to ensure that performing or having someone else perform a transfer of money, monetary value or virtual currencies, in order to make an unlawful gain for the perpetrator or a third party, or causing an unlawful loss of property for a third party, is punishable as a criminal offence, when committed intentionally by:

Amendment 33

Proposal for a directive
Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

(ba) directing or redirecting payment service users to imitation websites.

Amendment

Amendment 34

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Member States shall take the necessary

Amendment

Member States shall take the necessary
measures to ensure that, when committed intentionally with fraudulent purpose, the production, procurement for use, import, export, sale, transport, distribution or otherwise making available of a device or an instrument, computer data or any other means specifically designed or adapted for the purpose of committing any of the offences referred to in Article 4(a) and (b) or Article 5, is punishable as a criminal offence.

Amendment 35
Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that the attempt to commit an offence referred to in Articles 3 to 6 is punishable as a criminal offence.

Amendment

2. Member States shall take all the necessary measures to ensure that the attempt to commit an offence referred to in Articles 3 to 6 is punishable as a criminal offence.

Amendment 36
Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least three years.

Amendment

2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least four years.

Amendment 37
Proposal for a directive
Article 8 – paragraph 3

measures to ensure that the production, procurement for oneself or another, import, export, sale, transport, distribution or otherwise making available of a device or an instrument, computer data or any other means specifically designed or adapted for the purpose of committing any of the offences referred to in Article 4(a) and (b) or Article 5, is punishable as a criminal offence, when committed with the intention that these means be used to commit any of the said offences.
3. Member States shall take the necessary measures to ensure that the offences referred to in Article 6 are punishable by a maximum term of imprisonment of at least two years.

Amendment 38
Proposal for a directive
Article 8 – paragraph 4 – introductory part

Text proposed by the Commission

4. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least five years if:

Amendment 39
Proposal for a directive
Article 8 – paragraph 4 – point a

Text proposed by the Commission

(a) they are committed within the framework of a criminal organisation, as defined in Framework Decision 2008/841/JHA, irrespective of the penalty provided for in that Decision;

Amendment

(a) they are committed within the framework of a criminal organisation, as defined in Framework Decision 2008/841/JHA, irrespective of the penalty provided for in that Decision; or

Amendment 40
Proposal for a directive
Article 8 – paragraph 4 – point b

Text proposed by the Commission

(b) they involve extensive or considerable damage or an aggregate

Amendment

(b) they involve extensive or
advantage of at least EUR 20 000.

considerable damage; or

Amendment 41

Proposal for a directive
Article 8 – paragraph 4 – point b a (new)

Text proposed by the Commission

(b a) they have led to an aggregate advantage of considerable value.

Amendment 42

Proposal for a directive
Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:

Amendment

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines or other sanctions, including:

Amendment 43

Proposal for a directive
Article 10 – paragraph 1 – point a a (new)

Text proposed by the Commission

(a a) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, both at national and Union level;

Amendment

Proposal for a directive
Article 11 – paragraph 1 – point a
Text proposed by the Commission

(a) the offence is committed in whole or in part in its territory;

Amendment

(a) the offence is committed in whole or in part in its territory; or

Amendment 45

Proposal for a directive
Article 11 – paragraph 1 – point b

Text proposed by the Commission

(b) the offender is one of its nationals;

Amendment

(b) the offender is one of its nationals or a habitual resident; or

Amendment 46

Proposal for a directive
Article 11 – paragraph 1 – point b a (new)

Text proposed by the Commission

(b a) the offence is committed for the benefit of a legal person established in its territory; or

Amendment

(b) the offence is committed against one of its nationals or a person who is an habitual resident in its territory; or

Amendment 47

Proposal for a directive
Article 11 – paragraph 1 – point b b (new)

Text proposed by the Commission

(b b) the offence is committed against one of its nationals or a person who is an habitual resident in its territory; or

Amendment

(b) the offence is committed against one of its nationals or a person who is an habitual resident in its territory; or

Amendment 48

Proposal for a directive
Article 11 – paragraph 1 – point c
(c) the offence causes damage in its territory including damage resulting from the theft of the identity of a person.

Amendment 49

Proposal for a directive
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

1 a. A Member State shall inform the Commission and Eurojust if it decides to establish jurisdiction over an offence referred to in Articles 3 to 7 that has been committed outside its territory;

Amendment 50

Proposal for a directive
Article 11 – paragraph 2 – point a

Text proposed by the Commission

(a) the offender commits the offence when physically present on its territory, whether or not the offence is committed using computers or an information system on its territory;

Amendment

(b) the offence is committed using computers or an information system on its territory, whether or not the offender commits the offence when physically present on its territory.

Amendment 51

Proposal for a directive
Article 11 – paragraph 2 – point b

Text proposed by the Commission

(b) the offence is committed using a computer or an information system on its territory, whether or not the offender commits the offence when physically present on its territory.
Amendment 52

Proposal for a directive
Article 11 – paragraph 3

**Text proposed by the Commission**

3. A Member State shall inform the Commission if it decides to establish jurisdiction over an offence referred to in Articles 3 to 7 committed outside its territory, including where:

   (a) the offender has his or her habitual residence in its territory;
   
   (b) the offence is committed for the benefit of a legal person established in its territory;
   
   (c) the offence is committed against one of its nationals or a person who is an habitual resident in its territory.

Amendment 53

Proposal for a directive
Article 11 – paragraph 3 a (new)

**Text proposed by the Commission**

3 a. Where an offence referred to in Articles 3 to 7 falls within the jurisdiction of more than one Member State, the Member States concerned shall cooperate with one another in order to decide which of them will prosecute the offender with the aim of centralising proceedings in a single Member State, bearing in mind the principle of ne bis in idem. Member States shall have recourse to Eurojust in cases of conflict of jurisdiction or other difficulties, in line with Article 12 of Framework Decision 2009/948/JHA.
Amendment 54
Proposal for a directive
Article 12 – title

**Text proposed by the Commission**

Effective investigations

**Amendment**

Effective investigations *and cooperation*

Amendment 55
Proposal for a directive
Article 12 – paragraph 1

**Text proposed by the Commission**

1. Member States shall take the necessary measures to ensure that *effective* investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 7.

**Amendment**

1. Member States shall take the necessary measures to ensure that investigative tools, such as those which are used in *countering* organised crime or other serious crime cases, are *effective*, proportionate to the crime committed and available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 7.

Amendment 56
Proposal for a directive
Article 12 – paragraph 1 a (new)

**Text proposed by the Commission**

1 a. Each Member State shall ensure that adequate human and financial resources are allocated and training sessions are provided in order to investigate and prosecute the offences referred to in Articles 3 to 7.

**Amendment**

1 a. Each Member State shall ensure that adequate human and financial resources are allocated and training sessions are provided in order to investigate and prosecute the offences referred to in Articles 3 to 7.
Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that, where national law oblige natural and legal persons to submit information regarding offences referred to in Articles 3 to 7, such information reaches the authorities investigating or prosecuting those offences without undue delay.

Amendment

2. Member States shall take the necessary measures to ensure that, where national law oblige natural and legal persons to submit information regarding offences referred to in Articles 3 to 7, such information reaches the authorities investigating or prosecuting those offences without undue delay and that those authorities are empowered to cooperate with other national authorities and their counterparts in other Member States.

Amendment 58

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. For the purpose of exchanging information relating to the offences referred to in Articles 3 to 7, Member States shall ensure that they have an operational national point of contact available 24 hours a day and seven days a week. Member States shall also ensure that they have procedures in place so that urgent requests for assistance are promptly dealt with and the competent authority replies within eight hours of receipt, at least indicating whether the request will be answered, and the form and estimated time of such an answer. Member States may decide to make use of the existing networks of operational points of contact.

Amendment

1. For the purpose of exchanging information relating to the offences referred to in Articles 3 to 7, Member States shall ensure that they have an operational national point of contact available 24 hours a day and seven days a week. Member States shall also ensure that they have procedures in place so that urgent requests for assistance are promptly dealt with and the competent authority replies within two hours of receipt, at least indicating whether the request will be answered, and the form and estimated time of such an answer. Member States may decide to make use of the existing networks of operational points of contact.

Amendment 59

Proposal for a directive

Article 13 – paragraph 2

Text proposed by the Commission

2. Member States shall inform the

Amendment

2. Member States shall inform the

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Commission, Europol and Eurojust of their appointed point of contact referred to in paragraph 1. The Commission shall forward that information to the other Member States.

Amendment 60

Proposal for a directive
Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. In very urgent and serious cases that affect two or more Member States, Member States shall inform Europol’s European Cybercrime Centre. Europol shall facilitate the setting-up of a rapid alert system identifying new practices of fraud.

Amendment 61

Proposal for a directive
Article 13 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. When dealing with data as referred to in this Article, competent authorities shall comply with applicable Union data protection rules.

Amendment 62

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that appropriate reporting channels are made available in order to facilitate reporting of the offences referred to in Articles 3 to 7 to
law enforcement and other competent national authorities without undue delay.

order to facilitate reporting of the offences referred to in Articles 3 to 7 to law enforcement authorities, financial intelligence units and other competent national authorities without undue delay.

Amendment 63

Proposal for a directive
Article 14 – paragraph 1 a (new)

_text proposed by the Commission_

1 a. In order to harmonise reporting practices within the Union, the Commission shall adopt an implementing act to establish a standardised Union reporting template that shall serve as a basis for Member States. This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 16a(2).

Amendment 64

Proposal for a directive
Article 14 – paragraph 2

_text proposed by the Commission_

2. Member States shall take the necessary measures to encourage financial institutions and other legal persons operating in their territory to report without undue delay suspected fraud to law enforcement and other competent authorities, for the purpose of detecting, preventing, investigating or prosecuting offences referred to in Articles 3 to 7.

_text proposed by the Commission_

2. Member States shall take the necessary measures to ensure that financial institutions report without undue delay suspected fraud to law enforcement authorities, financial intelligence units and other competent authorities, for the purpose of detecting, preventing, investigating or prosecuting offences referred to in Articles 3 to 7.

Amendment 65

Proposal for a directive
Article 14 – paragraph 2 a (new)
Text proposed by the Commission

2a. Member States shall take the necessary measures to encourage other legal persons operating on their territory to report suspected fraud, without undue delay, to law enforcement authorities, financial intelligence units and other competent authorities, for the purpose of detecting, preventing, investigating or prosecuting offences referred to in Articles 3 to 7.

Amendment

Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that natural and legal persons who have suffered prejudice from offences referred to in Articles 3 to 7, committed by misusing personal data, are offered specific information and advice on how to protect themselves against the negative consequences of the offences, such as reputational damage.

Amendment

Proposal for a directive
Article 15 – paragraph 1 a (new)

Text proposed by the Commission

1 a. Member States shall ensure that natural and legal persons who have suffered prejudice from offences referred to in Articles 3 to 7, committed by misusing personal data, are provided with...
a list of dedicated institutions that deal with different aspects of identity-related crime and support.

Amendment 68

Proposal for a directive
Article 15 – paragraph 1 b (new)

Text proposed by the Commission

I b. Member States are encouraged to set up national single online information tools to facilitate access to assistance and support for natural or legal persons who have suffered prejudice from offences referred to in Articles 3 to 7, committed by misusing personal data.

Amendment

Amendment 69

Proposal for a directive
Article 15 – paragraph 1 c (new)

Text proposed by the Commission

I c. Member States shall ensure that natural persons who have suffered a prejudice from offences referred to in Articles 3 to 7, committed by misusing personal data, are offered free legal aid, at least those who lack sufficient resources to pay for legal aid. Member States may apply a means test to determine whether natural persons have the right to free legal aid.

Amendment

Amendment 70

Proposal for a directive
Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that legal persons that are victims of offences

Amendment

2. Member States shall ensure that natural and legal persons that are victims
of offences referred to in Articles 3 to 7 of this Directive are, without undue delay after their first contact with a competent authority, offered information about:

Amendment 71
Proposal for a directive
Article 15 – paragraph 2 – point a (new)

Text proposed by the Commission

Amendment

(aa) the right of access to information about the case;

Amendment 72
Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with stakeholders, aimed at reducing overall fraud, raising awareness and reducing the risk of becoming a victim of fraud.

Member States shall ensure that sufficient funding is made available for such campaigns.

Amendment 73
Proposal for a directive
Article 16 – paragraph 1 a (new)
Text proposed by the Commission

1a. Member States shall develop and keep up to date, as part of the information campaigns referred to in paragraph 1, a permanent online information tool with practical examples of fraudulent practices as referred to in Articles 3 to 7 in a format that is easy to understand. This tool may be linked to or be part of the single online information tool referred to in Article 15(1b).

Amendment 74
Proposal for a directive
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16 a
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Amendment 75
Proposal for a directive
Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that a system is in place for the recording, production and provision of statistical data measuring the reporting, investigative and judicial phases concerning the offences referred to in Articles 3 to 7.
Amendment 76

Proposal for a directive
Article 17 – paragraph 3

Text proposed by the Commission

3. The statistical data referred to in paragraph 2 shall, as a minimum, cover the number of offences referred to in Articles 3 to 7 reported to the Member States, the number of cases investigated, the number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 7, and data on the functioning of the reporting, investigative and judicial phases concerning these offences.

Amendment

3. The anonymised statistical data referred to in paragraph 2 shall, as a minimum, cover the number of offences referred to in Articles 3 to 7 reported to the Member States, the number of cases investigated, the number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 7, the number of persons involved in the fraud and the extent of the damage caused, data on the functioning of the reporting, investigative and judicial phases concerning these offences.

Amendment 77

Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [12 months after entry into force]. They shall immediately inform the Commission thereof.

Amendment 78

Proposal for a directive
Article 20 – paragraph 2

Text proposed by the Commission

2. The Commission shall, by [96

Amendment

2. The Commission shall by ... [48
months after entry into force], carry out an evaluation of this Directive on combating fraud and counterfeiting of non-cash means of payment and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of the report.
EXPLANATORY STATEMENT

Digitalization is transforming the way we pay: Using non-cash payments is becoming more and more frequent: The number of transactions has grown by 24% in the last five years. But this emerging market has also become attractive for criminals: In 2013, fraud with cards, issued in the SEPA area, caused damage of 1.44 Billion Euro. The sum has grown by 23% from 2011 to 2013.

Cards are not the only non-cash payment instrument - direct debit and mobile payments are other examples of these payment instruments. At the EU level, there are no comprehensive statistics on fraud with non-cash payment instruments. The Commission estimates an annual damage sum of 2 billion Euro; and this number does not include all the payment instruments available.

Online fraud (e.g. theft of credit card data) has often a cross-border dimension. Perpetrator and victim do not have to be based in the same country and this poses difficult challenges to law enforcement authorities.

The current Council Framework Decision 2001/413/JH dates back to 2001. The current rules do not sufficiently address new technological developments such as virtual currencies. The Commission therefore proposed to update the legal framework, remove operational obstacles and enhance the prevention of non-cash fraud. This proposed Directive to combat the fraud and counterfeiting of non-cash means of payment is also an important step for the “lisbonisation” of the area of criminal law in the European Union. The European Parliament as co-legislator will play an important role.

The Commission has provided several arguments for this revision, in its Impact Assessment and its proposal for a Directive. The expansion of the scope of the offences, including transactions through virtual currencies, the introduction of new online crime offences and minimum levels for the highest penalties, the clarification of the scope of jurisdiction and the provisions on ensuring the rights of cybercrime victims, prevention of fraud and improving the criminal justice cooperation seem to be convincing.

In order to strengthen the proposal, the Rapporteur proposes in her draft report some changes to the Commission proposal, inter alia:

- Strengthening the assistance to victims of non-cash fraud, since the consequences of the fraud are often aggravated because of reputational damage, loss in credit rating or serious emotional harm.

- Facilitating the reporting of crime, including the setting-up of national secure online fraud reporting systems

- Stronger involvement of Eurojust and Europol in exchange of information

- More focussed prevention provisions on internet and computer fraud
- A shorter transposition period and an obligation for the Commission to present an evaluation of the Directive after 4 years
## PROCEDURE – COMMITTEE RESPONSIBLE

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<th>Title</th>
<th>Combating fraud and counterfeiting of non-cash means of payment</th>
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<tbody>
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<td>Date submitted to Parliament</td>
<td>13.9.2017</td>
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<tr>
<td>Committee responsible</td>
<td>LIBE</td>
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<tr>
<td>Date announced in plenary</td>
<td>2.10.2017</td>
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<td>Committees asked for opinions</td>
<td>ECON, ITRE, JURI</td>
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<td>Date of decision</td>
<td>5.10.2017, 11.10.2017, 2.10.2017</td>
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<td>Rapporteurs</td>
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<td>Date appointed</td>
<td>20.11.2017</td>
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<td>Discussed in committee</td>
<td>27.3.2018, 25.4.2018, 3.9.2018</td>
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<td>Date adopted</td>
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<td>Members present for the final vote</td>
<td>Asim Ademov, Monika Beňová, Caterina Chinnici, Cornelia Ernst, Romeo Franz, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Péter Niedermüller, Judith Sargentini, Giancarlo Scottà, Birgit Sippel, Csaba Sógor, Sergei Stanishev, Helga Stevens, Bodil Valero, Josef Weidenholzer, Kristina Winberg, Auke Zijlstra</td>
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<td>Substitutes present for the final vote</td>
<td>Dennis de Jong, Gérard Deprez, Jean Lambert, Jeroen Lenaers, Nuno Melo, Emil Radev, Barbara Spinelli, Jaromír Štětina</td>
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<tr>
<td>Substitutes under Rule 200(2) present for the final vote</td>
<td>François Grossetête, Nadja Hirsch, Peter Kouroumbashev, Vladimir Urutchev</td>
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### FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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<td>VERTS/ALE</td>
<td>Romeo Franz, Jean Lambert, Judith Sargentini, Bodil Valero</td>
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<td>ENF</td>
<td>Auke Zijlstra</td>
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Key to symbols:
+ : in favour
- : against
0 : abstention