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Delegations will find attached document SWD(2023) 23 final.

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COMMISSION STAFF WORKING DOCUMENT

Monitoring Programme for Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA

1. Context

Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA, hereafter ‘the Directive’, entered into force on 30 May 2019 and had to be transposed by Member States by 31 May 2021.

Pursuant to Article 18 of the Directive, the Commission needs to establish a detailed programme for monitoring the outputs, results and impact of the Directive.

2. Aim and purpose

The monitoring programme foresees a continuous and systematic process of data collection, aims to generate information for future evaluations of the Directive, and helps identify actual problems in its application. It will allow to check if the implementation of the Directive is ‘on track’ and to generate information that can be used to evaluate whether it has achieved its objectives.

The monitoring programme sets out the means by which, and at which intervals, data and other necessary evidence are to be collected to monitor the outputs, results and impacts of the Directive. It specifies the actions to be taken and involved actors in collecting, sharing and analysing those data and other evidence. To this end, it sets out the objectives of the Directive, monitoring indicators as well as sources of data and collection methods to measure the achievement of those objectives. It devises a strategy to collect reliable data and evidence on the indicators at regular intervals.

The implementation of the Directive, the attainment of its objectives and the effects of its provisions. will be subject to the monitoring. This monitoring programme should enable the Commission to assess whether and to what extent the outputs, results and impacts of the Directive correspond to its objectives.

3. Objectives of the Directive

The Directive pursues two general policy objectives:

- Enhance security, by reducing the attractiveness (i.e. reduce gains, increase risk) for organized crime groups of non-cash payment fraud as a source of income and therefore as an enabler of other criminal activities, including terrorism;
- Support the digital single market, by reducing the negative impact on economic activity that non-cash payment fraud causes to the different stakeholders. This includes both direct losses as well as losses derived from the reduced trust of consumers and businesses in the payment processes.

The Directive also pursues three specific policy objectives:

- Ensure that a clear, robust and technology neutral policy/legal framework is in place;
- Eliminate operational obstacles that hamper investigation and prosecution;
- Enhance prevention.

Moreover, there is an operational objective pursued, namely

- Enhance cross-border law enforcement operational cooperation.

4. Indicators

The selected indicators represent quantitative or qualitative measures of how close we are to achieving a set goal (e.g. policy outcome). They help to analyse and compare performance and to measure the achievement of the Directive's objectives. Each indicator only gives one perspective of the performance of a policy intervention, which is highly dependent on the type of indicator, data, other influences, etc. Therefore, other complementary approaches to monitoring, such as qualitative analysis or surveys, are also to be used.

A number of indicators are identified for measuring the achievement of the general, specific and operational objectives of the Directive:

- Volume (value and number of transaction) of non-cash payment fraud
- Profits for organised crime groups derived from non-cash payment fraud
- Trust of consumers in the security of non-cash payment transactions
- Ratio between fraud volume and law enforcement action (reporting, investigative and judicial phases)
- Qualitative evidence of cases that cannot be prosecuted because the behaviour is not considered criminal
- Qualitative evidence of cases that cannot be prosecuted because jurisdiction cannot be established
- Qualitative evidence of cases that cannot be investigated due to lack of cooperation among law enforcement authorities
- Qualitative evidence of cases that cannot be prosecuted because the information is not available
- Number of structured public-private cooperation mechanisms established to enhance reporting and number of entities involved
- Awareness of consumers and economic operators on risks and possibilities to address them
- Number of national contact points set up in accordance with the Directive
- Number of cross-border operations under the relevant European Multidisciplinary Platform Against Criminal Threats (EMPACT) priority

The table (under section 9) summarises the indicators proposed to monitor the achievement of the policy objectives. For each indicator, the source of data and collection methods are indicated, also mentioning whether such data are already collected, by whom and at with intervals.

The Commission will assess all of these indicators over time to identify trends.

5. Data collection

In listing this set of data for collection, and by whom and at which intervals, the Commission took into account the burden and costs on involved actors. The programme collects only what is relevant, and makes maximum use of existing data to save time and increase coherence of results, in order to minimise administrative burden.

To avoid putting any additional administrative burden on Member States or the private sector due to the collection of information used for monitoring, the proposed indicators mainly rely on the existing data sources. Nevertheless, as not all relevant data is currently available, action should also be taken by the Commission and by the Member States in collecting, sharing and analysing the data and other evidence available, in order to be able to measure the achievement of the Directive's objectives.

5.1 Existing data sources

5.1.1 Data on volume (value and number of transaction) of non-cash payment fraud collected under Art. 96(6) of PSD2

Article 96(6) of the Revised Payment Services Directive¹ (hereafter 'PSD2') requires Member States to ensure that payment service providers provide, at least on an annual basis, statistical data on fraud relating to different means of payment to their competent authorities. Those competent authorities are asked to provide the European Banking Authority (EBA) and the European Central Bank (ECB) with such data in an aggregated form. The collected data are consolidated in the ECB report on card fraud², published on a yearly basis.

The proposed monitoring arrangements would not generate additional administrative burden (reporting obligations) for firms, including SMEs, beyond those already imposed by the reporting requirements on non-cash payment fraud data under Art. 96(6) of the PSD2.

The PSD2 does not cover payments through virtual currencies, which are therefore excluded from the scope of Article 96. However, non-cash payment fraud related to virtual currencies represents a small portion of the overall amount of non-cash payment fraud (NCPF), and thus, for the purpose of assessing the volume of NCPF, the data provided under Article 96(6) of PSD2 are to be considered sufficient.

This data will be used to monitor the following indicator:

- Volume (value and number of transaction) of on-cash payment fraud.

This indicator uses as sources the statistical data on fraud related to the different means of payment (not only cards) that payment service providers will be required to provide under Article 96(6) of PSD2 on incident reporting. Therefore, this indicator will provide additional information on the breakdown of fraud by non-cash means of payment, which will allow the future success of the intervention to be measured more broadly than only in terms of card fraud.

5.1.2 Data on profits for organised crime groups derived from non-cash payment fraud collected by Europol

Each year, Europol publishes threat assessment reports, in particular the Internet Organised Crime Threat Assessment (IOCTA)³ on developments and emerging threats in cybercrime, as well as their impact on European users, organizations, and governments.

¹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 35.

² See for instance <https://www.ecb.europa.eu/pub/pdf/cardfraud/ecb.cardfraudreport202110~cac4c418e8.en.pdf>

³ See for instance <https://www.europol.europa.eu/publications-events/main-reports/iocta-report>

This data will be used to monitor the following indicator:

- Profits for organised crime groups derived from non-cash payment fraud.

5.1.3 Data on trust and awareness of consumers collected through Eurobarometer surveys

The Commission launches periodic Eurobarometer surveys, in particular the special Eurobarometer ‘Europeans’ attitudes towards cyber security’ with the aim to understand EU citizens’ awareness, experiences and perceptions of cyber security.

This Eurobarometer is regularly conducted every third year: the latest one (Special Eurobarometer 499⁴) was conducted in 2019 and published in 2020, and the upcoming one is planned for 2022 to be published in 2023.

This data will be used to monitor the following indicators:

- Trust of consumers in the security of non-cash payment transactions;
- Awareness of consumers and economic operators on risks and possibilities to address them.

5.1.4 Data on cross-border operations collected under EMPACT

In the framework of EMPACT, non-cash payment fraud is tackled under relevant priority(ies).⁵ The driver of the relevant priority(ies) already periodically reports the number of cross-border operations.

This data will be used to monitor the following indicator:

- Number of cross-border operations under the relevant EMPACT priority.

5.1.5 Data on national contact points provided under Article 14 of the Directive

According to Article 14 of the Directive, for the purpose of exchanging information on the offences, Member States need to have an operational national point of contact available 24 hours a day, seven days a week, and they must inform the Commission, Europol and Eurojust of their appointed point of contact. Member States have notified this information to the Commission in their communication on national transposing measures for the Directive and they must update it as necessary.

This data will be used to monitor the following indicator:

- Number of national contact points set up in accordance with the Directive.

5.2 New data sources

5.2.1 Qualitative evidence of cases that cannot be prosecuted or investigated collected through ad hoc questionnaires under EMPACT

⁴ <https://data.europa.eu/doi/10.2837/672023>

⁵ Under the current EMPACT cycle, the sub-priority ‘Online Fraud Schemes’ has been identified as relevant

The Commission will gather relevant data with the assistance of Europol and Eurojust through ad hoc questionnaires to be distributed among the Member States participating in the relevant EMPACT priority(/ies).⁶

The costs for conducting the surveys will be borne by the Directorate General of Migration and Home Affairs (DG HOME) within its operational expenditure.

Data gathered through the questionnaire will be used to monitor the following indicators:

- Qualitative evidence of cases that cannot be prosecuted because the behaviour is not considered criminal;
- Qualitative evidence of cases that cannot be prosecuted because jurisdiction cannot be established;
- Qualitative evidence of cases that cannot be investigated due to lack of cooperation;
- Qualitative evidence of cases that cannot be prosecuted because the information is not available.

5.2.2 Statistical data on reporting, investigative and judicial phases involving the relevant offences by Member States

Under Article 18(2)-(4) of the Directive, Member States are required to put in place a system for the recording, production and provision of anonymised statistical data measuring the reporting, investigative and judicial phases involving the offences referred to in Articles 3 to 8 of the Directive. Such statistical data should, as a minimum, cover existing data on the number of offences registered by the Member States and on the number of persons prosecuted for and convicted of these offences.

Member States are required to transmit such national statistics on non-cash payment fraud crimes to the Commission on an annual basis.

On this basis, the Commission will consolidate the transmitted data and publish yearly a review of the statistical report, to be submitted to the competent specialised Union agencies and bodies.

This data will be used to monitor the following indicator:

- Ratio between fraud volume and law enforcement action.

5.2.3 Data on structured public-private cooperation mechanisms collected through a survey by the Commission

For the remaining data that is not currently available, i.e. data on structured public-private cooperation mechanisms, the Commission will conduct a survey targeted to financial operators (e.g. European Banking Association), merchants (through European associations) and law enforcement authorities (through EMPACT). The survey will be biannual and will be conducted at least twice before 2026, coinciding, if applicable, with the reporting requirements for the Commission on the transposition and implementation of the Directive.

The costs of the survey will be borne by DG HOME within its operational expenditure (e.g. as support expenditure for operations of the Cybercrime policy area).

⁶ Under the current EMPACT cycle, the sub-priority ‘Online Fraud Schemes’ has been identified as relevant.

The survey will be used to monitor the following indicators:

- Number of structured public-private cooperation mechanisms established and number of entities involved.

6. Benchmark and targets

The benchmark against which progress will be measured is the baseline situation following the entry into force of the legislative act. For existing data source, the baseline will be defined based on the most recently collected data from the entry into force of the Directive; whereas, for new data sources, the first collected data will serve as baseline.

With regard to targets (a proxy for success criteria), given the transnational nature of fraud and the different data collection methods and sources, it is considered more effective to measure aggregated progress across Member States against an average baseline at Union level. When possible, progress will be measured for each Member State against its own baseline.

7. Monitoring study

Progress in the implementation of the Directive, its objective and effects, will be compiled in a monitoring study. Data gathering and analysis will take place in 2025. The study is to be finalised in time to feed into the evaluation of the Directive due by 31 May 2026.

The costs of the study will be borne by DG HOME within its operational expenditure.

8. Review of the monitoring programme

The constantly evolving context within which the Directive operates, as well the maturity of legislation and its application, mean that the relevance of many aspects of reporting will continue to change over time. The monitoring programme should therefore be reviewed in the context of the evaluation of the Directive that the Commission is required to conduct by 31 May 2026.

9. Table: monitoring of general, specific and operational objectives

Objectives		Indicators	Sources of data and/or collection methods	Interval	Already collected data
General	Enhance security	Volume (value and number of transactions) of non-cash payment fraud	Data collected by ECB, EBA under Art. 96(6) of PSD2 and consolidated in the ECB report on card fraud	Yearly	Yes
		Profits for organized crime groups derived from non-cash payment fraud	Data collected by Europol in their threat assessment reports (IOCTA)	Yearly	Yes
	Support the digital single market	Volume (value and number of transactions) of non-cash payment fraud	Data collected by ECB, EBA under Art. 96(6) of PSD2 and consolidated in the ECB report on card fraud	Yearly	Yes
		Trust of consumers in the security of non-cash payment transactions	Data collected by EC through periodic Eurobarometer surveys	Every third year	Yes
Specific	Ensure that a clear, robust and technology neutral policy/legal framework is in place	Ratio between fraud volume and law enforcement action	Statistical data on investigations/prosecutions/convictions to be provided by MS and collected by EC under Art. 18 of the Directive	Yearly	No
		Qualitative evidence of cases that cannot be prosecuted because the behaviour is not considered criminal	Data to be collected by EC with the assistance of Europol and Eurojust through ad hoc questionnaires under EMPACT relevant priority(ies)	Every third year	No
		Qualitative evidence of cases that cannot be prosecuted because jurisdiction cannot be established			
	Enhance cooperation to facilitate investigation and prosecution	Qualitative evidence of cases that cannot be investigated due to lack of cooperation			
		Qualitative evidence of cases that cannot be prosecuted because the information is not available			
	Enhance prevention	Number of structured public-private cooperation mechanisms established and number of entities involved	Data to be collected by EC through a MS survey	Every second year	No
		Awareness of consumers and economic operators on risks and possibilities to address them	Data collected by EC through periodic Eurobarometer surveys	Every third year	Yes
Operational	Enhance cross-border operational cooperation	Number of national contact points set up in accordance with the Directive	Data on national contact points provided by MS and collected by EC under Art. 14 of the Directive	To be updated as necessary	Yes
		Number of cross-border operations under the relevant EMPACT priority	Data collected under EMPACT relevant priority(ies)	Yearly	Yes