



Council of the European Union
General Secretariat

Brussels, 20 November 2018

WK 13805/2018 INIT

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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
Subject:	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

In view of the meeting of the Friends of the Presidency on 22 November 2018, delegations will find attached an updated version of the 4-column document.

Delegations' attention is drawn to the use of colours in the fourth column:

- green means that the text was not changed or that the text is agreed;
- yellow means that a text was provisionally drafted at technical level but that a political confirmation is still pending.

Delegations attention is also drawn to a series of suggestions from the Presidency for new recitals (in pink).

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

Remark: Green (in the fourth column) means that the text was not changed or that the text is agreed. Yellow means that a text was provisionally drafted at technical level but that a political confirmation is still pending.

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,		Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,
Having regard to the proposal from the European Commission,		Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,		After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee,		Having regard to the opinion of the European Economic and Social Committee,	Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with the ordinary legislative procedure,		Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,
Whereas:		Whereas:	Whereas:

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(1) Fraud and counterfeiting of non-cash means of payment is a threat to security, as it represents a source of income for organised crime and is therefore an enabler for other criminal activities such as terrorism, drug trafficking and trafficking in human beings.		(1) Fraud and counterfeiting of non-cash means of payment is a threat to security, as it represents a source of income for organised crime and is therefore an enabler for other criminal activities such as terrorism, drug trafficking and trafficking in human beings.	(1) Fraud and counterfeiting of non-cash means of payment is a threat to security, as it represents a source of income for organised crime and is therefore an enabler for other criminal activities such as terrorism, drug trafficking and trafficking in human beings.
(2) Fraud and counterfeiting of non-cash means of payment is also an obstacle to the digital single market, as it erodes consumers' trust and causes direct economic losses.		(2) Fraud and counterfeiting of non-cash means of payment is also an obstacle to the digital single market, as it erodes consumers' trust and causes direct economic losses.	(2) Fraud and counterfeiting of non-cash means of payment is also an obstacle to the digital single market, as it erodes consumers' trust and causes direct economic losses.
(3) Council Framework Decision 2001/413/JHA ¹ needs to be updated and complemented by further provisions on offences, penalties and cross-border cooperation.	(3) Council Framework Decision 2001/413/JHA ¹ needs to be updated and complemented <i>in order to include</i> further provisions on offences, <i>in particular relating to computer-related fraud, penalties, prevention and assistance to victims</i> and cross-border cooperation.	(3) Council Framework Decision 2001/413/JHA ¹ needs to be updated and complemented by further provisions on offences, penalties and cross-border cooperation.	
(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	(4) Significant gaps and differences in Member States' laws in the area of fraud and counterfeiting of non-cash means of payment <i>obstruct the prevention, detection and sanctioning of</i> this	(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	

¹ Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).

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serious and organised crimes related to and enabled by it, and may complicate effective police and judicial cooperation in this area.	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 <i>with a direct impact on citizens' security</i> .	serious and organised crimes related to and enabled by it, and may complicate effective police and judicial cooperation in this area.	
(5) Fraud and counterfeiting of non-cash means of payment have a significant cross-border dimension, accentuated by an increasing digital component, which underlines the need for further action to approximate criminal legislation in this area.		(5) Fraud and counterfeiting of non-cash means of payment have a significant cross-border dimension, accentuated by an increasing digital component, which underlines the need for further action to approximate criminal legislation in this area.	(5) Fraud and counterfeiting of non-cash means of payment have a significant cross-border dimension, accentuated by an increasing digital component, which underlines the need for further action to approximate criminal legislation in this area.
(6) Recent years have brought not only an exponential increase in the digital economy but also a proliferation of innovation in many areas, including payment technologies. New payment technologies entail the use of new types of payment instruments, which, while creating new opportunities for consumers and businesses, also increase opportunities for fraud. Consequently, the legal framework must remain relevant and up-to-date against the background of these technological developments.		(6) Recent years have brought not only an exponential increase in the digital economy but also a proliferation of innovation in many areas, including payment technologies. New payment technologies entail the use of new types of payment instruments, which, while creating new opportunities for consumers and businesses, also increase opportunities for fraud. Consequently, the legal framework must remain relevant and up-to-date against the background of these technological developments <u>on the basis of a technology-neutral approach</u> .	

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		(6a) <u>This Directive applies to non-cash payment instruments only insofar as the instrument's payment function is concerned.</u>	

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	<i>(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.</i>		
(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.	(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.	(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 non-cash payment instruments which allow for transfers of electronic money and virtual currencies. <u>The definition of non-cash payment instruments should acknowledge that a non-cash payment instrument may consist of different elements acting together, as for example a mobile payment application and a corresponding authorization (e.g. a password). When this Directive uses the notion of a non-cash payment instrument, it is understood that the instrument puts the holder or user of the instrument in the position to actually enable a</u>	(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 non-cash payment instruments which allow for transfers of electronic money and virtual currencies. <u>The definition of non-cash payment instruments should acknowledge that a non-cash payment instrument may consist of different elements acting together, as for example a mobile payment application and a corresponding authorization (e.g. a password). When this Directive uses the notion of a non-cash payment instrument, it is understood that the</u>

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		<u>transfer of money or monetary value. For example, unlawful obtention of a mobile payment application without the necessary authorization would not be considered an unlawful obtention of a non-cash payment instrument as it does not actually enable the user to transfer money or monetary value.</u>	<u>instrument puts the holder or user of the instrument in the position to actually enable a transfer of money or monetary value or to initiate a payment order. For example, unlawful obtention of a mobile payment application without the necessary authorization would not be considered an unlawful obtention of a non-cash payment instrument as it does not actually enable the user to transfer money or monetary value.</u> <i>Remark by Presidency: text in pink moved from Art. 1 para 2 (a) of EP proposal as discussed during technical meeting of 16.11.2018</i>
		(7a) <u>Virtual currencies cannot per se be considered as payment instruments, payment systems or electronic money in the sense of the Directive 2015/2366² or the</u>	

² Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (OJ L 337, 23.12.2015, p. 35).

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		<p><u>Directive 2009/110³. This Directive covers virtual currencies only insofar as they can be commonly used for making payments. The Member States are encouraged to ensure in their national law that future currencies of a virtual nature issued by their central banks or other public authorities will enjoy the same level of protection against fraudulent offences as non-cash means of payment in general. Digital wallets that allow transferring virtual currencies should be covered by this Directive to the same extent as non-cash payment instruments. The inclusion of digital mediums of exchange in the definitions acknowledges that digital wallets for transferring virtual currencies may provide, but do not necessarily provide the features of a payment instrument and does not extend the definition of a payment instrument.</u></p>	
	<i>(7 a) Fake invoices with which payment credentials can be</i>		

³ Directive (EU) 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

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	<i>abstracted should be considered as an attempt at unlawful appropriation as referred to in Article 4 of this Directive.</i>		
(8) By giving the protection of the criminal law primarily to payment instruments that are provided with a special form of protection against imitation or abuse, the intention is to encourage operators to provide such special forms of protection to payment instruments issued by them, and thereby to add an element of prevention to the payment instrument.		(8) By giving the protection of the criminal law primarily to payment instruments that are provided with a special form of protection against imitation or abuse, the intention is to encourage operators to provide such special forms of protection to payment instruments issued by them, and thereby to add an element of prevention to the payment instrument.	(8) By giving the protection of the criminal law primarily to payment instruments that are provided with a special form of protection against imitation or abuse, the intention is to encourage operators to provide such special forms of protection to payment instruments issued by them, and thereby to add an element of prevention to the payment instrument.
(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 distribution, for example by selling credit card	(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	(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 distribution, for example by selling credit card	(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,

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<p>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 (<i>dolus eventualis</i>). 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.</p>	<p>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 (...) procurement or distribution does not necessarily lead to fraudulent use of such payment instruments, if the offender is aware of such a possibility (<i>dolus eventualis</i>). <i>The possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified, payment instrument should be covered if the person possessing it knows at the time of receipt that such instrument is derived from criminal activity or from an act of participation in such an activity.</i> 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.</p>	<p>information on the internet, should thus be made a criminal offence in its own right without requiring 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 [...]. <u>However, where this Directive criminalizes possession or holding, such criminalization does not encompass mere omission.</u> 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.</p>	<p>skimming or directing or redirecting payment service users to imitation websites, 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 requiring 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 [...]. <u>However, where this Directive criminalizes possession or holding, such criminalization does not encompass mere omission.</u> 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</p>

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			<p>developed by fintech companies.</p> <p><i>Remark by Presidency: text in pink moved from Art. 5(ba) of EP proposal as discussed during technical meeting of 16.11.2018</i></p>
		<p><u>(9a) With regard to the criminal offences provided for in this Directive, the notion of intention apply to all elements constituting those criminal offences in accordance with national law. The intentional nature of an act, as well as knowledge or purpose required as an element of an offence, may be inferred from objective, factual circumstances. Criminal offences which do not require intention are not covered by this Directive.</u></p>	
		<p><u>(9b) This Directive refers to classical forms of conduct, like fraud, forgery, theft and unlawful appropriation that have been shaped by national law already before the era of digitalization. The extended scope of the Directive with regard to non-corporeal payment-instruments therefore requires defining equivalent forms of conduct in the digital sphere,</u></p>	

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		<p><u>complementing and reinforcing Directive 2013/40⁴.</u></p> <p><u>Unlawful obtaining of a non-corporeal non-cash payment instrument should be a criminal offence, at least when this obtaining has involved the commission of one of the offences referred to in Articles 3 to 6 of Directive 2013/40 or</u></p> <p><u>misappropriation of a non-corporeal non-cash payment instrument. 'Misappropriation' means the action of a person, who is entrusted with a non-corporeal non-cash payment instrument, to knowingly use the instrument without right to his own benefit or to the benefit of another.</u></p> <p><u>Procurement for fraudulent use of such an unlawfully obtained instrument should be punishable, without it being necessary to establish all the factual elements of the unlawful obtaining, let alone require a prior or simultaneous conviction for the predicate offence which generated the unlawful obtaining.</u></p>	

⁴ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

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		<u>The Directive also refers to tools which can be used in order to commit the offences referred to in this Directive. Motivated by the need to avoid criminalization where such tools are produced and put to the market for legitimate purposes and are therefore, though sometimes used to commit criminal offences, not in themselves a threat, criminalization is limited to tools which are primarily designed or specifically adapted for the purpose of committing the offences referred to in this Directive.</u>	
(10) The sanctions and penalties for fraud and counterfeiting of non-cash means of payment should be effective, proportionate and dissuasive throughout the Union.	(10) The sanctions and penalties for fraud and counterfeiting of non-cash means of payment should be effective, proportionate and dissuasive throughout the Union <i>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.</i>	(10) The sanctions and penalties for fraud and counterfeiting of non-cash means of payment should be effective, proportionate and dissuasive throughout the Union. <u>This Directive is without prejudice to the individualisation and application of penalties and execution of sentences in accordance with the concrete circumstances in each individual case and the general rules of national criminal law.</u>	
		<u>(10a) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules with</u>	

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		<u>regard to fraud and counterfeiting of non-cash means of payment, including a broader definition of offences.</u>	
(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 ⁵ , 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.	(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 ⁵ , or where a crime is conducted on a large scale, thus involving extensive or considerable damage to the victims. <i>The fact that an offence involves a significant aggregate financial advantage or a high number of victims should be considered an aggravating circumstance.</i>	(11) It is appropriate to provide for more severe penalties where the crime is committed in the framework of a criminal organisation, as defined in Council Framework Decision 2008/841/JHA ⁵ [...]; <u>Member States should not be obliged to provide for specific aggravating circumstances where national law provides for separate criminal offences and this may lead to more severe sanctions. When an offence referred to in this Directive has been committed, by the same person, in conjunction with another offence referred to in this Directive, which de facto constitutes a necessary element of the first offence, a Member State may, in accordance with general principles of national law, provide that such conduct is regarded as an aggravating circumstance to the main offence.</u>	
(12) Jurisdictional rules should ensure that the offences laid down in	(12) Jurisdictional rules should ensure that the offences laid down in	(12) Jurisdictional rules should ensure that the offences laid down in	(12) Jurisdictional rules should ensure that the offences laid down

⁵ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

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<p>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.</p>	<p>this Directive are prosecuted effectively <i>and in accordance with a clear set of criteria</i>. 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.</p> <p><i>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.</i></p>	<p>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 and over offences committed by their nationals [...].</p>	<p>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. Member States may also establish their jurisdiction over offences that cause damage in their territory.</p> <p><i>Remark by Presidency: text in pink moved from Art. 11 (1) (c) of EP proposal as discussed during technical meeting of 16.11.201</i></p>
		<p>(12a) <u>Recalling the obligations under Framework Decision 2009/948⁶ and</u></p>	

⁶ Council Framework Decision 2009/948 of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

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		<u>Decision 2002/187/JHA⁷, competent authorities are encouraged to use in cases of conflicts of jurisdiction the possibility to conduct direct consultations with the assistance of Eurojust.</u>	
(13) Information systems challenge the traditional concept of territoriality because in principle they can be used and controlled remotely from anywhere. Where Member States assert jurisdiction on the basis of offences committed within their territory, it appears appropriate to assess the scope of their jurisdiction for offences committed using information systems as well. Jurisdiction in such cases should cover situations where the information system is located within the territory of the Member State although the offender may be located outside of it and situations where the offender is located within the territory of the Member State although the information system may be located outside of it.		<u>[deleted]</u>	

⁷ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

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(14) The complexity of assigning jurisdiction with regard to the effects of the offence in a different jurisdiction from that in which the actual act took place needs to be addressed. Jurisdiction should thus be asserted for offences committed by offenders irrespective of their nationality and physical presence, but in view of any damage caused by such an act on the territory of the Member State.		<u>[deleted]</u>	
(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	(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, <i>adequate</i> 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	(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, <u>if and to the extent that the use of those tools is appropriate and commensurate with the nature and gravity of the offences as defined in national law.</u> In addition, law enforcement authorities and other competent authorities should have timely access to relevant information in order to	(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, <u>if and to the extent that the use of those tools is appropriate and commensurate with the nature and gravity of the offences as defined in</u>

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competent authorities should have timely access to relevant information in order to investigate and prosecute the offences laid down in this Directive.	in order to investigate and prosecute the offences laid down in this Directive. <i>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.</i>	investigate and prosecute the offences laid down in this Directive.	<p><u>national law</u>. 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. <i>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.</i></p> <p><i>Remark by Presidency: text in pink moved from Art. 12 para 1a of EP proposal as discussed during technical meeting of 16.11.2018</i></p>
	<i>(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</i>		<p><i>(15a) National authorities investigating or prosecuting offences referred to in Articles 3 to 7 should be empowered to cooperate with other national authorities and their counterparts in other Member States.</i></p> <p><i>Remark by Presidency: text in pink moved from Art. 12 para 2 of</i></p>

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	<i>threshold for penalties provided for those offences in national law.</i>		<i>EP proposal as discussed during technical meeting of 16.11.2018</i>
(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 ⁸ . 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	(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 ⁸ . 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	(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 ⁸ . 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	

⁸ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

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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 providing specialist expertise on information systems.	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 providing specialist expertise on information systems.	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 providing specialist expertise on information systems.	
(17) Major security incidents as defined in Article 96 of Directive (EU) 2015/2366 of the European Parliament and the Council ⁹ 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.	(17) Major security incidents as defined in Article 96 of Directive (EU) 2015/2366 of the European Parliament and the Council ⁹ 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.	(17) Major security incidents as defined in Article 96 of Directive (EU) 2015/2366 of the European Parliament and the Council ⁹ 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.	
(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	(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	(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	(18) A number of instruments and mechanisms exist at Union level to enable the exchange of information among national law enforcement authorities to

⁹ 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).

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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 ¹⁰ . 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	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 ¹⁰ . 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	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 ¹⁰ . 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	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 ¹⁰ . 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

¹⁰ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

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able to promptly deal with urgent requests from this network of points of contact and provide feedback within eight hours.	requests from this network of points of contact and provide feedback within <i>two</i> hours <i>of receipt, at least indicating whether the request will be answered, and the form and estimated time of such an answer. In very urgent and serious cases, Member States should inform Europol's European Cybercrime Centre.</i>	requests from this network of points of contact and provide feedback within eight hours.	<p>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. In very urgent and serious cases, Member States should inform Europol.</p> <p><i>Remark by Presidency: text in pink moved from Art. 13 para 2a of EP proposal as discussed during technical meeting of 16.11.2018</i></p>
			<p>(18a) When dealing with data as referred to in Article 13, competent authorities should comply with applicable Union data protection rules.</p> <p><i>Remark by Presidency: text in pink moved from Art. 13 para 2b of EP proposal as discussed during technical meeting of 16.11.2018</i></p>
(19) Reporting crime without undue delay to public authorities is	(19) Reporting crime without undue delay to public authorities is	(19) Reporting crime without undue delay to public authorities is	

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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 ¹¹ . In particular, any transmission of information regarding preventing and combating offences relating to fraud and counterfeiting of non-cash	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 <i>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</i> 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	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 ¹¹ . 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	

¹¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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means of payment should comply with the requirements laid down in Regulation (EU) 2016/679, notably the lawful grounds for processing.	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 ¹¹ . 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.	requirements laid down in Regulation (EU) 2016/679, notably the lawful grounds for processing.	
		<u>19a) The offences envisaged in the Directive often have a cross-border nature. Therefore, combating these offences relies on the close cooperation between the Member States. Member States are encouraged to ensure, to the extent appropriate, effective application of mutual recognition and legal assistance instruments in relation to the offences covered by the directive irrespective of the threshold of penalties foreseen for these offences in national law.</u>	
	<i>(19 a) Investigation and prosecution of all types of fraud and counterfeiting of non-cash</i>		

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	<i>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.</i>		
(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	(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, <i>for example</i> , identity theft, its consequences are often aggravated because of reputational <i>and professional damage</i> , damage to an individual's credit rating as well as	<u>[deleted]</u>	

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assistance, support and protection aimed at mitigating these consequences.	serious emotional harm. Member States should adopt measures of assistance, support and protection aimed at mitigating these consequences.		
	<i>(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.</i>		
(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 ¹² . 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	(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 ¹² . 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, <i>the provision of a list of dedicated institutions</i>	(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 ¹² . Member States should adopt measures of assistance and support to such victims which build on the measures required by Directive 2012/29/EU. [...]	

¹² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

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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 of such crime should be offered to legal persons as well.	<i>covering different aspects of identity-related crime and victim support</i> , specialised psychological support and advice on financial, practical and legal matters, as well as assistance in receiving available compensation. <i>Member States should also be able to set up a national single online information tool to facilitate access to assistance and support for victims.</i> Specific information and advice on protection against the negative consequences of such crime should be offered to legal persons as well.		
	<i>(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.</i>		
(22) This Directive should provide for the right for legal persons to access information about		<u>[deleted]</u>	

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the procedures for making complaints. This right is necessary in particular for small and medium-sized enterprises ¹³ and should contribute to creating a friendlier business environment for small and medium-sized enterprises. Natural persons already benefit from this right under Directive 2012/29/EU.			
(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.	(23) Member States, <i>assisted by the Commission</i> , 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, <i>for example</i> , by means of information and awareness-raising campaigns, <i>permanent online information tools with practical examples of fraudulent practices</i> and research and education programmes.	(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.	(23) Member States, assisted by the Commission , 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, permanent online information tools with practical examples of fraudulent practices and research and education programmes. Special attention should be paid in particular to the needs and interests of vulnerable persons. Member States should ensure that sufficient funding is made available for such campaigns

¹³ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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	<i>(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.</i>		
			<p>(23b) Member States should develop and keep up to date, as part of the information campaigns referred to in Article 16 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).</p> <p><i>Remark by Presidency: text in pink taken from Art. 16 para 1 and 1a of EP proposal as</i></p>

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			<i>discussed during technical meeting of 16.11.2018</i>
<p>(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' <i>modus operandi</i> 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</p>	<p>(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, <i>and the Commission</i> 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' <i>modus operandi</i> 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 Council¹⁴. Providing information can help better understand present</p>	<p>(24) <u>It is necessary to collect statistical data on fraud and counterfeiting of non-cash payment instrument, and Member States should therefore be obliged to ensure that an adequate system is in place for the recording, production and provision of available statistical data on the offences referred to in the proposed Directive. [...]</u></p>	

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Council ¹⁴ . 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.	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.		

¹⁴ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

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	<i>(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 States, both directly and through Europol, with a particular focus on improving the exchange of information between authorities responsible for criminal prevention and investigation.</i>		
(25) This Directive aims to amend and expand the provisions of Council Framework Decision 2001/413/JHA. Since the amendments to be made are substantial in number and nature, Framework Decision 2001/413/JHA should, in the interests of clarity, be replaced in its entirety for Member States bound by this Directive.		(25) This Directive aims to amend and expand the provisions of Council Framework Decision 2001/413/JHA. Since the amendments to be made are substantial in number and nature, Framework Decision 2001/413/JHA should, in the interests of clarity, be replaced in its entirety for Member States bound by this Directive.	(25) This Directive aims to amend and expand the provisions of Council Framework Decision 2001/413/JHA. Since the amendments to be made are substantial in number and nature, Framework Decision 2001/413/JHA should, in the interests of clarity, be replaced in its entirety for Member States bound by this Directive.
(26) In accordance with Article 3 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member		<u>[deleted]</u>	

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States have notified their wish to take part in the adoption and application of this Directive.			
OR			
(26) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.		<u>[deleted]</u>	
OR		<u>[deleted]</u>	
(26) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.		<u>[deleted]</u>	

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AND/OR			
(26) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.		(26) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.	(26) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
OR		<u>[deleted]</u>	
(26) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.		<u>[deleted]</u>	

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OR			
(26) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.		<u>[deleted]</u>	
(27) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.		(27) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.	(27) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
(28) Since the objectives of this Directive, namely to subject fraud and counterfeiting of non-cash means of payment to effective, proportionate and dissuasive criminal penalties and to improve and encourage cross-border cooperation both between		(28) Since the objectives of this Directive, namely to subject fraud and counterfeiting of non-cash means of payment to effective, proportionate and dissuasive criminal penalties and to improve and encourage cross-border cooperation both between competent authorities	(28) Since the objectives of this Directive, namely to subject fraud and counterfeiting of non-cash means of payment to effective, proportionate and dissuasive criminal penalties and to improve and encourage cross-border cooperation both between

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<p>competent authorities and between natural and legal persons and competent authorities, cannot be sufficiently achieved by the Member States, and can therefore, by reason of their scale or effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.</p>		<p>and between natural and legal persons and competent authorities, cannot be sufficiently achieved by the Member States, and can therefore, by reason of their scale or effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.</p>	<p>competent authorities and between natural and legal persons and competent authorities, cannot be sufficiently achieved by the Member States, and can therefore, by reason of their scale or effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.</p>
<p>(29) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality of</p>		<p>(29) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality of criminal offences and penalties, as</p>	<p>(29) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and</p>

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criminal offences and penalties, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly,		well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly.	proportionality of criminal offences and penalties, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly.
HAVE ADOPTED THIS DIRECTIVE:		HAVE ADOPTED THIS DIRECTIVE:	
TITLE I: SUBJECT MATTER AND DEFINITIONS		TITLE I: SUBJECT MATTER AND DEFINITIONS	TITLE I: SUBJECT MATTER AND DEFINITIONS
<u>Article 1</u> <i>Subject matter</i>	<u>Article 1</u> <i>Subject matter</i>	<u>Article 1</u> <i>Subject matter</i>	
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.	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. <i>It facilitates the prevention of such offences, assists and supports victims and improves cooperation between judicial and other competent authorities.</i>	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.	<i>Remark: Will be debated together with article on victims and cooperation</i>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
<u>Article 2</u> <i>Definitions</i>	<u>Article 2</u> <i>Definitions</i>	<u>Article 2</u> <i>Definitions</i>	<u>Article 2</u> <i>Definitions</i>
For the purpose of this Directive, the following definitions shall apply:		For the purpose of this Directive, the following definitions shall apply:	For the purpose of this Directive, the following definitions shall apply: <i>General remark: Agreement on the whole article has to be finally confirmed by ECON.</i>
(a) ‘payment instrument’ means a protected device, object or record, other than legal tender, which, alone or with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value or to initiate a payment order, including by means of digital mediums of exchange;		(a) ‘ non-cash payment instrument’ means a non-corporeal or corporeal protected device, object or record, or a combination thereof , other than legal tender, which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value [...], including by means of digital mediums of exchange;	<i>Remark: Will be debated together with article 4 and 4a.</i>
(b) ‘protected device, object or record’ means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature;		b) ‘protected device, object or record’ means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature;	b) ‘protected device, object or record’ means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature;
(c) ‘payment order’ means a payment order as defined in point (13) of Article 4 of Directive (EU) 2015/2366;		[deleted]	[deleted] <i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
(d) 'digital medium of exchange' means any electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council ¹⁵ , and virtual currencies;		(c) 'digital medium of exchange' means any electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council ¹⁵ , and virtual currencies; <i>(Order of the letter reviewed on the basis of the Council text)</i>	(c) 'digital medium of exchange' means any electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council ¹⁵ , and virtual currencies;
(e) 'virtual currencies' means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically;		d) 'virtual currencies' means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, <u>is</u> not necessarily attached to a <u>legally established currency</u> , <u>and does not possess a legal status of currency or money</u> , but is accepted by natural or legal persons, as a means of <u>exchange</u> , and <u>which</u> can be transferred, stored and traded electronically; <i>(Order of the letter reviewed on the basis of the Council text)</i>	<i>Remark: Definitions ECON-EP responsibility- Waiting for ECON letter</i> 'virtual currencies' means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency, and does not possess a legal status of currency or money, but is accepted by natural or legal persons, as a means of exchange, and which can be transferred, stored and traded electronically; ECON letter - 22.11.2018
(f) 'payment service' means a payment service as defined in point		<u>[deleted]</u>	<u>[deleted]</u>

¹⁵ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

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(3) of Article 4 of Directive (EU) 2015/2366;			<i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>
(g) 'payment service user' means a payment service user as defined in point (10) of Article 4 of Directive (EU) 2015/2366;		<u>[deleted]</u>	<u>[deleted]</u> <i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>
(h) 'payment account' means a payment account as defined in point (12) of Article 4 of Directive (EU) 2015/2366;		<u>[deleted]</u>	<u>[deleted]</u> <i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>
(i) 'payment transaction' means a payment transaction as defined in point (5) of Article 4 of Directive (EU) 2015/2366;		<u>[deleted]</u>	<u>[deleted]</u> <i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>
(j) 'payer' means a natural or legal person, who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order or transfers virtual currency;		<u>[deleted]</u>	<u>[deleted]</u> <i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>
(k) 'payee' means a payee as defined in point (9) of Article 4 of Directive (EU) 2015/2366;		<u>[deleted]</u>	<u>[deleted]</u> <i>Remark: Not in articles - deletion. Technical meeting 16.11.18.</i>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
(l) 'information system' means information system as defined in point (a) of Article 2 of Directive 2013/40/EU;		(e) 'information system' means information system as defined in point (a) of Article 2 of Directive 2013/40/EU; <i>(Order of the letter reviewed on the basis of the Council text)</i>	(e) 'information system' means information system as defined in point (a) of Article 2 of Directive 2013/40/EU;
(m) 'computer data' computer data as defined in point (b) of Article 2 of Directive 2013/40/EU.		(f) 'computer data' computer data as defined in point (b) of Article 2 of Directive 2013/40/EU; <i>(Order of the letter reviewed on the basis of the Council text)</i>	(f) 'computer data' computer data as defined in point (b) of Article 2 of Directive 2013/40/EU;
		<u>(g) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.</u>	<u>(g) 'legal person' means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.</u> ECON letter - 22.11.2018
TITLE II: OFFENCES		TITLE II: OFFENCES	TITLE II: OFFENCES
<u>Article 3</u> <i>Fraudulent use of payment instruments</i>	<u>Article 3</u> <i>Fraudulent use of non-cash payment instruments</i>	<u>Article 3</u> <i>Fraudulent use of non-cash payment instruments</i>	<u>Article 3</u> <i>Fraudulent use of non-cash payment instruments</i>
Member States shall take the necessary measures to ensure that, when committed intentionally, the following are punishable as a criminal offence:		Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:	Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
(a) fraudulent use of a stolen or otherwise unlawfully appropriated payment instrument;		(a) fraudulent use of a stolen or otherwise unlawfully appropriated or obtained non-cash payment instrument;	(a) fraudulent use of a stolen or otherwise unlawfully appropriated or obtained non-cash payment instrument; <i>Technical meeting of 5.10.18 and confirmation in trilogue on 24 October (Remark: This solution is without prejudice to the on-going debates on Articles 4 and 4a) Trilogue confirmation pending.</i>
(b) fraudulent use of a counterfeited or falsified payment instrument		(b) fraudulent use of a counterfeited or falsified non-cash payment instrument.	(b) fraudulent use of a counterfeited or falsified non-cash payment instrument.

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
Article 4 Offences preparatory to the fraudulent use of payment instruments	Article 4 Offences preparatory to the fraudulent use of payment instruments	Article 4 Offences <u>related</u> to the fraudulent use of corporeal non-cash payment instruments	<i>Remark: Article 4/Article 4a: the question of the splitting of corporeal/non-corporeal non cash means of payment is still being the subject of examination by the EP.</i>
Member states shall take the necessary measures to ensure that, when committed intentionally, the following are punishable as a criminal offence:	Member States shall take the necessary measures to ensure that (...) the following are punishable as a criminal offence:	Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:	
(a) theft or other unlawful appropriation of a payment instrument;	(a) theft or other unlawful appropriation of a payment instrument <i>when committed intentionally</i> ;	(a) theft or other unlawful appropriation of a corporeal non- cash payment instrument;	
(b) counterfeiting or falsification of a payment instrument in order for it to be used fraudulently;	(b) counterfeiting or falsification of a payment instrument, <i>when committed intentionally</i> , in order for it to be used fraudulently;	(b) fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument [...];	
(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	(c) procurement for <i>oneself or another, including</i> import, export, sale <i>and</i> transport, distribution of a <i>payment instrument which has been</i> stolen or otherwise unlawfully appropriated or of a <i>payment instrument</i> counterfeited or falsified, <i>when committed intentionally</i> , in order for it to be used fraudulently;	(c) possession [...] of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified corporeal non-cash payment instrument for fraudulent use ;	
	(c a) <i>possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified,</i>		

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
	<i>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.</i>		
		<u>(d) procurement for oneself or another, including receiving, appropriation, buying, transfer, import, export, sale, transport and distribution of a stolen, counterfeited or falsified corporeal non-cash payment instrument for fraudulent use.</u>	
		<u>Article 4a</u> <u>Offences related to the fraudulent use of non-corporeal non-cash payment instruments</u>	
		<u>Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:</u>	
		<u>(a) unlawful obtaining of a non-corporeal non-cash payment instrument, at least when this obtaining has involved the commission of one of the offences referred to in Article 3 to 6 of Directive 2013/40, or misappropriation of a non-corporeal non-cash payment instrument;</u>	

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
		<u>(b) fraudulent counterfeiting or falsification of a non-corporeal non-cash payment instrument;</u>	
		<u>(c) holding of an unlawfully obtained, falsified or counterfeited non-corporeal non-cash payment instrument for fraudulent use, at least if the unlawful origin is known at the time of the holding of the instrument;</u>	
		<u>(d) procurement for oneself or another, including sale, transfer and distribution, or making available, of an unlawfully obtained, falsified or counterfeited non-corporeal non-cash payment instrument for fraudulent use.</u>	
<u>Article 5</u> <i>Offences related to information systems</i>	<u>Article 5</u> <i>Offences related to information systems</i>	<u>Article 5</u> <u>Fraud</u> <i>related to information systems</i>	<u>Article 5</u> <u>Fraud related to information systems</u>
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:	Member States shall take the necessary measures to ensure that performing or <i>having someone else perform</i> a transfer of money, monetary value or virtual currencies, in order to make an unlawful gain for the perpetrator or a third party, <i>or causing an unlawful loss of property for a third party</i> , is punishable as a criminal offence, when committed intentionally by:	Member States shall take the necessary measures to ensure that performing or causing a transfer of money, monetary value or virtual currencies <u>and thereby causing an unlawful loss of property for another person</u> in order to make an unlawful gain for the perpetrator or a third party is punishable as a criminal offence, when committed intentionally by:	<u>Member States shall take the necessary measures to ensure that performing or causing a transfer of money, monetary value or virtual currencies and/or (STILL OPEN POLITICALLY, COUNCIL TO CHECK “or”, EP wants “or”) thereby causing an unlawful loss of property for another person in order to make an unlawful gain for the perpetrator or a third party is</u>

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			<p>punishable as a criminal offence, when committed intentionally by;</p> <p>EP words “or having someone else perform” included in a recital.</p> <p><i>Technical meeting of 5.10.18. Trilogue confirmation pending. Confirmation by trilogue on 24 October</i></p>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
(a) hindering or interfering with the functioning of an information system;		(a) <u>without right</u> hindering or interfering with the functioning of an information system;	(a) <u>without right</u> hindering or interfering with the functioning of an information system; Technical meeting of 5.10.18. Trilogue confirmation pending on 24 October.
(b) introducing, altering, deleting, transmitting or suppressing computer data.		(b) <u>without right</u> introducing, altering, deleting, transmitting or suppressing computer data.	(b) <u>without right</u> introducing, altering, deleting, transmitting or suppressing computer data. Technical meeting of 5.10.18. Trilogue confirmation pending.
	(ba) <i>directing or redirecting payment service users to imitation websites.</i>		Incorporation into a recital. Technical meeting of 5.10.18. Trilogue confirmation on 24 October pending. PLUS RECITAL INCLUDING "directing or redirecting payment service users to imitation websites" Agreed trilogue 24 October 2018.
<u>Article 6</u> <i>Tools used for committing offences</i>	<u>Article 6</u> <i>Tools used for committing offences</i>	<u>Article 6</u> <i>Tools used for committing offences</i>	<u>Article 6</u> <i>Tools used for committing offences</i>
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	Member States shall take the necessary measures to ensure <i>that the</i> production, procurement for <i>oneself or another</i> , import, export, sale, transport, distribution or otherwise making available of a	Member States shall take the necessary measures to ensure that the <u>[...]</u> producing , procurement for oneself or another, including import, export, sale, transport and distribution, or making available of a	Member States shall take the necessary measures to ensure that the producing, procurement for oneself or another, including import, export, sale, transport and distribution, or making available

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
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.	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, <i>when committed with the intention that these means be used to commit any of the said offences.</i>	device or an instrument, computer data or any other means [...] <u>primarily</u> designed or <u>specifically</u> adapted for the purpose of committing any of the offences referred to in Article 4(a), <u>4(b), 4a(a), 4a(b) or Article 5, at least when committed with the intention that these means be used to commit any of the said offences,</u> is punishable as a criminal offence.	of a device or an instrument, computer data or any other means [...] <u>primarily</u> designed or <u>specifically</u> adapted for the purpose of committing any of the offences referred to in Article 4(a), <u>4(b), 4a(a), 4a(b)</u> [Remark: <i>connected with debate on Articles 4 and 4a, but the principle is agreed</i>] <u>or Article 5, at least when committed with the intention that these means be used.</u> Technical meeting of 5.10.18. Trilogue confirmation 24 October 2018

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
<u>Article 7</u> <i>Incitement, aiding and abetting and attempt</i>	<u>Article 7</u> <i>Incitement, aiding and abetting and attempt</i>	<u>Article 7</u> <i>Incitement, aiding and abetting and attempt</i>	<u>Article 7</u> <i>Incitement, aiding and abetting and attempt</i>
1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Articles 3 to 6 is punishable as a criminal offence.		1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Articles 3 to 6 is punishable as a criminal offence.	1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Articles 3 to 6 is punishable as a criminal offence.
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.	2. Member States shall take <i>all the measures</i> necessary to ensure that the attempt to commit an offence referred to in Articles 3 to 6 is punishable as a criminal offence.	2. Member States shall take the necessary measures to ensure that the attempt to commit an offence referred to in Articles 3, <u>4 (a), 4 (b), 4 (d), 4a (a), 4a (b), and 5</u> is punishable as a criminal offence. <u>With regard to Article 4a (d), Member States shall take the necessary measures to at least ensure that attempted fraudulent procurement for oneself or another is punishable as a criminal offence.</u>	Possible compromise text: <u>2. Member States shall take the necessary measures to ensure that the attempt to commit an offence referred to in Articles 3, 4 (a), 4 (b), 4 (d), 4a (a), 4a (b), and 5 is punishable as a criminal offence. With regard to Article 4a (d), Member States shall take the necessary measures to at least ensure that attempted fraudulent procurement for oneself or another is punishable as a criminal offence.</u> Technical meeting of 16.11.18. Trilogue confirmation pending. Both sides have to check.
<u>Article 8</u> <i>Penalties for natural persons</i>	<u>Article 8</u> <i>Penalties for natural persons</i>	<u>Article 8</u> <i>Penalties for natural persons</i>	<u>Article 8</u> <i>Penalties for natural persons</i>
1. Member States shall take the necessary measures to ensure that the offences referred to in		1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 7	1. Member States shall take the necessary measures to ensure that the offences referred to in

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
Articles 3 to 7 are punishable by effective, proportionate and dissuasive criminal penalties.		are punishable by effective, proportionate and dissuasive criminal penalties.	Articles 3 to 7 are punishable by effective, proportionate and dissuasive criminal penalties.
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.	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.	2. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 4(a), 4(b), 4a(a), 4a(b) and 5 are punishable by a maximum term of imprisonment of at least two-years .	<p><i>Remark: As promised during technical meeting of 5.10.18 Commission drafted a text with additional options (see Annex).</i></p> <p><i>Technical meeting 16.11. - for Article 5 - 3 years.</i></p> <p><i>Both sides have to check politically.</i></p>
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.	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 three years.	3. Member States shall take the necessary measures to ensure that the offences referred to in Articles 4 (c), 4(d), 4a (c), 4a(d) and 6 are punishable by a maximum term of imprisonment of at least one year .	<p><i>Technical meeting 16.11 - for Article 6 - two years.</i></p> <p><i>Both sides have to check politically.</i></p>
4. Member States shall take the necessary measures to ensure that offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least five years if:	4. Member States shall take the necessary measures to ensure that the following circumstances are regarded as aggravating circumstances in relation to the offences referred to in Articles 3, 4 and 5 and are punishable by a maximum term of imprisonment of at least five years if:	4. Member States shall take the necessary measures to ensure that offences referred to in Articles 3, 4, 4a and 5 are punishable by a maximum term of imprisonment of at least five years if 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.	<p>4. Member States shall take the necessary measures to ensure that offences referred to in Articles 3, 4, [4a - Remark - depending on debates on Article 4] and 5 are punishable by a maximum term of imprisonment of at least five years if:</p> <p><i>Referred to technical level (trilogue 24 October 18)</i></p>

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(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;	(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; <i>or</i>	<u>[deleted, the content of lit. a has been moved to paragraph 4]</u>	(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;
(b) they involve extensive or considerable damage or an aggregate advantage of at least EUR 20 000.	(b) they involve extensive or considerable damage; or	<u>[deleted]</u>	(b) they involve extensive or considerable damage <u>in accordance with national law;</u> <u>Technical meeting 16.11.18. Both sides have to check politically.</u> or
	<i>(b a) they have led to an aggregate advantage of considerable value.</i>		Deletion of point (ba) if b is accepted. Technical meeting 16.11.18. To be checked politically for both sides.
<u>Article 9</u> <i>Liability of legal persons</i>	<u>Article 9</u> <i>Liability of legal persons</i>	<u>Article 9</u> <i>Liability of legal persons</i>	<u>Article 9</u> <i>Liability of legal persons</i>
1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal		1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:	1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
person, based on one of the following:			the legal person, based on one of the following:
(a) a power of representation of the legal person;		(a) a power of representation of the legal person;	(a) a power of representation of the legal person;
(b) an authority to take decisions on behalf of the legal person;		(b) an authority to take decisions on behalf of the legal person;	(b) an authority to take decisions on behalf of the legal person;
(c) an authority to exercise control within the legal person.		(c) an authority to exercise control within the legal person.	(c) an authority to exercise control within the legal person.
2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.		2. Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.	Member States shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or inciters of, or accessories to, any of the offences referred to in Articles 3 to 7.		3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators [...]of [...]any of the offences referred to in Articles 3 to 7.	3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or inciters of, or accessories to, any of the offences referred to in Articles 3 to 7.

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			<i>Use of Commission text as this is standard text in other directives. Technical meeting of 5.10.18. Trilogue confirmation (24 October 2018).</i>
<u>Article 10</u> <i>Sanctions for legal persons</i>	<u>Article 10</u> <i>Sanctions for legal persons</i>	<u>Article 10</u> <i>Sanctions for legal persons</i>	<u>Article 10</u> <i>Sanctions for legal persons</i>
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:	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 <i>or</i> other sanctions, including :	Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) or 9(2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:	Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) or 9(2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as: <i>Technical meeting of 5.10.18. Trilogue confirmation (24 October 18).</i>
(a) exclusion from entitlement to public benefits or aid;		(a) exclusion from entitlement to public benefits or aid;	(a) exclusion from entitlement to public benefits or aid;
	<i>(a a) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, both at national and Union level;</i>		(a a) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions both at national and Union level; <i>Technical meeting of 5.10.18. Trilogue confirmation (24 October 18).</i>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
(b) temporary or permanent disqualification from the practice of commercial activities;		(b) temporary or permanent disqualification from the practice of commercial activities;	(b) temporary or permanent disqualification from the practice of commercial activities;
(c) placing under judicial supervision;		(c) placing under judicial supervision;	(c) placing under judicial supervision;
(d) judicial winding-up;		(d) judicial winding-up;	(d) judicial winding-up;
(e) temporary or permanent closure of establishments which have been used for committing the offence.		(e) temporary or permanent closure of establishments which have been used for committing the offence.	(e) temporary or permanent closure of establishments which have been used for committing the offence.
TITLE III: JURISDICTION AND INVESTIGATION		TITLE III: JURISDICTION AND INVESTIGATION	TITLE III: JURISDICTION AND INVESTIGATION
<u>Article 11</u> <i>Jurisdiction</i>	<u>Article 11</u> <i>Jurisdiction</i>	<u>Article 11</u> <i>Jurisdiction</i>	<u>Article 11</u> <i>Jurisdiction</i>
1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:		1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:	1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:
(a) the offence is committed in whole or in part in its territory;	(a) the offence is committed in whole or in part in its territory; <i>or</i>	a) the offence is committed in whole or in part in its territory;	a) the offence is committed in whole or in part in its territory;
(b) the offender is one of its nationals;	(b) the offender is one of its nationals <i>or a habitual resident; or</i>	b) the offender is one of its nationals.	b) the offender is one of its nationals <i>or a permanent habitual resident</i> Technical meeting 16.11.18. Has to be politically confirmed (based on analysis of existing instruments).

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	<i>(b a) the offence is committed for the benefit of a legal person established in its territory; or</i>		<u>Deleted</u> Technical meeting 16.11.18 (based on analysis of existing instruments). Has to be politically confirmed.
	<i>(b b) the offence is committed against one of its nationals or a person who is an habitual resident in its territory; or</i>		<u>Deleted</u> Technical meeting 16.11.18. Has to be politically confirmed.
(c) the offence causes damage in its territory including damage resulting from the theft of the identity of a person.	(c) the offence causes damage in its territory.	<u>[deleted]</u>	<u>[deleted]</u> Addition of a recital stating that the place of the offence could be also the place where damage occurred in accordance with national law. Technical meeting 16.11.18. Has to be politically confirmed. Commission has to report back.
	<i>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;</i>		<u>Deletion</u> Technical meeting 16.11.18. To be confirmed.
2. When establishing jurisdiction in accordance with point (a) of paragraph 1, a Member State shall		2. When establishing jurisdiction in accordance with point (a) of paragraph 1, a Member State shall	2. When establishing jurisdiction in accordance with point (a) of paragraph 1, a

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
ensure that it has jurisdiction where:		ensure that it has jurisdiction where <u>the offender commits the offence when physically present on its territory, whether or not the offence is committed using an information system on its territory.</u>	<u>Member State shall ensure that it has jurisdiction where:</u>
(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;	(a) the offender commits the offence when physically present on its territory, whether or not the offence is committed using <i>a computer</i> or an information system on its territory;	<u>[deleted, part of the content of lit. (a) has been included in paragraph 2]</u>	<u>(a) the offender commits the offence when physically present on its territory, whether or not the offence is committed using a computer or an information system on its territory;</u> <u>Technical meeting 16.11.18. Has to be politically confirmed.</u>
(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.	(b) the offence is committed using <i>a computer</i> or an information system on its territory, whether or not the offender commits the offence when physically present on its territory.	<u>[deleted]</u>	<u>(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.</u> <u>Technical meeting 16.11.18. Has to be politically confirmed.</u>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
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:	<i>deleted</i>	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:	<u>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:</u>
(a) the offender has his or her habitual residence in its territory;	<i>deleted</i>	(a) the offender has his or her habitual residence in its territory;	<u>Deleted (see compromise above)</u> <u>Technical meeting 16.11.18. Has to be politically confirmed.</u>
(b) the offence is committed for the benefit of a legal person established in its territory;	<i>deleted</i>	(b) the offence is committed for the benefit of a legal person established in its territory;	<u>(b) the offence is committed for the benefit of a legal person established in its territory;</u> <u>Technical meeting 16.11.18. Has to be politically confirmed.</u>
(c) the offence is committed against one of its nationals or a person who is an habitual resident in its territory.	<i>deleted</i>	(c) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;	<u>(c) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;</u> <u>Technical meeting 16.11.18. Has to be politically confirmed.</u>
		<u>(d) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory.</u>	<u>Deleted</u> <u>Technical meeting 16.11.18. Has to be politically confirmed.</u>
	<i>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</i>		<u>Text on jurisdictional rules (based on the anti-money laundering in criminal law directive)</u>

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	<i>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.</i>		Technical meeting 16.11.18. Has to be politically confirmed.
Article 12 <i>Effective investigations</i>	Article 12 Effective investigations <i>and cooperation</i>	Article 12 <i>Effective investigations</i>	Article 12 Effective investigations <i>and cooperation</i>
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.	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.	1. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in countering 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, if and to the extent that the use of those tools is appropriate and commensurate with the nature and gravity of the offences.	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. Trilogue 24 October 18 Recital agreed.
	1 a. Each Member State shall ensure that adequate human and financial resources are allocated		

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	<i>and training sessions are provided in order to investigate and prosecute the offences referred to in Articles 3 to 7.</i>		<i>"Each Member State should 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 this Directive."</i>
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.	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 <i>and that those authorities are empowered to cooperate with other national authorities and their counterparts in other Member States.</i>	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.	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. Additional EP text to transferred into a recital ("National authorities investigating or prosecuting those offences should be empowered to cooperate with other national authorities and their counterparts in other Member States.") Trilogue 24 October 18.

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
TITLE IV: EXCHANGE OF INFORMATION AND REPORTING OF CRIME	<i>TITLE IV: EXCHANGE OF INFORMATION AND REPORTING OF CRIME</i>	TITLE IV: EXCHANGE OF INFORMATION AND REPORTING OF CRIME	TITLE IV: EXCHANGE OF INFORMATION AND REPORTING OF CRIME
Article 13 <i>Exchange of information</i>	Article 13 <i>Exchange of information</i>	Article 13 <i>Exchange of information</i>	Article 13 <i>Exchange of information</i>
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.	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.	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.	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. Technical meeting 16.11.2018 (alignment with the attacks against information system directive). To be confirmed.

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2. Member States shall inform the 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.	2. Member States shall inform the Commission, Europol and Eurojust of their appointed point of contact referred to in paragraph 1 <i>and update that information as necessary.</i> The Commission shall forward that information to the other Member States.	2. Member States shall inform the 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.	2. Member States shall inform the Commission, Europol and Eurojust of their appointed point of contact referred to in paragraph 1 <i>and update that information as necessary.</i> The Commission shall forward that information to the other Member States. Trilogue 24 October. Recital Trilogue 24 October.
	2 a. <i>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.</i>		Trilogue 24 October.
	2 b. <i>When dealing with data as referred to in this Article, competent authorities shall comply with applicable Union data protection rules.</i>		Recital Trilogue 24 October.

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
<p><u>Article 14</u> <i>Reporting of crime</i></p> <p>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.</p>	<p><u>Article 14</u> <i>Reporting of crime</i></p> <p>1. Member States shall take the necessary measures to ensure that appropriate reporting channels, <i>including via a secure national online fraud-reporting system,</i> are made available in order to facilitate reporting of the offences referred to in Articles 3 to 7 to law enforcement <i>authorities, financial intelligence units</i> and other competent national authorities without undue delay.</p>	<p><u>Article 14</u> <i>Reporting of crime</i></p> <p>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.</p>	<p><u>Article 14</u> <i>Reporting of crime</i></p> <p>1. Member States shall take the necessary measures to ensure that appropriate reporting channels, <i>including via a secure national online fraud-reporting system,</i> 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.</p> <p><u>Proposal by the Commission to include an assessment of establishing such common channel - inclusion in Article 20 (Evaluation and reporting).</u></p> <p><u>Possible text could be drafted by the Commission. Decision at political level to be taken.</u></p>
	<p><i>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</i></p>		<p><u>Proposal by the Commission to include an assessment of establishing such common channel - inclusion in Article 20 (Evaluation and reporting).</u></p>

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	<i>implementing act shall be adopted in accordance with the advisory procedure referred to in Article 16a(2).</i>		<u>Possible text could be drafted by the Commission. Decision at political level to be taken.</u>
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.	2. Member States shall take the necessary measures to <i>ensure that</i> financial institutions report without undue delay suspected fraud to law enforcement <i>authorities, financial intelligence units</i> and other competent authorities, for the purpose of detecting, preventing, investigating or prosecuting offences referred to in Articles 3 to 7.	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.	<p><u>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.</u></p> <p><u>Trilogue 24 October 18.</u></p>
	<i>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.</i>		<p><u>Deletion. Checking possibility of a recital</u></p> <p><u>Technical meeting 16.11.18.</u></p>
TITLE V: ASSISTANCE TO VICTIMS AND PREVENTION		TITLE V: PREVENTION	

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<p><u>Article 15</u> <i>Assistance and support to victims</i></p> <p>1. Member States shall ensure that natural and legal persons who have suffered a 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.</p>	<p><u>Article 15</u> <i>Assistance and support to victims</i></p> <p>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, <i>damage to their credit rating and financial costs as well as about their rights, including the right to compensation for damage suffered as a result of the offence.</i></p>	<p><u>Article 15</u> <i>Assistance and support to victims</i></p> <p><u>[This provision was deleted]</u></p>	<p><u>Article 15</u> <i>Assistance and support to victims</i></p> <p><u>Linked with the discussions on Art. 4/4a</u></p> <p><u>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, <i>damage to their credit rating and financial costs as well as about their rights, including the right to compensation for damage suffered as a result of the offence.</i></u></p> <p><u>Technical meeting 16.11.18. Both sides political confirmation. Part of a possible overall agreement.</u></p>
	<p><i>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</i></p>		<p><u>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</u></p>

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	<i>dedicated institutions that deal with different aspects of identity-related crime and support.</i>		<u><i>provided with a list of dedicated institutions that deal with different aspects of identity-related crime and support.</i></u>
	<i>1 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.</i>		<u><i>1 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.</i></u>
	<i>1 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.</i>		<u>Deletion</u> <u>Technical meeting 16.11.18.</u>
2. Member States shall ensure that 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:	2. Member States shall ensure that <i>natural and</i> 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:		<u>2. Member States shall ensure that 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</u>

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			<u>competent authority, offered information about:</u>
(a) the procedures for making complaints with regard to the offence and their role in connection with such procedures;			<u>(a) the procedures for making complaints with regard to the offence and their role in connection with such procedures;</u>
	<i>(aa) the right of access to information about the case;</i>		<u><i>(aa) the right of access to information about the case;</i></u>
(b) the available procedures for making complaints if the competent authority does not respect their rights in the course of criminal proceedings;			<u>(b) the available procedures for making complaints if the competent authority does not respect their rights in the course of criminal proceedings;</u>
(c) the contact details for communications about their case.			<u>(c) the contact details for communications about their case.</u>
<u>Article 16</u> <u>Prevention</u>	<u>Article 16</u> <u>Prevention</u>	<u>Article 16</u> <u>Prevention</u>	<u>Article 16</u> <u>Prevention</u>
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.	<i>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 and fraud using computer and information systems in particular, raising awareness and reducing the risk of becoming a victim of fraud, in particular for vulnerable persons, such as elderly or young persons. The Commission shall</i>	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.	<u>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</u> <u>Rest in a recital</u> <u>Trilogue 24 October 2018.</u>

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	<i>assist Member States in regularly conducting such campaigns. Member States shall ensure that sufficient funding is made available for such campaigns.</i>		
	<i>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).</i>		RECITAL TECHNICAL MEETING 16.11.18.
	<i>Article 16 a Committee procedure</i>		
	<i>1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</i>		SEE ARTICLE 14 COMMENT
	<i>2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.</i>		
TITLE VI: FINAL PROVISIONS	TITLE VI: FINAL PROVISIONS	TITLE VI: FINAL PROVISIONS	
<u>Article 17</u> <i>Monitoring and statistics</i>	<u>Article 17</u> <i>Monitoring and statistics</i>	<u>Article 17</u> <i>Monitoring and statistics</i>	<u>Article 17</u> <i>Monitoring and statistics</i>

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
1. By [3 months after entry into force of this Directive] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Directive. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting, sharing and analysing the data and other evidence.		1. By [3 months after entry into force of this Directive] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Directive. [...]	<p><u>Proposed compromise from technical level (16.11.18)e:</u></p> <p><u>1. By [3 months after entry into force of this Directive] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Directive. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting, sharing and analysing the data and other evidence.</u></p> <p><u>Technical meeting 16.11.2018.</u></p>
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.	2. Member States shall ensure that a system is in place for the recording, production and provision of <i>anonymised</i> statistical data measuring the reporting, investigative and judicial phases concerning the offences referred to in Articles 3 to 7.	2. Member States shall ensure that a system is in place for the recording, production and provision of available statistical data measuring the reporting, investigative and judicial phases concerning the offences referred to in Articles 3 to 7.	<p><u>2. Member States shall ensure that a system is in place for the recording, production and provision of <i>anonymised</i> statistical data measuring the reporting, investigative and judicial phases concerning the offences referred to in Articles 3 to 7</u></p> <p><u>Technical meeting 16.11.2018.</u></p>

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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.	3. The <i>anonymised</i> 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, <i>the number of persons involved in the fraud and the extent of the damage caused</i> , data on the functioning of the reporting, investigative and judicial phases concerning these offences.	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.	<u>Proposed compromise (technical meeting 16.11.2018):</u> <u>Possibility of drafting to sets of data. One that have to be available and another, if existing in the national system (based on Directive 2014/42 example, as well as Directive on attacks against information systems.</u>
4. Member States shall transmit the data collected pursuant to paragraphs 1, 2 and 3 to the Commission on an annual basis. The Commission shall ensure that a consolidated review of the statistical reports is published each year and submitted to the competent specialised Union agencies and bodies.		4. Member States shall transmit the data collected pursuant to paragraphs 1 and 2 [...]to the Commission on an annual basis. The Commission shall ensure that a consolidated review of the statistical reports is published each year and submitted to the competent specialised Union agencies and bodies.	4. Member States shall transmit the data collected pursuant to paragraphs [1, 2 and 3] to the Commission on an annual basis. The Commission shall ensure that a consolidated review of the statistical reports is published each year and submitted to the competent specialised Union agencies and bodies.
<u>Article 18</u> <i>Replacement of Framework Decision 2001/413/JHA</i>	<u>Article 18</u> <i>Replacement of Framework Decision 2001/413/JHA</i>	<u>Article 18</u> <i>Replacement of Framework Decision 2001/413/JHA</i>	Article 18 Replacement of Framework Decision 2001/413/JHA
Framework Decision 2001/413/JHA is replaced with regard to Member States bound by this Directive, without prejudice to		Framework Decision 2001/413/JHA is replaced with regard to Member States bound by this Directive, without prejudice to the obligations	Framework Decision 2001/413/JHA is replaced with regard to Member States bound by this Directive.

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the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.		of those Member States with regard to the date for transposition of that Framework Decision into national law.	without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.
With regard to Member States bound by this Directive, references to Framework Decision 2001/413/JHA shall be construed as references to this Directive.		With regard to Member States bound by this Directive, references to Framework Decision 2001/413/JHA shall be construed as references to this Directive.	With regard to Member States bound by this Directive, references to Framework Decision 2001/413/JHA shall be construed as references to this Directive.
<i>Article 19</i> <i>Transposition</i>	<i>Article 19</i> <i>Transposition</i>	<i>Article 19</i> <i>Transposition</i>	<i>Article 19</i> <i>Transposition</i>
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.	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.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [30 months after entry into force]. They shall immediately inform the Commission thereof.	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.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.		2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Member States shall communicate to the Commission		3. Member States shall communicate to the Commission the	3. Member States shall communicate to the Commission

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the text of measures that they adopt in the field covered by this Directive.		text of measures that they adopt in the field covered by this Directive.	the text of measures that they adopt in the field covered by this Directive.
<u>Article 20</u> <i>Evaluation and reporting</i>	<u>Article 20</u> <i>Evaluation and reporting</i>	<u>Article 20</u> <i>Evaluation and reporting</i>	<u>Article 20</u> <i>Evaluation and reporting</i>
1. The Commission shall, by [48 months after entry into force], submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive. Member States shall provide the Commission with necessary information for the preparation of the report.		1. The Commission shall, by [48 months after entry into force], submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive. Member States shall provide the Commission with necessary information for the preparation of the report.	1. The Commission shall, by [48 months after entry into force], submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive. Member States shall provide the Commission with necessary information for the preparation of the report.
2. The Commission shall, by [96 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.	2. The Commission shall <i>by ...</i> [48 months after entry into force], carry out an evaluation of this Directive on combating fraud and counterfeiting of non-cash means of payment, <i>as well as its impact on fundamental rights</i> , and submit a report to the European Parliament and to the Council. <i>Member States shall provide the Commission with necessary information for the preparation of the report.</i>	2. The Commission shall, by [96 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.	2. The Commission shall <i>by ...</i> [84 months after entry into force], carry out an evaluation of this Directive on combating fraud and counterfeiting of non-cash means of payment, <i>as well as its impact on fundamental rights</i> , and submit a report to the European Parliament and to the Council. <i>Member States shall provide the Commission with necessary information for the preparation of the report.</i>
			<i>Trilogue 24 October 18.</i>

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<u>Article 21</u> <i>Entry into force</i>	<u>Article 21</u> <i>Entry into force</i>	<u>Article 21</u> <i>Entry into force</i>	<u>Article 21</u> <i>Entry into force</i>
This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.		This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
This Directive is addressed to the Member States in accordance with the Treaties.		This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.