

Brussels, 20 November 2018

WK 13805/2018 INIT

LIMITE

CYBER DROIPEN IA JAI MI TELECOM

### **WORKING PAPER**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

#### WORKING DOCUMENT

From: To:	General Secretariat of the Council 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 serious of suggestions from the Presidency for new recitals (in pink).

2017/0226 (COD)

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

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS	COUNCIL	Compromise
(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.	C8-0311/2017	(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.	<ol> <li>(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.</li> <li>(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</li> </ol>
(3) Council Framework Decision 2001/413/JHA¹ needs to be updated and complemented by further provisions on offences, penalties and cross-border cooperation.	(3) Council Framework Decision 2001/413/JHA <sup>1</sup> needs to be updated and complemented <i>in order to include</i> further provisions on offences, <i>in particular relating to computer-related fraud</i> , penalties, <i>prevention and assistance to victims</i> and cross- border cooperation.	(3) Council Framework Decision 2001/413/JHA¹ needs to be updated and complemented by further provisions on offences, penalties and cross-border cooperation.	economic losses.
(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 obstruct the prevention, detection and sanctioning of 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	

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
serious and organised crimes related	type of crime and other serious and	serious and organised crimes related	
to and enabled by it, and may	organised crimes related to and	to and enabled by it, and may	
complicate effective police and	enabled by it, and complicate	complicate effective police and	
judicial cooperation in this area.	effective police and judicial	judicial cooperation in this area.	
	cooperation in this area with a direct		
	impact on citizens' security.		
(5) Fraud and counterfeiting of		(5) Fraud and counterfeiting of	(5) Fraud and counterfeiting
non-cash means of payment have a		non-cash means of payment have a	of non-cash means of payment
significant cross-border dimension,		significant cross-border dimension,	have a significant cross-border
accentuated by an increasing digital		accentuated by an increasing digital	dimension, accentuated by an
component, which underlines the		component, which underlines the	increasing digital component,
need for further action to		need for further action to	which underlines the need for
approximate criminal legislation in		approximate criminal legislation in	further action to approximate
this area.		this area.	criminal legislation in this area.
(6) Recent years have brought		(6) Recent years have brought	
not only an exponential increase in		not only an exponential increase in	
the digital economy but also a		the digital economy but also a	
proliferation of innovation in many		proliferation of innovation in many	
areas, including payment		areas, including payment	
technologies. New payment		technologies. New payment	
technologies entail the use of new		technologies entail the use of new	
types of payment instruments,		types of payment instruments, which,	
which, while creating new		while creating new opportunities for	
opportunities for consumers and		consumers and businesses, also	
businesses, also increase		increase opportunities for fraud.	
opportunities for fraud.		Consequently, the legal framework	
Consequently, the legal framework		must remain relevant and up-to-date	
must remain relevant and up-to-date		against the background of these	
against the background of these		technological developments on the	
technological developments.		basis of a technology-neutral	
		approach.	

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
		(6a) This Directive applies to	
		non-cash payment instruments	
		only insofar as the instrument's	
		payment function is concerned.	

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
	(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.		
(7) Common definitions in this	(7) Common definitions in this	(7) Common definitions in this	(7) Common definitions in
area are important to ensure a	area are important to ensure a	area are important to ensure a	this area are important to ensure
consistent approach in Member	consistent approach in Member	consistent approach in Member	a consistent approach in
States' application of this Directive.	States' application of this Directive	States' application of this Directive.	Member States' application of
The definitions need to cover new	and to facilitate information	The definitions need to cover new	this Driective. The definitions
types of payment instruments, such	exchange and cooperation between	types of non-cash payment	need to cover new types of non-
as electronic money and virtual	competent authorities. The	instruments which allow for transfers	cash payment instruments which
currencies.	definitions need to cover new types	of electronic money and virtual	allow for transfers of electronic
	of payment instruments, such as	currencies. The definition of non-	money and virtual currencies.
	electronic money and virtual	cash payment instruments should	The definition of non- cash
	currencies.	acknowledge that a non-cash	payment instruments should
		payment instrument may consist of	acknowledge that a non-cash
		different elements acting together,	payment instrument may
		as for example a mobile payment	consist of different elements
		application and a corresponding	acting together, as for example
		authorization (e.g. a password).	a mobile payment application
		When this Directive uses the	and a corresponding
		notion of a non-cash payment	authorization (e.g. a
		instrument, it is understood that	password). When this
		the instrument puts the holder or	Directive uses the notion of a
		user of the instrument in the	non-cash payment instrument,
		position to actually enable a	it is understood that the

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
		transfer of money or monetary	instrument puts the holder or
		value. For example, unlawful	user of the instrument in the
		obtention of a mobile payment	position to actually enable a
		application without the necessary	transfer of money or monetary
		authorization would not be	<u>value <mark>or to initiate a payment</mark></u>
		considered an unlawful obtention	order. <u>For example, unlawful</u>
		of a non-cash payment instrument	obtention of a mobile payment
		as it does not actually enable the	application without the
		user to transfer money or	necessary authorization would
		monetary value.	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
			<u>value.</u>
			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
		(7a) <u>Virtual currencies cannot</u>	
		per se be considered as payment	
		instruments, payment systems or	
		electronic money in the sense of the	
		Directive 2015/2366 <sup>2</sup> or the	

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	-
		Directive 2009/110 <sup>3</sup> . 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.	
	(7 a) Fake invoices with which		
	payment credentials can be		

\_

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
	abstracted should be considered as		
	an attempt at unlawful		
	appropriation as referred to in		
	Article 4 of this Directive.		
(8) By giving the protection of		(8) By giving the protection of	(8) By giving the protection of
the criminal law primarily to		the criminal law primarily to	the criminal law primarily to
payment instruments that are		payment instruments that are	payment instruments that are
provided with a special form of		provided with a special form of	provided with a special form of
protection against imitation or		protection against imitation or abuse,	protection against imitation or
abuse, the intention is to encourage		the intention is to encourage	abuse, the intention is to
operators to provide such special		operators to provide such special	encourage operators to provide
forms of protection to payment		forms of protection to payment	such special forms of protection to
instruments issued by them, and		instruments issued by them, and	payment instruments issued by
thereby to add an element of		thereby to add an element of	them, and thereby to add an
prevention to the payment		prevention to the payment	element of prevention to the
instrument.		instrument.	payment instrument.
(9) Effective and efficient	(9) Effective and efficient	(9) Effective and efficient	(9) Effective and efficient
criminal law measures are essential	criminal law measures are essential	criminal law measures are essential	criminal law measures are
to protect non-cash means of	to protect non-cash means of	to protect non-cash means of	essential to protect non-cash
payment against fraud and	payment against fraud and	payment against fraud and	means of payment against fraud
counterfeiting. In particular, a	counterfeiting. In particular, a	counterfeiting. In particular, a	and counterfeiting. In particular,
common criminal law approach is	common criminal law approach is	common criminal law approach is	a common criminal law
needed to the constituent elements	needed to the constituent elements	needed to the constituent elements of	approach is needed to the
of criminal conduct that contribute	of criminal conduct that contribute	criminal conduct that contribute to or	constituent elements of criminal
to or prepare the way for the actual	to or prepare the way for the actual	prepare the way for the actual	conduct that contribute to or
fraudulent use of means of payment.	fraudulent use of means of payment.	fraudulent use of means of payment.	prepare the way for the actual
Behaviour such as the collection and	Behaviour such as the	Behaviour such as the collection and	fraudulent use of means of
possession of payment instruments	collection()of payment	possession of payment instruments	payment. Behaviour such as the
with the intention to commit fraud,	instruments with the intention to	with the intention to commit fraud,	collection and possession of
through, for instance, phishing or	commit fraud, through, for instance,	through, for instance, phishing or	payment instruments with the
skimming, and their distribution, for	phishing or skimming, and their	skimming, and their distribution, for	intention to commit fraud,
example by selling credit card	distribution, for example by selling	example by selling credit card	through, for instance, phishing,

## COMMISSION PROPOSAL 12181/1/17

information on the internet, should thus be made a criminal offence in its own right without being directly linked to the actual fraudulent use of means of payment. So such criminal conduct should also cover circumstances where possession, procurement or distribution does not necessarily lead to fraudulent use of such payment instruments, if the offender is aware of such a possibility (dolus eventualis). This Directive does not sanction the legitimate use of a payment instrument, including and in relation to the provision of innovative payment services, such as services commonly developed by fintech companies.

# EP AMENDMENTS C8-0311/2017

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 (dolus eventualis). 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. 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.

#### COUNCIL 6472/1/18

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 [...]. However, where this Directive criminalizes possession or holding, such criminalization does not encompass mere omission. 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.

## Compromise

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 [...]. However, where this **Directive criminalizes** possession or holding. such criminalization does not en compass mere omission.

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

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
12101/1/17	C0-0311/2017	04/2/1/16	developed by fintech
			companies.
			Remark by Presidency: text in
			pink moved from Art. 5(ba) of EP
			proposal as discussed during
			technical meeting of 16.11.2018
		(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.	
		(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,	

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	<u>-</u>
		complementing and reinforcing	
		<b>Directive 2013/40<sup>4</sup>.</b>	
		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	
		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.	
		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.	

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	•
		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.	
(10) The sanctions and penalties	(10) The sanctions and penalties	(10) The sanctions and penalties	
for fraud and counterfeiting of non-	for fraud and counterfeiting of non-	for fraud and counterfeiting of non-	
cash means of payment should be	cash means of payment should be	cash means of payment should be	
effective, proportionate and	, 1 1	effective, proportionate and	
dissuasive throughout the Union.	dissuasive throughout the Union in	dissuasive throughout the Union.	
	order to discourage fraud of this	This Directive is without prejudice	
	type and to prevent similar offences.	to the individualisation and	
	This Directive does not prevent	application of penalties and	
	Member States from applying	execution of sentences in	
	stricter rules and sanctions with	accordance with the concrete	
	regard to fraud and counterfeiting	circumstances in each individual	
	of non-cash means of payment.	case and the general rules of	
		national criminal law.	
		(10a) As this Directive provides	
		for minimum rules, Member States	
		are free to adopt or maintain more	
		stringent criminal law rules with	

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	_
		regard to fraud and counterfeiting	
		of non-cash means of payment,	
		including a broader definition of	
		offences.	
(11) It is appropriate to provide	(11) It is appropriate to provide	(11) It is appropriate to provide	
for more severe penalties where the	for more severe penalties where the	for more severe penalties where the	
crime is committed by a criminal	crime is committed by a criminal	crime is committed in the framework	
organisation, as defined in Council	organisation, as defined in Council	of a criminal organisation, as defined	
Framework Decision	Framework Decision	in Council Framework	
2008/841/JHA <sup>5</sup> , or where a crime is	2008/841/JHA <sup>5</sup> , or where a crime is	Decision 2008/841/JHA <sup>5</sup> [];	
conducted on a large scale, thus	conducted on a large scale, thus	Member States should not be	
involving extensive or considerable	involving extensive or considerable	obliged to provide for specific	
damage to the victims or an	damage to the victims. <i>The fact that</i>	aggravating circumstances where	
aggregate advantage for the	an offence involves a significant	national law provides for separate	
offender of at least EUR 20 000.	aggregate <i>financial</i> advantage <i>or a</i>	criminal offences and this may	
	high number of victims should be	<u>lead to more severe sanctions.</u>	
	considered an aggravating	When an offence referred to in this	
	circumstance.	<b>Directive has been committed, by</b>	
		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.	
(12) Jurisdictional rules should	(12) Jurisdictional rules should	(12) Jurisdictional rules should	(12) Jurisdictional rules should
ensure that the offences laid down in	ensure that the offences laid down in	ensure that the offences laid down in	ensure that the offences laid down

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

		CONTRACT	
COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
this Directive are prosecuted	this Directive are prosecuted	this Directive are prosecuted	in this Directive are prosecuted
effectively. In general, offences are	effectively and in accordance with a	effectively. In general, offences are	effectively. In general, offences
best dealt with by the criminal	clear set of criteria. In general,	best dealt with by the criminal justice	are best dealt with by the criminal
justice system of the country in	offences are best dealt with by the	system of the country in which they	justice system of the country in
which they occur. Member States	criminal justice system of the	occur. Member States should	which they occur. Member States
should therefore establish their	country in which they occur.	therefore establish their jurisdiction	should therefore establish their
jurisdiction over offences	Member States should therefore	over offences committed on their	jurisdiction over offences
committed on their territory, over	establish their jurisdiction over	territory and over offences	committed on their territory, over
offences committed by their		committed by their nationals [].	offences committed by their
nationals and over offences that	territory, over offences committed		nationals. Member States may
cause damage in their territory.	by their nationals and over offences		also establish their jurisdiction
	that cause damage in their territory.		over offences that cause damage
	Where an offence falls within the		in their territory.
	jurisdiction of more than one		
	Member State, the Member States		Remark by Presidency: text in
	concerned should cooperate with		pink moved from Art. 11 (1) (c) of
	one another in order to decide		EP proposal as discussed during
	which of them are to investigate the		technical meeting of 16.11.201
	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.		
	una cooramanon oj men acuons.	(12a) Recalling the obligations	
		under Framework	
		Decision 2009/948 <sup>6</sup> and	
		DECISION 2007/740° AND	

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	-
		Decision 2002/187/JHA <sup>7</sup> ,	
		competent authorities are	
		encouraged to use in cases of	
		conflicts of jurisdiction the	
		possibility to conduct direct	
		consultations with the assistance of	
		Eurojust.	
(13) Information systems		[deleted]	
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.			

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	•
(14) The complexity of assigning		[deleted]	
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		// C1 >>	
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.			
(15) Given the need for special	(15) Given the need for special	(15) Given the need for special	(15) Given the need for
tools to effectively investigate fraud	tools to effectively investigate fraud	tools to effectively investigate fraud	special tools to effectively
and counterfeiting of non-cash	and counterfeiting of non-cash	and counterfeiting of non-cash means	investigate fraud and
means of payment, and their	means of payment, and their	of payment, and their relevance for	counterfeiting of non-cash
relevance for effective international	relevance for effective international	effective international cooperation	means of payment, and their
cooperation between national	cooperation between national	between national authorities,	relevance for effective
authorities, investigative tools that	authorities, <i>adequate</i> investigative	investigative tools that are typically	international cooperation
are typically used for cases	tools () should be available to	used for cases involving organised	between national authorities,
involving organised crime and other	competent authorities in all Member	crime and other serious crime should	investigative tools that are
serious crime should be available to	States for the investigation of such	be available to competent authorities	typically used for cases
competent authorities in all Member	offences. Taking into account the	in all Member States for the	involving organised crime and
States for the investigation of such	principle of proportionality, the use	investigation, if and to the extent	other serious crime should be
offences. Taking into account the	of such tools in accordance with	that the use of those tools is	available to competent
principle of proportionality, the use	national law should be	appropriate and commensurate	authorities in all Member States
of such tools in accordance with	commensurate with the nature and	with the nature and gravity of the	for the investigation, <b>if and to</b>
national law should be	gravity of the offences under	offences as defined in national law.	the extent that the use of those
commensurate with the nature and	investigation. In addition, law	In addition, law enforcement	tools is appropriate and
gravity of the offences under	enforcement authorities and other	authorities and other competent	<u>commensurate</u>
investigation. In addition, law	competent authorities should have	authorities should have timely access	with the nature and gravity of
enforcement authorities and other	timely access to relevant information	to relevant information in order to	the offences as defined in

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
competent authorities should have timely access to relevant information in order to investigate and prosecute the offences laid down in this Directive.		investigate and prosecute the offences laid down in this Directive.	national law. In addition, law enforcement authorities and other competent authorities should have timely access to relevant information in order to investigate and prosecute the offences laid down in this Directive. Adequate human and financial resources should be allocated to the competent authorities in order to properly investigate and prosecute the offences laid down in this Directive.  Remark by Presidency: text in pink moved from Art. 12 para 1a of EP proposal as discussed during technical meeting of 16.11.2018
	(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		(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.  Remark by Presidency: text in pink moved from Art. 12 para 2 of

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	_
	threshold for penalties provided for		EP proposal as discussed during
	those offences in national law.		technical meeting of 16.11.2018
(16) In many cases, criminal	(16) In many cases, criminal	(16) In many cases, criminal	
activities underlie incidents that	activities underlie incidents that	activities underlie incidents that	
should be notified to the relevant	should be notified to the relevant	should be notified to the relevant	
national competent authorities	national competent authorities under	national competent authorities under	
under Directive (EU) 2016/1148 of	Directive (EU) 2016/1148 of the	Directive (EU) 2016/1148 of the	
the European Parliament and the	European Parliament and the	European Parliament and the	
Council <sup>8</sup> . Such incidents may be	Council <sup>8</sup> . Such incidents may be	Council <sup>8</sup> . Such incidents may be	
suspected to be of criminal nature	suspected to be of criminal nature	suspected to be of criminal nature	
even if the evidence of a criminal	even if the evidence of a criminal	even if the evidence of a criminal	
offence is not sufficiently clear from	offence is not sufficiently clear from	offence is not sufficiently clear from	
the outset. In this context, relevant	the outset. In this context, relevant	the outset. In this context, relevant	
operators of essential services and	operators of essential services and	operators of essential services and	
digital service providers should be	digital service providers should ()	digital service providers should be	
encouraged to share the reports	share the reports required under	encouraged to share the reports	
required under Directive (EU)	Directive (EU) 2016/1148 with law	required under Directive (EU)	
2016/1148 with law enforcement	enforcement authorities and	2016/1148 with law enforcement	
authorities so as to form an effective	financial intelligence units so as to	authorities so as to form an effective	
and comprehensive response and to	form an effective and comprehensive	and comprehensive response and to	
facilitate attribution and	response and to facilitate attribution	facilitate attribution and	
accountability by the perpetrators	and accountability by the	accountability by the perpetrators for	
for their actions. In particular,	perpetrators for their actions. In	their actions. In particular, promoting	
promoting a safe, secure and more	particular, promoting a safe, secure	a safe, secure and more resilient	
resilient environment requires		environment requires systematic	
systematic reporting of incidents of	requires systematic reporting of	reporting of incidents of a suspected	
a suspected serious criminal nature	1	serious criminal nature to law	
to law enforcement authorities.	criminal nature to law enforcement	enforcement authorities. Moreover,	
Moreover, when relevant, Computer	authorities. Moreover, when	when relevant, Computer Security	

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	•
Security Incident Response Teams	relevant, Computer Security Incident	Incident Response Teams designated	
designated under Article 9 of	1	under Article 9 of	
Directive (EU) 2016/1148 should be	Article 9 of Directive (EU)	Directive (EU) 2016/1148 should be	
involved in law enforcement	2016/1148 should be involved in law	involved in law enforcement	
investigations with a view to	enforcement investigations with a	investigations with a view to	
providing information, as	view to providing information, as	providing information, as considered	
considered appropriate at national	considered appropriate at national	appropriate at national level, and also	
level, and also providing specialist	1	providing specialist expertise on	
expertise on information systems.	expertise on information systems.	information systems.	
(17) Major security incidents as	(17) Major security incidents as	(17) Major security incidents as	
defined in Article 96 of Directive	defined in Article 96 of Directive	defined in Article 96 of Directive	
(EU) 2015/2366 of the European	(EU) 2015/2366 of the European	(EU) 2015/2366 of the European	
Parliament and the Council <sup>9</sup> may be	1	Parliament and the Council <sup>9</sup> may be	
of criminal origin. Where relevant,	of criminal origin. Where relevant,	of criminal origin. Where relevant,	
payment service providers should be	payment service providers should be	payment service providers should be	
encouraged to share with law	encouraged to share with law	encouraged to share with law	
enforcement authorities the reports	enforcement authorities and	enforcement authorities the reports	
they are required to submit to the		they are required to submit to the	
competent authority in their home	reports they are required to submit to	competent authority in their home	
Member State under Directive (EU)	the competent authority in their	Member State under Directive	
2015/2366.	home Member State under Directive	(EU) 2015/2366.	
	(EU) 2015/2366.		
(18) A number of instruments	\ \ /	(18) A number of instruments and	(18) A number of
and mechanisms exist at Union level	mechanisms exist at Union level to	mechanisms exist at Union level to	instruments and mechanisms
to enable the exchange of	enable the exchange of information	enable the exchange of information	exist at Union level to enable
information among national law	among national law enforcement	among national law enforcement	the exchange of information
enforcement authorities to	authorities to investigate and	authorities to investigate and	among national law
investigate and prosecute crimes. To	prosecute crimes. To facilitate and	prosecute crimes. To facilitate and	enforcement authorities to

\_

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).

## COMMISSION PROPOSAL 12181/1/17

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<sup>10</sup>. They should provide effective assistance, for example facilitating the exchange of relevant information and the provision of technical advice 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

#### EP AMENDMENTS C8-0311/2017

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<sup>10</sup>. 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

#### COUNCIL 6472/1/18

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<sup>10</sup>. 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

## Compromise

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<sup>10</sup>. 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

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).

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
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 eight hours.	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.  Remark by Presidency: text in pink moved from Art. 13 para 2a of EP proposal as discussed during technical meeting of 16.11.2018
			(18a) When dealing with data as referred to in Article 13, competent authorities should comply with applicable Union data protection rules.  Remark by Presidency: text in pink moved from Art. 13 para 2b of EP proposal as discussed during technical meeting of 16.11.2018
(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	

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
of great importance in combating	of great importance in combating	of great importance in combating	
fraud and counterfeiting of non-cash	fraud and counterfeiting of non-cash	fraud and counterfeiting of non-cash	
means of payment, as it is often the	means of payment, as it is often the	means of payment, as it is often the	
starting point of the criminal	starting point of the criminal	starting point of the criminal	
investigation. Measures should be	investigation. Measures should be	investigation. Measures should be	
taken to encourage reporting by	taken to encourage reporting by	taken to encourage reporting by	
natural and legal persons, in		natural and legal persons, in	
particular financial institutions to	particular financial institutions, to	particular financial institutions to law	
law enforcement and judicial	law enforcement and judicial	enforcement and judicial authorities.	
authorities. These measures can be	authorities and should include the	These measures can be based on	
based on various types of action,	establishment of an effective and	various types of action, including	
including legislative ones, such as	secure national online fraud-	legislative ones, such as obligations	
obligations to report suspected	reporting system in order to	to report suspected fraud, or non-	
fraud, or non-legislative ones, such	facilitate the immediate reporting	legislative ones, such as setting up or	
as setting up or supporting	of crime. The use of standardised	supporting organisations or	
organisations or mechanisms		mechanisms favouring the exchange	
favouring the exchange of	should allow for better analysis of	of information, or awareness raising.	
information, or awareness raising.	threats and should facilitate the	Any such measure that involves	
Any such measure that involves	work and cooperation of national	processing of the personal data of	
processing of the personal data of	competent authorities. The	natural persons should be carried out	
natural persons should be carried out		in accordance with Regulation	
in accordance with Regulation (EU)	types of action, including legislative	(EU) 2016/679 of the European	
2016/679 of the European	1	Parliament and of the Council <sup>11</sup> . In	
Parliament and of the Council <sup>11</sup> . In	suspected fraud, or non-legislative	particular, any transmission of	
particular, any transmission of	ones, such as setting up or	information regarding preventing and	
information regarding preventing	supporting organisations or	combating offences relating to fraud	
and combating offences relating to	mechanisms favouring the exchange	and counterfeiting of non-cash means	
fraud and counterfeiting of non-cash	of information, or awareness	of payment should comply with the	

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).

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
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 <sup>11</sup> . 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.	
		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.	
	(19 a) Investigation and		
	prosecution of all types of fraud and counterfeiting of non-cash		

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
	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.		
(20) Fraud and counterfeiting of	` '	[deleted]	
non-cash means of payment can	1 2		
result in serious economic and non-			
economic consequences for its			
victims. Where such fraud involves			
identity theft, its consequences are often aggravated because of	1-		
reputational damage and serious			
emotional harm. Member States	<u> </u>		
should adopt measures of	1 3		
should adopt incasures of	mariana s cienti inting as well as		

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	-
assistance, support and protection	serious emotional harm. Member		
aimed at mitigating these	States should adopt measures of		
consequences.	assistance, support and protection		
	aimed at mitigating these		
	consequences.		
	(20 a) It often takes a considerable	// C1 //	
	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.		
(21) Natural persons who are	(21) Natural persons who are	(21) Natural persons who are	
victims of fraud related to non-cash	victims of fraud related to non-cash	victims of fraud related to non-cash	
means of payment have rights	means of payment have rights	means of payment have rights	
conferred under	conferred under	conferred under	
Directive 2012/29/EU of the	Directive 2012/29/EU of the	Directive 2012/29/EU of the	
European Parliament and the	European Parliament and the	European Parliament and the	
Council <sup>12</sup> . Member States should	Council <sup>12</sup> . Member States should	Council <sup>12</sup> . Member States should	
adopt measures of assistance and	adopt measures of assistance and	adopt measures of assistance and	
support to such victims which build	support to such victims which build	support to such victims which build	
on the measures required by	on the measures required by	on the measures required by	
Directive 2012/29/EU but respond	Directive 2012/29/EU but respond	Directive 2012/29/EU. []	
more directly to the specific needs	more directly to the specific needs		
of victims of fraud related to	of victims of fraud related to		
identity theft. Such measures	identity theft. Such measures should		
should include, in particular,	include, in particular, the provision		
specialised psychological support	of a list of dedicated institutions		

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
and advice on financial, practical	covering different aspects of		
and legal matters, as well as	identity-related crime and victim		
assistance in receiving available	<i>support</i> , specialised psychological		
compensation. Specific information	support and advice on financial,		
and advice on protection against the	practical and legal matters, as well		
negative consequences of such	as assistance in receiving available		
crime should be offered to legal	compensation. <i>Member States</i>		
persons as well.	should also be able to set up a		
	national single online information		
	tool to facilitate access to		
	assistance and support for victims.		
	Specific information and advice on		
	protection against the negative		
	consequences of such crime should		
	be offered to legal persons as well.		
	(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.		
(22) This Directive should		[deleted]	
provide for the right for legal			
persons to access information about			

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	Compromise
the procedures for making complaints. This right is necessary in particular for small and mediumsized enterprises <sup>13</sup> 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, 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, for example, by means of information and awareness-raising campaigns, permanent online information tools with practical examples of fraudulent practices and research and education programmes.	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.	the Commission, should establish or strengthen policies to prevent fraud and counterfeiting of noncash 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

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

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
	(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.		(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).
			Remark by Presidency: text in pink taken from Art. 16 para 1 and 1a of EP proposal as

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
			discussed during technical meeting of 16.11.2018
(24) There is a need to collect comparable data on the offences laid down in this Directive. Relevant data should be made available to the competent specialised Union agencies and bodies, such as Europol, in line with their tasks and information needs. The aim would be to gain a more complete picture of the problem of fraud and counterfeiting of non-cash means of payment and issues relating to payment security at Union level, and so contribute to formulating a more effective response. Member States should make full use of Europol's mandate and capacity to provide assistance and support to relevant investigations, by submitting information on the offenders' modus operandi to Europol for the purpose of conducting strategic analyses and threat assessments of fraud and counterfeiting of non-cash means of payment in accordance with Regulation (EU) 2016/794 of the European Parliament and of the	(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' modus operandi to Europol for the purpose of conducting strategic analyses and threat assessments of fraud and counterfeiting of non-cash means of payment in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council <sup>14</sup> . Providing information	(24) 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. []	meeting of 16.11.2018
	can help better understand present		

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
Council <sup>14</sup> . Providing information	and future threats and assist the		
can help better understand present	Council and the Commission in		
and future threats and assist the	laying down strategic and		
Council and the Commission in	operational priorities of the Union		
laying down strategic and	for fighting crime and in the ways of		
operational priorities of the Union	implementing those priorities.	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	
for fighting crime and in the ways of			
implementing those priorities.			

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).

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
	(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.		
(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		[deleted]	

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	1
States have notified their wish to			
take part in the adoption and			
application of this Directive.			
OR			
(26) In accordance with Article 3		[deleted]	
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.			
OR		[deleted]	
(26) In accordance with Article 3		[deleted]	
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.			

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	-
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
OP		(1.1.4.1)	by it or subject to its application.
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, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.		[deleted]	

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
OR	C6-0311/2017	0472/1/18	
(26) In accordance with Articles		[deleted]	
1 and 2 of Protocol No 21 on the		<u>Ideleted</u>	
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.		(27) 1 1 1 1	(27)
(27) In accordance with Articles		(27) In accordance with Articles 1	(27) In accordance with
1 and 2 of the Protocol No 22 on the		and 2 of the Protocol No 22 on the	Articles 1 and 2 of the Protocol
position of Denmark annexed to the		position of Denmark annexed to the	No 22 on the position of Denmark
Treaty on European Union and to		Treaty on European Union and to the	annexed to the Treaty on
the Treaty on the Functioning of the		Treaty on the Functioning of the	European Union and to the Treaty
European Union, Denmark is not		European Union, Denmark is not	on the Functioning of the
taking part in the adoption of this		taking part in the adoption of this	European Union, Denmark is not
Directive and is not bound by it or		Directive and is not bound by it or	taking part in the adoption of this
subject to its application.		subject to its application.	Directive and is not bound by it or
			subject to its application.
(28) Since the objectives of this		(28) Since the objectives of this	(28) Since the objectives of this
Directive, namely to subject fraud		Directive, namely to subject fraud	Directive, namely to subject fraud
and counterfeiting of non-cash		and counterfeiting of non-cash means	and counterfeiting of non-cash
means of payment to effective,		of payment to effective,	means of payment to effective,
proportionate and dissuasive		proportionate and dissuasive criminal	proportionate and dissuasive
criminal penalties and to improve		penalties and to improve and	criminal penalties and to improve
and encourage cross-border		encourage cross-border cooperation	and encourage cross-border
cooperation both between		both between competent authorities	cooperation both between

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
competent authorities and between		and between natural and legal	competent authorities and
natural and legal persons and		persons and competent authorities,	between natural and legal persons
competent authorities, cannot be		cannot be sufficiently achieved by	and competent authorities, cannot
sufficiently achieved by the		the Member States, and can	be sufficiently achieved by the
Member States, and can therefore,		therefore, by reason of their scale or	Member States, and can therefore,
by reason of their scale or effects, be		effects, be better achieved at Union	by reason of their scale or effects,
better achieved at Union level, the		level, the Union may adopt measures	be better achieved at Union level,
Union may adopt measures in		in accordance with the principle of	the Union may adopt measures in
accordance with the principle of		subsidiarity as set out in Article 5 of	accordance with the principle of
subsidiarity as set out in Article 5 of		the Treaty on European Union. In	subsidiarity as set out in Article 5
the Treaty on European Union. In		accordance with the principle of	of the Treaty on European Union.
accordance with the principle of		proportionality, as set out in that	In accordance with the principle
proportionality, as set out in that		Article, this Directive does not go	of proportionality, as set out in
Article, this Directive does not go		beyond what is necessary in order to	that Article, this Directive does
beyond what is necessary in order to		achieve those objectives.	not go beyond what is necessary
achieve those objectives.			in order to achieve those
			objectives.
(29) This Directive respects		(29) This Directive respects	(29) This Directive respects
fundamental rights and observes the		fundamental rights and observes the	fundamental rights and observes
principles recognised in particular		principles recognised in particular by	the principles recognised in
by the Charter of Fundamental		the Charter of Fundamental Rights of	particular by the Charter of
Rights of the European Union,		the European Union, including the	Fundamental Rights of the
including the right to liberty and		right to liberty and security, the	European Union, including the
security, the respect for private and		respect for private and family life,	right to liberty and security, the
family life, the protection of		the protection of personal data, the	respect for private and family life,
personal data, the freedom to		freedom to conduct a business, the	the protection of personal data,
conduct a business, the right to		right to property, the right to an	the freedom to conduct a business,
property, the right to an effective		effective remedy and to a fair trial,	the right to property, the right to
remedy and to a fair trial, the		the presumption of innocence and	an effective remedy and to a fair
presumption of innocence and right		right of defence, the principles of the	trial, the presumption of
of defence, the principles of the		legality and proportionality of	innocence and right of defence,
legality and proportionality of		criminal offences and penalties, as	the principles of the legality and

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	•
criminal offences and penalties, as		well as the right not to be tried or	proportionality of criminal
well as the right not to be tried or		punished twice in criminal	offences and penalties, as well as
punished twice in criminal		proceedings for the same criminal	the right not to be tried or
proceedings for the same criminal		offence. This Directive seeks to	punished twice in criminal
offence. This Directive seeks to		ensure full respect for those rights	proceedings for the same criminal
ensure full respect for those rights		and principles and should be	offence. This Directive seeks to
and principles and should be		implemented accordingly.	ensure full respect for those rights
implemented accordingly,			and principles and should be
			implemented accordingly.
HAVE ADOPTED THIS		HAVE ADOPTED THIS	
DIRECTIVE:		DIRECTIVE:	
TITLE I: SUBJECT MATTER		TITLE I: SUBJECT MATTER	TITLE I: SUBJECT MATTER
AND DEFINITIONS		AND DEFINITIONS	AND DEFINITIONS
Article 1	Article 1	Article 1	
Subject matter	Subject matter	Subject matter	
This Directive establishes	This Directive establishes minimum	This Directive establishes minimum	Remark: Will be debated together
minimum rules concerning the	rules concerning the definition of	rules concerning the definition of	with article on victims and
definition of criminal offences and	criminal offences and sanctions in	criminal offences and sanctions in	cooperation
sanctions in the area of fraud and	the area of fraud and counterfeiting	the area of fraud and counterfeiting	
counterfeiting of non-cash means	of non-cash means of payment. <i>It</i>	of non-cash means of payment.	
of payment.	facilitates the prevention of such		
	offences, assists and supports		
	victims and improves cooperation		
	between judicial and other		
	competent authorities.		

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
Article 2 Definitions	Article 2 Definitions	Article 2 Definitions	Article 2 Definitions
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:  General remark: Agreement on the whole article has to be finally confirmed by ECON.
(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;	Remark: Will be debated together with article 4 and 4a.
(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]  Remark: Not in articles - deletion.  Technical meeting 16.11.18.

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 <sup>15</sup> , and virtual currencies;  (e) 'virtual currencies' means a		(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 <sup>15</sup> , and virtual currencies; (Order of the letter reviewed on the basis of the Council text) d) 'virtual currencies' means a	(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 <sup>15</sup> , and virtual currencies;  *Remark: Definitions ECON EP*
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;		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; (Order of the letter reviewed on the basis of the Council text)	responsibility. Waiting for ECON letter '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		[deleted]	[deleted]

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).

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
(3) of Article 4 of Directive (EU) 2015/2366;			Remark: Not in articles - deletion. <u>Technical meeting 16.11.18.</u>
(g) 'payment service user' means a payment service user as defined in point (10) of Article 4 of Directive (EU) 2015/2366;		[deleted]	[deleted]  Remark: Not in articles - deletion.  Technical meeting 16.11.18.
(h) 'payment account' means a payment account as defined in point (12) of Article 4 of Directive (EU) 2015/2366;		[deleted]	[deleted]  Remark: Not in articles - deletion.  Technical meeting 16.11.18.
(i) 'payment transaction' means a payment transaction as defined in point (5) of Article 4 of Directive (EU) 2015/2366;		[deleted]	Remark: Not in articles - deletion. Technical meeting 16.11.18.
(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;		[deleted]	[deleted]  Remark: Not in articles - deletion.  Technical meeting 16.11.18.
(k) 'payee' means a payee as defined in point (9) of Article 4 of Directive (EU) 2015/2366;		[deleted]	Remark: Not in articles - deletion. Technical meeting 16.11.18.

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; (Order of the letter reviewed on the basis of the Council text)	(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; (Order of the letter reviewed on the basis of the Council text)	(f) computer data computer data as defined in point (b) of Article 2 of Directive 2013/40/EU;
		(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.	(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.  ECON letter - 22.11.2018
TITLE II: OFFENCES		TITLE II: OFFENCES	TITLE II: OFFENCES
Article 3 Fraudulent use of payment instruments	Article 3 Fraudulent use of non-cash payment instruments	Article 3 Fraudulent use of non-cash payment instruments	Article 3 Fraudulent use of non-cash payment instruments
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;	C0-0311/2017	(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;  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.
(b) fraudulent use of a		(b) fraudulent use of a counterfeited	(b) fraudulent use of a
counterfeited or falsified payment		or falsified non-cash payment	counterfeited or falsified non-cash
instrument		instrument.	payment instrument.

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

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	•
	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.		
		(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	
		<u>fraudulent use.</u>	
		Article 4a	
		Offences related to the fraudulent	
		use of non-corporeal non-cash	
		payment instruments  Mambay States shall take the	
		Member States shall take the	
		necessary measures to ensure that, when committed intentionally, the	
		following conduct is punishable as	
		a criminal offence:	
		(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;	

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

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
			punishable as a criminal offence, when committed intentionally by:
			EP words "or having someone else perform" included in a recital.
			Technical meeting of 5.10.18. Trilogue confirmation pending. Confirmation by trilogue on 24 October

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;	CO 0011/2017	(a) without right hindering or interfering with the functioning of an information system;	(a) without right hindering or interfering with the functioning of an information system;
			Technical meeting of 5.10.18. Trilogue confirmation pendingon 24 October.
(b) introducing, altering, deleting, transmitting or		(b) without right introducing, altering, deleting, transmitting or	(b) without right introducing, altering, deleting, transmitting or
suppressing computer data.		suppressing computer data.	suppressing computer data.
			Technical meeting of 5.10.18. Trilogue confirmation pending.
	(ba) directing or redirecting payment service users to imitation		Incorporation into a recital.
	websites.		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.
Article 6	Article 6	Article 6	Article 6
Tools used for committing offences	Tools used for committing offences	Tools used for committing offences	Tools used for committing offences
Member States shall take the	Member States shall take the	Member States shall take the	Member States shall take the
necessary measures to ensure that,	necessary measures to ensure <i>that</i>	necessary measures to ensure that the	necessary measures to ensure that
when committed intentionally with	the production, procurement for	[] <b>producing</b> , procurement for	the producing, procurement for
fraudulent purpose, the production,	oneself or another, import, export,	oneself or another, including import,	oneself or another, including
procurement for use, import, export, sale, transport, distribution	sale, transport, distribution or otherwise making available of a	export, sale, transport and distribution, or making available of a	import, export, sale, transport and distribution, or making available
export, saie, transport, distribution	omerwise making available of a	distribution, or making available of a	distribution, or making available

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

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
Article 7	Article 7	Article 7	Article 7
Incitement, aiding and abetting and	Incitement, aiding and abetting and	Incitement, aiding and abetting and	Incitement, aiding and abetting
attempt	attempt	attempt	and attempt
1. Member States shall take		1. Member States shall take the	1. Member States shall take
the necessary measures to ensure		necessary measures to ensure that	the necessary measures to ensure
that inciting or aiding and abetting		inciting or aiding and abetting an	that inciting or aiding and abetting
an offence referred to in Articles 3		offence referred to in Articles 3 to 6	an offence referred to in Articles 3
to 6 is punishable as a criminal		is punishable as a criminal offence.	to 6 is punishable as a criminal
offence.			offence.
2. Member States shall take	2. Member States shall take <i>all</i>	2. Member States shall take the	Possible compromise text:
the necessary measures to ensure	the measures necessary to ensure	necessary measures to ensure that the	•
that the attempt to commit an	that the attempt to commit an	attempt to commit an offence	2. Member States shall take
offence referred to in Articles 3 to 6	offence referred to in Articles 3 to 6	referred to in Articles 3, 4 (a), 4 (b),	the necessary measures to ensure
is punishable as a criminal offence.	is punishable as a criminal offence.	4 (d), 4a (a), 4a (b), and 5 is	that the attempt to commit an
The process of the contract of	F	punishable as a criminal offence.	offence referred to in Articles 3, 4
		With regard to Article 4a (d),	(a), 4 (b), 4 (d), 4a (a), 4a (b),
		Member States shall take the	and 5 is punishable as a criminal
		necessary measures to at least	offence. With regard to Article
		ensure that attempted fraudulent	4a (d), Member States shall take
		procurement for oneself or another	the necessary measures to at
		is punishable as a criminal offence.	least ensure that attempted
		is pumisituore us u eriminur orienee.	fraudulent procurement for
			oneself or another is punishable
			as a criminal offence.
			as a criminal officiec.
			Technical meeting of 16.11.18. Trilogue
			confirmation pending. Both sides have to
			<mark>check.</mark>
Article 8	Article 8	Article 8	Article 8
Penalties for natural persons	Penalties for natural persons	Penalties for natural persons	Penalties for natural persons
1. Member States shall take		1. Member States shall take the	1. Member States shall take
the necessary measures to ensure		necessary measures to ensure that the	the necessary measures to ensure
that the offences referred to in		offences referred to in Articles 3 to 7	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.	C0-0311/2017	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	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 <i>four</i> 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.	Remark: As promised during technical meeting of 5.10.18 Commission drafted a text with additional options (see Annex).
years.			Technical meeting 16.11 for Article 5 - 3 years.  Both sides have to check politically.
3. Member States shall take	3. Member States shall take the	3. Member States shall take the	Technical meeting 16.11 - for
the necessary measures to ensure	necessary measures to ensure that	necessary measures to ensure that the	Article 6 - two years.
that the offences referred to in	the offences referred to in Article 6	offences referred to in Articles 4 (c),	<u> </u>
Article 6 are punishable by a	are punishable by a maximum term	4(d), 4a (c), 4a(d) and 6 are	Both sides have to check
maximum term of imprisonment of	of imprisonment of at least <i>three</i>	punishable by a maximum term of	politically.
at least two years.	years.	imprisonment of at least one year.	
4. Member States shall take	4. Member States shall take the	4. Member States shall take the	4. Member States shall take the
the necessary measures to ensure	necessary measures to ensure that	necessary measures to ensure that	necessary measures to ensure that
that offences referred to in Articles	the following circumstances are	offences referred to in Articles 3, 4,	offences referred to in Articles 3,
3, 4 and 5 are punishable by a	regarded as aggravating	4a and 5 are punishable by a	<mark>4,</mark> [4a - Remark - depending on
maximum term of imprisonment of	circumstances in relation to the	maximum term of imprisonment of	debates on Article 4] and 5 are
at least five years if:	offences referred to in Articles 3, 4	at least five years if they are	punishable by a maximum term of
	and 5 <i>and</i> are punishable by a	committed within the framework	imprisonment of at least five years
	maximum term of imprisonment of	of a criminal organisation, as	<mark>if</mark> :
	at least five years if:	defined in Framework	
		Decision 2008/841/JHA,	Referred to technical level
		irrespective of the penalty	(trilogue 24 October 18)
		provided for in that Decision.	

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS	COUNCIL 6472/1/18	Compromise
(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.	(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> (b) they involve extensive or considerable damage; or	[deleted, the content of lit. a has been moved to paragraph 4]  [deleted]	(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 in accordance with national law;  Technical meeting 16.11.18. Both sides have to check politically.or
	(b a) they have led to an aggregate advantage of considerable value.		Deletion of point (ba) if b is accepted.  Technical meeting 16.11.18. To be checked politically for both sides.
Article 9	Article 9	Article 9	Article 9
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	Liability of legal persons	Liability of legal persons  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.

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
			Use of Commission text as this is standard text in other directives. Technical meeting of 5.10.18. Trilogue confirmation (24 October 2018)
Article 10 Sanctions for legal persons  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,	Article 10 Sanctions for legal persons  Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines or other sanctions, including:	Article 10 Sanctions for legal persons  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	Article 10 Sanctions for legal persons  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
such as:  (a) exclusion from entitlement	other sanctions, including.	sanctions, such as:  (a) exclusion from entitlement	sanctions, such as:  Technical meeting of 5.10.18. Trilogue confirmation (24 October 18).  (a) exclusion from
to public benefits or aid;	(a a) temporary or permanent	to public benefits or aid;	entitlement to public benefits or aid;
	exclusion from access to public funding, including tender procedures, grants and concessions, both at national and Union level;		(a a) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions; both at national and Union level;  Technical meeting of 5.10.18. Trilogue confirmation (24 October 18).

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

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	D 1 4 1
	(b a) the offence is committed		<u>Deleted</u>
	for the benefit of a legal person		Technical meeting 16.11.18
	established in its territory; or		(based on analysis of existing
			instruments). Has to be politically
			confirmed.
	(b b) the offence is committed		Deleted
	against one of its nationals or a		
	person who is an habitual resident		Technical meeting 16.11.18. Has
	in its territory; or		to be politically confirmed.
(c) the offence causes damage	(c) the offence causes damage	[deleted]	[deleted]
in its territory including damage	in its territory.		
resulting from the theft of the			Addition of a recital stating that
identity of a person.			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.
	1 a. A Member State shall		Deletion
	inform the Commission and		
	Eurojust if it decides to establish		Technical meeting 16.11.18. To
	jurisdiction over an offence		be confirmed.
	referred to in Articles 3 to 7 that has		
	been committed outside its		
	territory;		
2. When establishing jurisdiction		2. When establishing jurisdiction in	2. When establishing
in accordance with point (a) of		accordance with point (a) of	jurisdiction in accordance with
paragraph 1, a Member State shall		paragraph 1, a Member State shall	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 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.	Member State shall ensure that it has jurisdiction where:
(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;	[deleted, part of the content of lit. (a) has been included in paragraph 2]	(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;  Technical meeting 16.11.18. Has
(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.	[deleted]	to be politically confirmed.  (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.  Technical meeting 16.11.18. Has to be politically confirmed.

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
3. A Member State shall	deleted	3. A Member State shall inform	3. A Member State shall
inform the Commission if it		the Commission if it decides to	inform the Commission if it
decides to establish jurisdiction		establish jurisdiction over an offence	decides to establish jurisdiction
over an offence referred to in		referred to in Articles 3 to 7	over an offence referred to in
Articles 3 to 7 committed outside		committed outside its territory,	Articles 3 to 7 committed outside
its territory, including where:		including where:	its territory, including where:
(a) the offender has his or her habitual residence in its	deleted	(a) the offender has his or her habitual residence in its	Deleted (see compromise above)
territory;		territory;	Technical meeting 16.11.18. Has
, constant		,	to be politically confirmed.
(b) the offence is committed for	deleted	(b) the offence is committed for the	(b) the offence is committed
the benefit of a legal person		benefit of a legal person	for the benefit of a legal person
established in its territory;		established in its territory;	established in its territory;
			Technical meeting 16.11.18. Has to be politically confirmed.
(c) the offence is committed	deleted	(c) the offence is committed against	(c) the offence is committed
(c) the offence is committed against one of its nationals or	aetetea	one of its nationals or a person who	against one of its nationals or a
a person who is an habitual		is an habitual resident in its territory;	person who is an habitual resident
resident in its territory.		is an natitual resident in its territory,	in its territory;
resident in its territory.			m its territory,
			Technical meeting 16.11.18. Has
			to be politically confirmed.
		(d) the offence is against an	Deleted
		information system on its territory,	
		whether or not the offender	Technical meeting 16.11.18. Has
		commits the offence when	to be politically confirmed.
		physically present on its territory.	
	3 a. Where an offence referred		Text on jurisdictional rules (based
	to in Articles 3 to 7 falls within the		on the anti-money laundering in
	jurisdiction of more than one		<u>criminal law directive</u> )
	Member State, the Member States		

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
	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.		Technical meeting 16.11.18. Has to be politically confirmed.
Article 12	Article 12	Article 12	Article 12
Effective investigations	Effective investigations and	Effective investigations	Effective investigations and
	cooperation		<u>cooperation</u>
1. Member States shall take	1. Member States shall take the	1. Member States shall take	1. Member States shall take
the necessary measures to ensure	necessary measures to ensure that	the necessary measures to ensure that	the necessary measures to ensure
that effective investigative tools,	investigative tools, such as those	effective investigative tools, such as	that investigative tools, such as
such as those which are used in	which are used in <i>countering</i>	those which are used in countering	those which are used in countering
organised crime or other serious	organised crime or other serious	organised crime or other serious	organised crime or other serious
crime cases, are available to	crime cases, are <i>effective</i> ,	crime cases, are available to persons,	crime cases, are effective,
persons, units or services	proportionate to the crime	units or services responsible for	proportionate to the crime
responsible for investigating or	committed and available to persons,	investigating or prosecuting the	committed and available to
prosecuting the offences referred to	units or services responsible for	offences referred to in Articles 3 to 7,	persons, units or services
in Articles 3 to 7.	investigating or prosecuting the	if and to the extent that the use of	responsible for investigating or
	offences referred to in Articles 3 to	those tools is appropriate and	prosecuting the offences referred
	7.	commensurate with the nature and	to in Articles 3 to 7.
		gravity of the offences.	
			Trilogue 24 October 18
	1 a. Each Member State shall		Recital agreed:
	ensure that adequate human and		
	financial resources are allocated		

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
	and training sessions are provided in order to investigate and prosecute the offences referred to in Articles 3 to 7.		"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."
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 and that those authorities are empowered to cooperate with other national authorities and their counterparts in other Member States.	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.")  Trillogue 24 October 18.

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	_
TITLE IV: EXCHANGE OF	TITLE IV: EXCHANGE OF	TITLE IV: EXCHANGE OF	TITLE IV: EXCHANGE OF
INFORMATION AND	INFORMATION AND	INFORMATION AND	INFORMATION AND
REPORTING OF CRIME	REPORTING OF CRIME	REPORTING OF CRIME	REPORTING OF CRIME
Article 13	Article 13	Article 13	Article 13
Exchange of information	Exchange of information	Exchange of information	Exchange of information
1. For the purpose of	1. For the purpose of	1. For the purpose of	1. For the purpose of
exchanging information relating to	exchanging information relating to	exchanging information relating to	exchanging information relating
the offences referred to in Articles	the offences referred to in Articles 3	the offences referred to in Articles 3	to the offences referred to in
3 to 7, Member States shall ensure	to 7, Member States shall ensure	to 7, Member States shall ensure that	Articles 3 to 7, Member States
that they have an operational	that they have an operational	they have an operational national	shall ensure that they have an
national point of contact available	national point of contact available	point of contact available 24 hours a	operational national point of
24 hours a day and seven days a	24 hours a day and seven days a	day and seven days a week. Member	contact available 24 hours a day
week. Member States shall also	week. Member States shall also	States shall also ensure that they	and seven days a week. Member
ensure that they have procedures in	ensure that they have procedures in	have procedures in place so that	States shall also ensure that they
place so that urgent requests for	place so that urgent requests for	urgent requests for assistance are	have procedures in place so that
assistance are promptly dealt with	assistance are promptly dealt with	promptly dealt with and the	urgent requests for assistance are
and the competent authority replies	and the competent authority replies	competent authority replies within	promptly dealt with and the
within eight hours of receipt, at	within <i>two</i> hours of receipt, at least	eight hours of receipt, at least	competent authority replies within
least indicating whether the request	indicating whether the request will	indicating whether the request will	eight hours of receipt, at least
will be answered, and the form and	be answered, and the form and	be answered, and the form and	indicating whether the request
estimated time of such an answer.	estimated time of such an answer.	estimated time of such an answer.	will be answered, and the form
Member States may decide to make	Member States may decide to make	Member States may decide to make	and estimated time of such an
use of the existing networks of	use of the existing networks of	use of the existing networks of	answer. Member States may
operational points of contact.	operational points of contact.	operational points of contact.	decide to make use of the existing
			networks of operational points of
			contact.
			Tachnical mactine 16 11 2019
			Technical meeting 16.11.2018 (alignment with the attacks
			against information system
			directive). To be confirmed.

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	_
2. Member States shall inform	2. Member States shall inform the	2. Member States shall inform	2. Member States shall inform the
the Commission, Europol and	Commission, Europol and Eurojust	the Commission, Europol and	Commission, Europol and
Eurojust of their appointed point of	of their appointed point of contact	Eurojust of their appointed point of	Eurojust of their appointed point
contact referred to in paragraph 1.	referred to in paragraph 1 and	contact referred to in paragraph 1.	of contact referred to in paragraph
The Commission shall forward that	update that information as	The Commission shall forward that	1 and update that information as
information to the other Member	<i>necessary</i> . The Commission shall	information to the other Member	necessary. The Commission shall
States.	forward that information to the	States.	forward that information to the
	other Member States.		other Member States.
			T. 11
			Trilogue 24 October.
	2 a. In very urgent and serious		Recital
	cases that affect two or more Member States, Member States		Trilogue 24 October.
	shall inform Europol's European		THIOGUE 24 OCTOBEL
	Cybercrime Centre. Europol shall		
	facilitate the setting-up of a rapid		
	alert system identifying new		
	practices of fraud.		
	2 b. When dealing with data as		Recital
	referred to in this Article,		
	competent authorities shall comply		Trilogue 24 October.
	with applicable Union data		
	protection rules.		

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

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
12101/1/1/	implementing act shall be adopted in accordance with the advisory procedure referred to in Article 16a(2).	0472/1/16	Possible text could be drafted by the Commission. Decision at political level to be taken.
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.	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.
	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.		Trilogue 24 October 18.  Deletion. Checking possibility of a recital  Technical meeting 16.11.18.
TITLE V: ASSISTANCE TO VICTIMS AND PREVENTION		TITLE V: PREVENTION	

10101/1/17	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	-
Article 15 Assistance and support to victims  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.	Article 15 Assistance and support to victims  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, damage to their credit rating and financial costs as well as about their rights, including the		Article 15  Assistance and support to victims  Linked with the discussions on Art.  4/4a  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,
	right to compensation for damage suffered as a result of the offence.  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		such as reputational damage, [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].  Technical meeting 16.11.18. Both sides political confirmation. Part of a possible overall agreement.  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

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
	dedicated institutions that deal with		provided with a list of dedicated
	different aspects of identity-related		institutions that deal with
	crime and support.		different aspects of identity-
			related crime and support.
	1 b. Member States are		1 b. Member States are
	encouraged to set up national	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	encouraged to set up national
	single online information tools to		single online information tools to
	facilitate access to assistance and		facilitate access to assistance and
	support for natural or legal		support for natural or legal
	persons who have suffered		persons who have suffered
	prejudice from offences referred to		prejudice from offences referred
	in Articles 3 to 7, committed by		to in Articles 3 to 7, committed by
	misusing personal data.		misusing personal data.
	1 c. Member States shall ensure		<u>Deletion</u>
	that natural persons who have		
	suffered a prejudice from offences		Technical meeting 16.11.18.
	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.		
2. Member States shall ensure	2. Member States shall ensure		2. Member States shall
that legal persons that are victims	that <i>natural</i> and legal persons that		ensure that legal persons that are
of offences referred to in Articles 3	are victims of offences referred to in		victims of offences referred to in
to 7 of this Directive are, without	Articles 3 to 7 of this Directive are,		Articles 3 to 7 of this Directive
undue delay after their first contact	without undue delay after their first		are, without undue delay after
with a competent authority, offered	contact with a competent authority,		their first contact with a
information about:	offered information about:		

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
			competent authority, offered
			information about:
(a) the procedures for making			(a) the procedures for making
complaints with regard to the			complaints with regard to the
offence and their role in connection			offence and their role in
with such procedures;			connection with such procedures;
	(aa) the right of access to information about the case;		(aa) the right of access to information about the case;
(b) the available procedures for	information about the case;	<u> </u>	(b) the available procedures
1			
making complaints if the competent authority does not respect their			for making complaints if the competent authority does not
rights in the course of criminal			respect their rights in the course
proceedings;			of criminal proceedings;
(c) the contact details for			(c) the contact details for
communications about their case.			communications about their case.
Article 16	Article 16	Article 16	Article 16
Prevention	Prevention	Prevention	Prevention
Member States shall take	1. Member States shall take	Member States shall take appropriate	Member States shall take
appropriate action, including	appropriate action, including	action, including through the	appropriate action, including
through the Internet, such as	through the <i>internet</i> , such as	Internet, such as information and	through the Internet, such as
information and awareness-raising	information and awareness-raising	awareness-raising campaigns,	information and awareness-raising
campaigns, research and education	campaigns, research and education	research and education programmes,	campaigns, research and
programmes, where appropriate in	programmes, where appropriate in	where appropriate in cooperation	education programmes, where
cooperation with stakeholders,	cooperation with stakeholders,	with stakeholders, aimed at reducing	appropriate in cooperation with
aimed at reducing overall fraud,	aimed at reducing overall fraud <i>and</i>	overall fraud, raising awareness and	stakeholders, aimed at reducing
raising awareness and reducing the	fraud using computer and	reducing the risk of becoming a	overall fraud, raising awareness
risk of becoming a victim of fraud.	information systems in particular,	victim of fraud.	and reducing the risk of becoming
	raising awareness and reducing the		a victim of fraud.
	risk of becoming a victim of fraud,		
	in particular for vulnerable		Rest in a recital.
	persons, such as elderly or young		
	persons. The Commission shall		Trilogue 24 October 2018.

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
	assist Member States in regularly		
	conducting such campaigns.		
	Member States shall ensure that		
	sufficient funding is made		
	available for such campaigns.		
	1a. Member States shall		RECITAL
	develop and keep up to date, as		
	part of the information campaigns		TECHNICAL MEETING 16.11.18.
	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).		
	Article 16 a		
	Committee procedure		
	1. The Commission shall be		SEE ARTICLE 14 COMMENT
	assisted by a committee. That		
	committee shall be a committee		
	within the meaning of Regulation		
	(EU) No 182/2011.		
	2. Where reference is made to		
	this paragraph, Article 4 of		
	Regulation (EU) No 182/2011 shall		
	apply.		
TITLE VI: FINAL	TITLE VI: FINAL PROVISIONS	TITLE VI: FINAL PROVISIONS	
PROVISIONS			
Article 17	Article 17	Article 17	Article 17
Monitoring and statistics	Monitoring and statistics	Monitoring and statistics	Monitoring and statistics

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	•
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. []	Proposed compromise from technical level (16.11.18)e:  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.  Technical meeting 16.11.2018.
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.	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.  Technical meeting 16.11.2018.

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
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.	[deleted]	Proposed compromise (technical meeting 16.11.2018):  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.
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.
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	Article 18 Replacement of Framework Decision 2001/413/JHA	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 the obligations	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,

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
the obligations of those Member		of those Member States with regard	without prejudice to the
States with regard to the date for		to the date for transposition of that	obligations of those Member
transposition of that Framework		Framework Decision into national	States with regard to the date for
Decision into national law.		law.	transposition of that Framework
			Decision into national law.
With regard to Member States		With regard to Member States bound	With regard to Member States
bound by this Directive, references		by this Directive, references to	bound by this Directive,
to Framework Decision		Framework Decision 2001/413/JHA	references to Framework
2001/413/JHA shall be construed		shall be construed as references to	Decision 2001/413/JHA shall be
as references to this Directive.		this Directive.	construed as references to this
			Directive.
Article 19	Article 19	Article 19	Article 19
Transposition	Transposition	Transposition	<b>Transposition</b>
1. Member States shall bring	1. Member States shall bring	1. Member States shall bring	1. Member States shall bring
into force the laws, regulations and	into force the laws, regulations and	into force the laws, regulations and	into force the laws, regulations
administrative provisions necessary	administrative provisions necessary	administrative provisions necessary	and administrative provisions
to comply with this Directive by	to comply with this Directive by	to comply with this Directive by	necessary to comply with this
[24 months after entry into force].	[12 months after entry into force].	[30 months after entry into force].	Directive by [24 months after
They shall immediately inform the	They shall immediately inform the	They shall immediately inform the	entry into force]. They shall
Commission thereof.	Commission thereof.	Commission thereof.	immediately inform the
			Commission thereof.
2. When Member States adopt		2. When Member States adopt	2. When Member States
those measures, they shall contain a		those measures, they shall contain a	adopt those measures, they shall
reference to this Directive or shall		reference to this Directive or shall be	contain a reference to this
be accompanied by such a		accompanied by such a reference on	Directive or shall be accompanied
reference on the occasion of their		the occasion of their official	by such a reference on the
official publication. The methods of		publication. The methods of making	occasion of their official
making such a reference shall be		such a reference shall be laid down	publication. The methods of
laid down by the Member States.		by the Member States.	making such a reference shall be
			laid down by the Member States.
3. Member States shall		3. Member States shall	3. Member States shall
communicate to the Commission		communicate to the Commission the	communicate to the Commission

COMMISSION PROPOSAL 12181/1/17	EP AMENDMENTS C8-0311/2017	COUNCIL 6472/1/18	Compromise
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.
Article 20 Evaluation and reporting  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.	Article 20 Evaluation and reporting  2. The Commission shall by [48 months after entry into force], carry out an evaluation of this Directive on combating fraud and counterfeiting of non-cash means of payment, as well as its impact on fundamental rights, and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of the report.	Evaluation and reporting  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.	Article 20 Evaluation and reporting  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 [84 months after entry into force], carry out an evaluation of this Directive on combating fraud and counterfeiting of non-cash means of payment, as well as its impact on fundamental rights, and submit a report to the European Parliament and to the Council Member States shall provide the Commission with necessary information for the preparation of the report.
			Trilogue 24 October 18.

COMMISSION PROPOSAL	EP AMENDMENTS	COUNCIL	Compromise
12181/1/17	C8-0311/2017	6472/1/18	
Article 21	Article 21	Article 21	Article 21
Entry into force	Entry into force	Entry into force	Entry into force
This Directive shall enter into force		This Directive shall enter into force	This Directive shall enter into
on the twentieth day following that		on the twentieth day following that	force on the twentieth day
of its publication in the Official		of its publication in the Official	following that of its publication in
Journal of the European Union.		Journal of the European Union.	the Official Journal of the
			European Union.
This Directive is addressed to the		This Directive is addressed to the	This Directive is addressed to the
Member States in accordance with		Member States in accordance with	Member States in accordance with
the Treaties.		the Treaties.	the Treaties.