Combating fraud and counterfeiting of non-cash means of payment

2017/0226(COD) - 06/09/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Sylvia-Yvonne KAUFMANN (S&D, DE) on the proposal for a directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

Subject matter: the proposed Directive shall establish minimum rules concerning the definition of criminal offences and sanctions in the area of fraud and counterfeiting of non-cash means of payment. According to Members, it shall also **facilitate the prevention of such offences, assist and support victims** and improve cooperation between judicial and other competent authorities.

Offences: Members request that the following be made a punishable criminal offence:

- theft or other unlawful appropriation of a payment instrument when committed intentionally;
- counterfeiting or falsification of a payment instrument, when committed intentionally, in order for it to be used fraudulently;
- procurement for oneself or another, including import, export, sale and transport, distribution of a payment instrument which has been stolen or otherwise unlawfully appropriated or of a payment instrument counterfeited or falsified, when committed intentionally, in order for it to be used fraudulently

- **possession of a stolen or otherwise unlawfully appropriated**, or of a counterfeited or falsified, payment instrument, knowing at the time of receipt that such instrument is derived from criminal activity or from an act of participation in such an activity;
- that performing or having someone else perform a transfer of money, monetary value or virtual currencies, in order to make an unlawful gain for the perpetrator or a third party, or causing an unlawful loss of property for a third party, is punishable as a criminal offence, when committed intentionally by **directing or redirecting payment service users to imitation websites**.

Penalties: offences related to the fraudulent use of payment instruments and those related to information systems shall be punishable by a maximum term of imprisonment of **at least 4 years** (rather than 3 years). Offences related to the use of devices, computer data or other means specifically designed to commit the offences shall be punishable by a maximum term of imprisonment of **at least 3 years** (rather than 2 years).

For legal persons, penalties shall include temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions, both at national and Union level.

The fact that an offence involves a significant **aggregate financial advantage** or a high number of victims shall be considered an aggravating circumstance.

The Directive shall not prevent Member States from applying stricter rules and sanctions concerning fraud and counterfeiting of non-cash means of payment.

Jurisdiction: where an offence falls within the jurisdiction of more than one Member State, the Member States concerned shall cooperate with one another in order to decide which of them will prosecute the offender with the aim of centralising proceedings in a single Member State, bearing in mind the principle of *ne bis in idem*. Member States shall have recourse to **Eurojust** in cases of conflict of jurisdiction or other difficulties.

Cooperation and exchange of information: given the cross-border nature of offences, 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.

Members proposed to facilitate the immediate reporting of offences, in particular by setting up secure national mechanisms for reporting online fraud. They also suggested the use of standardised Union reporting templates to allow for better threat assessment and to facilitate the work and cooperation of the competent national authorities.

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

Victim support: Members want to strengthen support for victims of non-cash payment fraud as the use of new payment instruments increases the possibility of fraud. Victims who have suffered prejudice as a result of offences committed by the misuse of personal data shall be entitled to **free legal aid**, at least those who lack sufficient resources to pay for legal aid.

As part of information campaigns, Member States shall develop a **permanent online information tool** with practical examples of fraudulent practices.

Transposition and reporting: Members proposed to reduce the transposition deadline to one year after the entry into force of the directive and to oblige the Commission to submit an evaluation of the directive after four years.