Combating fraud and counterfeiting of non-cash means of payment

2017/0226(COD) - 13/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 587 votes to 26, with 8 abstentions, a legislative resolution 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amended 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. It shall also facilitate the prevention of such offences, assist and support victims.

This Directive shall cover virtual currencies only insofar as they can be commonly used for making payments. Member States shall be encouraged to ensure in their national law that future currencies of a virtual nature issued by their central banks or other public authorities shall enjoy the same level of protection against fraud as non-cash means of payment in general.

Digital wallets that allow the transfer of virtual currencies should be covered by this Directive to the same extent as non-cash payment instruments.

Offences

When committed intentionally, the following conduct is punishable as a criminal offence:

- the theft or other unlawful appropriation of a corporeal non-cash payment instrument;

- the fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument;

- the possession of a stolen or otherwise unlawfully appropriated, or of a counterfeit or falsified corporeal non-cash payment instrument for fraudulent use;

- the procurement for oneself or another, including the receipt, appropriation, purchase, transfer, import, export, sale, transport or distribution of a stolen, counterfeit or falsified corporeal non-cash payment instrument for fraudulent use;

- the production, obtaining for oneself or others, including the import, export, sale, transport or distribution of tools used to commit the offences;

- fraud relating to IT systems, i.e. the act of performing or causing a transfer of money, thereby causing an unlawful loss of property for another person in order to make an unlawful gain for the perpetrator or a third party.

Penalties

Offences related to fraudulent use, theft, illegal procurement, counterfeiting of a payment instrument and production of tools used to commit the offences would be punishable by a maximum term of imprisonment of at least 2 years.

Offences related to the unlawful possession or obtaining for oneself or others of a stolen, usurped or otherwise unlawful or falsified payment instrument for fraudulent use would be punishable by a maximum term of imprisonment of at least one year.

Fraud related to information systems would be punishable by a maximum term of imprisonment of at least 3 years.

For legal persons, sanctions shall include temporary or permanent exclusion from access to public funding, including tendering procedures, grants and concessions.

Victim support

Natural and legal persons who have suffered harm as a result of any of the offences being committed by misusing personal data, shall be offered specific information and advice on how to protect themselves against the negative consequences of the offences, such as reputational damage; and a list of dedicated institutions that deal with different aspects of identity-related crime and victim support.

Member States are encouraged to set up single national online information tools to facilitate access to assistance and support for natural or legal persons who have suffered harm as a result of the offences being committed by misusing personal data.