

Courtesy translation



THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
11TH TERM

318th

RESOLUTION OF THE SENATE

Delivered on the 11th session held on 6th December 2017

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 (Senate Print No. N 66/11; COM (2017) 489)

The Senate

I.

1. Understands

the Commission's effort to update the EU legal framework on cooperation in criminal matters in the area of combating fraud and counterfeiting of non-cash means of payment because strengthening mutual cooperation and harmonization in this area is important particularly with regard to the frequent cross-border nature of this type of criminal activity and it may facilitate mutual recognition of decisions in criminal matters and help a uniform interpretation;

2. Points out, however,

that the EU legislation in the area of criminal law must observe the principle of proportionality and must not impair the system of criminal law in the Member States unless it is necessary for the accomplishment of the objectives of this legislation;

II.

1. Supports

the proposal in general, because most of the provisions are already enshrined in the Czech legal order and it is necessary that EU law is fully in accordance with the international obligations of the Member States that follow from the Council of Europe Convention on Cybercrime;

2. Agrees

with the Position of the Government;

3. Has doubts,

in accord with the Government, about the Commission's statement that disparities in the level of penalties (duration of possible imprisonment) influence, in this type of criminal activity, the decisions of perpetrators about whether and where they will commit a crime, because perpetrators often cannot know in advance where and against whom the consequences of the offences will occur and which Member States will therefore be responsible for their prosecution;

4. Therefore does not consider as necessary

the detailed harmonization of the level of penalties for offences defined by the Directive, because it would suffice to stipulate that sanctions imposed by the Member States have to be effective, proportionate and dissuasive; the specific setting of the level of these penalties must not, in particular, lead to unjustified disparities in the level of penalties for similar and similarly serious offences depending on whether the area is the subject to harmonization under EU law or not;

5. Points out

that the proposed measures on assistance to victims and on prevention go beyond the scope of the Directive, which harmonizes substantive criminal law, and should therefore not be the part of the submitted proposal;

6. Is of the opinion

that the collection of statistical data on criminal activity in this area must not create a disproportionate administrative burden for the Member States;

7. Calls on

the European Commission to clarify and specify the definition of payment instrument especially in relation to digital media of exchange (in particular with regard to virtual currencies);

III.

1. Requests

the Government to inform the Senate about the way this resolution was taken into account and about further development of negotiations once the political agreement of the required number of Member States on the main elements of the proposal is reached, or at an earlier time, should the results of negotiations in the Council begin to depart considerably from the position of the Czech Republic expressed in the General Position of the Government;

2. Authorises

the President of the Senate to forward this Resolution to the European Commission.

Milan Štěch
sign manual
President of the Senate

Michael Canov
sign manual
Senate Verifier