



EUROPEAN COMMISSION

*Brussels, 18.6.2018  
C(2018) 3484 final*

*Dear President,*

*The Commission would like to thank the Camera dei Deputati for its favourable Opinion 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 {COM(2017) 489 final}.*

*This proposal was adopted as a part of the package of measures designed to enhance cybersecurity in the European Union, presented on 13 September 2017.*

*In proposing this initiative, the Commission is following up on the commitment it undertook in the European Agenda on Security {COM(2015) 185 final} to review the existing EU legal framework, which dates back to 2001, and remedy identified shortcomings.*

*The Commission welcomes the support expressed by the Camera dei Deputati for the aim of establishing a technologically neutral regime and the approach taken, in particular as regards specific provisions on prevention and assistance to victims.*

*The Commission is pleased that the Camera dei Deputati shares the view that action at the EU level, as envisaged in the proposal, is required to facilitate law enforcement and judicial cooperation against fraud and counterfeiting of non-cash means of payment, and welcomes the assessment as regards the respect of the principle of subsidiarity and the consistency with other EU and national policies.*

*Ms Laura BOLDRINI  
President of the Camera dei Deputati  
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*As regards risks of possible conflicts of jurisdiction, the Commission concurs that general rules have been created to facilitate coordination between Member States (namely the Council Framework Decision on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings<sup>1</sup> and Council Decision 2002/187/JHA setting up Eurojust<sup>2</sup>). The Commission believes that these instruments are sufficient to regulate relations among Member States and, as they were adopted after Framework Decision 2001/413/JHA, the general provisions they include supersede specific ones that were deemed necessary in 2001.*

*The Commission has carefully considered each of the issues raised by the Camera dei Deputati in its Opinion and is pleased to offer the following clarifications.*

*The purpose of the Commission proposal is to provide an encompassing definition of 'payment instrument', ensuring that this is technologically neutral and future-proof. Hence, the Commission proposes to modify the corresponding definition in the existing legal instrument<sup>3</sup> to remove references to specific examples, while avoiding at the same time that certain non-cash means of payment may fall outside its scope.*

*The condition "in order for it to be used fraudulently" has been included in specific provisions on the basis of a careful assessment of proportionality; the Commission would like to underline that this is to be read in light of Recital 9 of the proposal, which provides guidelines to interpret the specific intent. Furthermore, once adopted, the Directive will provide for minimum harmonisation and will not prevent Member States that wish to go further in criminalising the described conducts to do so.*

*In Article 5, the Commission proposes to modify the corresponding provision in Framework Decision 2001/413/JHA: the original wording 'causing an unauthorised loss of property for another person' has in fact been replaced by 'in order to make an unlawful gain', which would avoid any gap between the scope of the proposal currently under negotiation and the existing Directive on attacks against information systems.<sup>4</sup>*

*The Commission believes that the level of penalties should be proportionate to the gravity of the crime. The proposed minimum levels of maximum penalties result from an assessment of relevant EU criminal law instruments. Article 12 of the proposal provides for effective investigative tools (such as those which are used in organised crime or other serious crime cases) to be made available for investigating or prosecuting the offences referred to in the proposal. Furthermore, once adopted, the Directive will provide for minimum harmonisation and will not prevent Member States that wish to go further in criminalising the described conducts to do so.*

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<sup>1</sup> [Council Framework Decision 2009/948/JHA](#) of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

<sup>2</sup> [Council Decision 2002/187/JHA](#) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

<sup>3</sup> Article 1(a) of [Council Framework Decision 2001/413/JHA](#) of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.

<sup>4</sup> [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.

*The Opinion of the Camera dei Deputati has been made available to the Commission's representatives in the ongoing negotiations with the European Parliament and the Council and will inform these discussions.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Camera dei Deputati and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Dimitris Avramopoulos  
Member of the Commission*