

Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA

TITLE II

OFFENCES

Article 3

Fraudulent use of non-cash payment instruments

Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:

- (a) the fraudulent use of a stolen or otherwise unlawfully appropriated or obtained non-cash payment instrument;
- (b) the fraudulent use of a counterfeit or falsified non-cash payment instrument.

Article 4

Offences related to the fraudulent use of corporeal non-cash payment instruments

Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:

- (a) the theft or other unlawful appropriation of a corporeal non-cash payment instrument;
- (b) the fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument;
- (c) the possession of a stolen or otherwise unlawfully appropriated, or of a counterfeit or falsified corporeal non-cash payment instrument for fraudulent use;
- (d) 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.

Article 5

Offences related to the fraudulent use of non-corporeal non-cash payment instruments

Member States shall take the necessary measures to ensure that, when committed intentionally, the following conduct is punishable as a criminal offence:

- (a) the unlawful obtainment of a non-corporeal non-cash payment instrument, at least when this obtainment has involved the commission of one of the offences referred to in Articles 3 to 6 of Directive 2013/40/EU, or misappropriation of a non-corporeal non-cash payment instrument;

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- (b) the fraudulent counterfeiting or falsification of a non-corporeal non-cash payment instrument;
- (c) the holding of an unlawfully obtained, counterfeit or falsified 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) the procurement for oneself or another, including the sale, transfer or distribution, or the making available, of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use.

Article 6

Fraud related to information systems

Member States shall take the necessary measures to ensure that performing or causing a transfer of money, monetary value or virtual currency and thereby causing an unlawful loss of property for another person in order to make an unlawful gain for the perpetrator or a third party is punishable as a criminal offence, when committed intentionally by:

- (a) without right, hindering or interfering with the functioning of an information system;
- (b) without right, introducing, altering, deleting, transmitting or suppressing computer data.

Article 7

Tools used for committing offences

Member States shall take the necessary measures to ensure that producing, procurement for oneself or another, including the import, export, sale, transport or distribution, or making available a device or an instrument, computer data or any other means primarily designed or specifically adapted for the purpose of committing any of the offences referred to in points (a) and (b) of Article 4, in points (a) and (b) of Article 5 or in Article 6, at least when committed with the intention that these means be used, is punishable as a criminal offence.

Article 8

Incitement, aiding and abetting and attempt

1 Member States shall take the necessary measures to ensure that inciting or aiding and abetting an offence referred to in Articles 3 to 7 is punishable as a criminal offence.

2 Member States shall take the necessary measures to ensure that an attempt to commit an offence referred to in Article 3, in point (a), (b) or (d) of Article 4, in point (a) or (b) of Article 5 or in Article 6 is punishable as a criminal offence. With regard to point (d) of Article 5, Member States shall take the necessary measures to ensure that at least the attempted fraudulent procurement of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for oneself or another is punishable as a criminal offence.

Article 9

Penalties for natural persons

1 Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 8 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 Article 3, in points (a) and (b) of Article 4 and in points (a) and (b) of Article 5 are punishable by a maximum term of imprisonment of at least two years.

3 Member States shall take the necessary measures to ensure that the offences referred to in points (c) and (d) of Article 4 and in points (c) and (d) of Article 5 are punishable by a maximum term of imprisonment of at least one year.

4 Member States shall take the necessary measures to ensure that the offence referred to in Article 6 is punishable by a maximum term of imprisonment of at least three years.

5 Member States shall take the necessary measures to ensure that the offence referred to in Article 7 is punishable by a maximum term of imprisonment of at least two years.

6 Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by a maximum term of imprisonment of at least five years if 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.

Article 10

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 8 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:

- a a power of representation 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.

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 of any of the offences referred to in Articles 3 to 8 for the benefit of the legal person by a person under its authority.

3 Liability of legal persons pursuant to 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 8.

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Article 11

Sanctions for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 10(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary exclusion from access to public funding, including tender procedures, grants and concessions;
- (c) temporary or permanent disqualification from the practice of commercial activities;
- (d) placing under judicial supervision;
- (e) judicial winding-up;
- (f) temporary or permanent closure of establishments which have been used for committing the offence.