

Directorate-General for Migration and
Home Affairs
European Commission
1049 Bruxelles
Belgium

Wiedner Hauptstraße 63 | Postfach 195
1045 Wien
T +43 (0)5 90 900-4282 | F +43 (0)5 90 900-243
E rp@wko.at
W <https://news.wko.at/rp>

Ihr Zeichen, Ihre Nachricht vom
COM(2017) 489 final
September 13th, 2017

Unser Zeichen, Sachbearbeiter
Rp 630/17/AS/CG
Dr. Artur Schuschnigg

Durchwahl
4014

Datum
November 20th, 2017

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

Statement of the Austrian Federal Economic Chamber, register number: 10405322962-08

Dear Sir or Madam,

On September 13th, 2017 the European Commission published its 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.

Generally spoken the Austrian Federal Economic Chamber appreciate the EC proposal for a common directive on combating fraud and counterfeiting of non-cash means of payment.

We have the following remarks in regard to the document:

After reviewing the proposal, we have come to the conclusion that we do not see increased responsibilities for banks relating to the proposal. One might however note that concerning the reporting of such incidents the vague wording in this context might lead to an enhancement of incident reporting for banks.

For a successful monitoring of financial crimes data sharing must be enhanced.

- Although Austrian banks fully adhere to and support the Austrian banking secrecy law, in the area of the exchange of information it might be considered as an obstacle because financial institutions cannot share data in order to detect criminal patterns. Also the GDPR renders data sharing between institutions difficult.
- The increased cooperation between national law enforcement and competent authorities in this aspect is positive, but in our experts view this does not go far enough to detect criminal

patterns. It successfully detect those the monitoring should also take into consideration cross-border/cross bank elements and should therefore be done by governmental (or related) agencies.

The definition of payment instruments in a more encompassing and robust way and a self-standing offence, aside from using such instruments, to possess, sell, procure for use, import, distribute or otherwise make available a stolen or otherwise unlawfully appropriated counterfeited or falsified payment instrument should not lead to an increasing responsibility, additional reporting duties of businesses and more monitoring.

Remarks in detail:

Chapter 4 of proposal-document "background & rationale"

- Chapter 3.4/point 3: It shall be ensured that no additional reporting line to authorities will be established with implementation of this directive, requirements shall be in line with EBA fraud reporting requirements.

Proposal for directive

- Article 4/para c: Passage "...in order for it to be used fraudulently" should be deleted. It should be independent of intended usage, just the possession of falsified payment instrument shall be punishable as a criminal offence.
- Article 8/point 3: Criminal offences referred to in Article 3, 4 and 5 are punishable by a maximum term of imprisonment of at least three years. Why should criminal offences referred to in Article 6 only be punishable by a maximum term of imprisonment of at least two years? Article 6 refers to substantial preliminary offences, these should also be punishable by a maximum term of imprisonment of at least three years accordingly.
- Article 8/point 4: Criminal offences referred to in Article 6 (e.g. development of malicious toolkits, malware etc.) are usually related to organized crime, therefore also Article 6 should be mentioned here.
- Article 10: We agree to the introduction of rules on the level of penalties. Existing general rules for the punishment of legal persons should be classified as sufficient.
- Article 11: It shall be elaborated clearer that also money muling is designated as a criminal offence. Usually the offenders do not commit the preceding crime in the Member State's territory, neither is the offender one of its nationals, neither causes the offense damage in its territory. However, the money mule is part of the criminal offense as only his assistance (providing his account as vehicle for transferring the forged money) enables the criminal offence to be successful.
- Article 13/point 2: Member states shall not only inform the Commission, Europol and Eurojust of their appointed point of contact, but shall also publish its contact data within the Member States. Furthermore, the Commission, Europol and Eurojust shall also inform the Member States and the Member States' financial institutions and other stakeholders about new unknown trends.

- General remark: Punishability of money mules is missing in our point of view. As money mules become an increasing problem for financial institution and those crimes are committed cross-border, this criminal offence should be regulated in more detail.

Kind regards

A handwritten signature in blue ink, appearing to read 'Leitl', with a stylized, cursive script.

Dr. Christoph Leitl
President

A handwritten signature in blue ink, appearing to read 'A. Hochhauser', with a stylized, cursive script.

Mag. Anna Maria Hochhauser
Secretary-General