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## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) 2019/711 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 17 April 2019****amending Regulation (EU) No 1303/2013 as regards the resources for the specific allocation for the Youth Employment Initiative**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 177 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Regulation (EU) No 1303/2013 of the European Parliament and of the Council <sup>(3)</sup> lays down the common and general rules applicable to the European Structural and Investment Funds.
- (2) The European Union's general budget for the financial year 2019 <sup>(4)</sup> amended the total amount of resources for the Youth Employment Initiative ('YEI') by increasing commitment appropriations for the specific allocation for the YEI in 2019 by EUR 116,7 million in current prices and increasing the total amount of commitment appropriations for the specific allocation for the YEI for the entire programming period to EUR 4 527 882 072 in current prices.
- (3) For 2019, the additional resources of EUR 99 573 877 in 2011 prices are funded by the Global Margin for Commitments within the margin of the multiannual financial framework for the years 2014-2020.
- (4) It is appropriate to provide for specific measures to facilitate the implementation of the YEI, due to the advanced stage of implementation of the operational programmes for the 2014-2020 programming period.
- (5) Given the urgency of amending the programmes which support the YEI in order to include the additional resources for the specific allocation for the YEI before the end of 2019, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (6) Regulation (EU) No 1303/2013 should therefore be amended accordingly,

<sup>(1)</sup> Opinion of 22 March 2019 (not yet published in the Official Journal).

<sup>(2)</sup> Position of the European Parliament of 27 March 2019 (not yet published in the Official Journal) and Decision of the Council of 9 April 2019.

<sup>(3)</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

<sup>(4)</sup> OJ L 67, 7.3.2019, p. 1.

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) No 1303/2013 is amended as follows:

(1) in Article 91, paragraph 1 is replaced by the following:

‘1. The resources for economic, social and territorial cohesion available for budgetary commitment for the period 2014 - 2020 shall be EUR 330 081 919 243 in 2011 prices, in accordance with the annual breakdown set out in Annex VI, of which EUR 325 938 694 233 represents the global resources allocated to the ERDF, the ESF and the Cohesion Fund, and EUR 4 143 225 010 represents a specific allocation for the YEI. For the purposes of programming and subsequent inclusion in the budget of the Union, the amount of resources for economic, social and territorial cohesion shall be indexed at 2 % per year.’;

(2) in Article 92, paragraph 5 is replaced by the following:

‘5. Resources for the YEI shall amount to EUR 4 143 225 010 from the specific allocation for the YEI, of which EUR 99 573 877 constitutes the additional resources for 2019. Those resources shall be complemented by ESF targeted investment in accordance with Article 22 of the ESF Regulation.

Member States who benefit from the additional resources for the specific allocation for the YEI for 2019 as referred to in the first subparagraph may request the transfer of up to 50 % of the additional resources for the specific allocation for the YEI to the ESF in order to constitute the corresponding ESF targeted investment as required by Article 22 of the ESF Regulation. Such a transfer shall be made to the respective categories of region corresponding to the categorisation of the regions eligible for the increase of the specific allocation for the YEI. Member States shall request the transfer in the request for amendment of the programme in accordance with Article 30(1) of this Regulation. Resources allocated to past years may not be transferred.

The second subparagraph of this paragraph shall apply to any additional resources for specific allocation for the YEI increasing the resources to above EUR 4 043 651 133.’;

(3) Annex VI is replaced by the text set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 17 April 2019.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

G. CIAMBA

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## ANNEX

## 'ANNEX VI

## ANNUAL BREAKDOWN OF COMMITMENT APPROPRIATIONS FOR THE YEARS 2014 TO 2020

Adjusted annual profile (including the YEI top-up)

	2014	2015	2016	2017	2018	2019	2020	Total
EUR, 2011 prices	34 108 069 924	55 725 174 682	46 044 910 736	48 027 317 164	48 341 984 652	48 811 933 191	49 022 528 894	330 081 919 243'

**REGULATION (EU) 2019/712 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 17 April 2019**  
**on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Aviation plays a crucial role in the Union's economy and in the everyday lives of Union citizens, and is one of the best performing and most dynamic sectors of the Union economy. It is a strong driver for economic growth, jobs, trade and tourism, as well as connectivity and mobility for businesses and citizens alike, particularly within the Union aviation internal market. Over the past decades, growth in air transport services has significantly contributed to improving connectivity within the Union and with third countries, and has been a significant enabler of the Union economy.
- (2) Union air carriers are at the centre of a global network connecting Europe internally and with the rest of the world. They should be enabled to compete against third countries air carriers in an environment of open and fair competition. This is necessary in order to bring benefits to consumers, to maintain conditions conducive to a high level of Union air connectivity and to ensure transparency, a level-playing field and continuing competitiveness of Union air carriers, as well as high levels of quality employment in the Union aviation industry.
- (3) In a context of increased competition between air transport actors at a global level, fair competition is an indispensable general principle in the operation of international air transport services. This principle is notably acknowledged by the Chicago Convention on International Civil Aviation of 7 December 1944 ('the Chicago Convention') whose preamble recognises the need for international air transport services to be established on the basis of equality of opportunity. Article 44 of the Chicago Convention also states that the International Civil Aviation Organization (ICAO) aims to foster the development of international air transport so as to ensure that every contracting State has a fair opportunity to operate international airlines and to avoid discrimination between contracting States.
- (4) The fair competition principle is well established within the Union where market distortive practices are subject to Union law, which guarantees equal opportunities and fair competition conditions for Union and third-country air carriers operating in the Union.
- (5) However, in spite of continued efforts by the Union and some third countries, principles of fair competition have not yet been defined through specific multilateral rules, in particular, in the context of the ICAO or of World Trade Organization (WTO) agreements, such as the General Agreement on Trade in Services (GATS), and the Annex on Air Transport Services thereto, from the scope of which air transport services have been largely excluded.

<sup>(1)</sup> OJ C 197, 8.6.2018, p. 58.

<sup>(2)</sup> Position of the European Parliament of 14 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

- (6) Efforts should, therefore, be strengthened, in the context of the ICAO and of the WTO, to actively support the development of international rules guaranteeing fair competition conditions between all air carriers.
- (7) Fair competition between air carriers should preferably be addressed in the context of air transport or air services agreements with third countries. However, most air transport or air services agreements concluded between the Union or its Member States, or both, on the one hand, and third countries on the other do not so far provide for adequate rules for fair competition. Efforts should therefore be strengthened to negotiate the inclusion of fair competition clauses in existing and future air transport or air services agreements with third countries.
- (8) Fair competition between air carriers can also be ensured through appropriate Union legislation such as Council Regulation (EEC) No 95/93<sup>(3)</sup> and Council Directive 96/67/EC<sup>(4)</sup>. Insofar as fair competition supposes protection of Union air carriers from certain practices adopted by third countries or third-country carriers, this issue was previously addressed in Regulation (EC) No 868/2004 of the European Parliament and of the Council<sup>(5)</sup>. However, Regulation (EC) No 868/2004 has proved to be ineffective in respect of its underlying general aim of fair competition. This has been particularly the case in respect of some of its rules pertaining to the definition of the practices concerned, other than subsidisation, and to the requirements regarding the initiation and conduct of investigations. In addition, Regulation (EC) No 868/2004 has failed to provide complementarity with air transport or air services agreements to which the Union is a party. Given the number and significance of the amendments that would be necessary to address these issues, it is appropriate to replace Regulation (EC) No 868/2004 by a new act.
- (9) The competitiveness of the Union aviation sector depends on the competitiveness of each part of the aviation value chain and it can only be maintained through a complementary set of policies. The Union should engage in constructive dialogue with third countries in order to find a basis for fair competition. In this respect, effective, proportionate and dissuasive legislation remains necessary in order to maintain conditions conducive to a high level of Union connectivity and to ensure fair competition with third-country air carriers. To that end, the Commission should be entrusted with the power to conduct an investigation and to take measures where necessary. Such measures should be available where practices distorting competition cause injury to Union air carriers.
- (10) Discrimination might include situations where a Union air carrier is subject to differential treatment without objective justification, in particular differential treatment concerning: the prices of, and access to, ground handling services; airport infrastructure; air navigation services; the allocation of slots; administrative procedures, such as those for the allocation of visas for foreign carriers' staff; detailed arrangements for the selling and distribution of air services; or any other 'doing business issues', such as burdensome customs clearance procedures or any other unfair practice of financial or operational nature.
- (11) Proceedings should be concluded without redressive measures under this Regulation where the adoption of the latter would be against the Union interest, giving special consideration to their impact on other persons, notably consumers or undertakings in the Union, as well as to their impact on high levels of connectivity throughout the Union. When assessing the Union interest, special attention should be given to the situation of Member States who rely exclusively or significantly on air transport for their connectivity with the rest of the world, and consistency with other Union policy areas should be ensured. Proceedings should also be concluded without measures where the requirements for such measures are not, or no longer met.
- (12) When determining whether the adoption of redressive measures would be against the Union interest, the Commission should take into account the views of all interested parties. In order to organise consultations with all interested parties and to give them the opportunity to be heard, time limits for providing information or for requesting a hearing should be specified in the notice of initiation of the investigation. Interested parties should be aware of the conditions of disclosure for the information they provide and should be entitled to respond to other parties' comments.

<sup>(3)</sup> Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1).

<sup>(4)</sup> Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).

<sup>(5)</sup> Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community (OJ L 162, 30.4.2004, p. 1).

- (13) In order for the Commission to be adequately informed about possible elements justifying the initiation of an investigation, any Member State, Union air carrier or association of Union air carriers should be entitled to lodge a complaint, which should be addressed within a reasonable time.
- (14) In the interest of ensuring the effectiveness of this Regulation, it is essential that the Commission is able to initiate proceedings on the basis of a complaint presenting prima facie evidence of a threat of injury.
- (15) During the investigation, the Commission should give consideration to the practices distorting competition in the relevant context. Given the variety of possible practices, the practice and its effects might, in some cases, be limited to air transport activities of a city-pair route while, in other cases, it might be relevant to consider the practice and its effects on the wider air transport network.
- (16) It is important to ensure that the investigation can extend to the widest possible range of pertinent elements. To this effect, the Commission should be enabled to carry out investigations in third countries, subject to the consent of the third-country entities concerned and in the absence of an objection by those third countries. For the same reasons and to the same end, Member States should be obliged to support the Commission to the best of their abilities. The Commission should conclude the investigation on the basis of best available evidence.
- (17) During the investigation, the Commission might consider whether the practice distorting competition also constitutes a violation of an international air transport or air services agreement or any other agreement which contains provisions on air transport services to which the Union is a party. If that is the case, the Commission might consider that the practice distorting competition, which also constitutes a violation of an international air transport or air services agreement or any other agreement which contains provisions on air transport services to which the Union is a party, would be more appropriately addressed through the application of the dispute settlement procedures established by that agreement. In such a case, the Commission should be entitled to suspend the investigation initiated under this Regulation. Where the application of the dispute settlement procedures established by the international air transport or air services agreement or any other agreement which contains provisions on air transport services to which the Union is a party fails to sufficiently remedy the situation, it should be possible for the Commission to resume the investigation.
- (18) Aviation agreements and this Regulation should facilitate dialogue with the third countries concerned in order to efficiently resolve disputes and restore fair competition. Where the investigation conducted by the Commission concerns operations covered by an air transport or air services agreement or any other agreement which contains provisions on air transport services concluded with a third country and to which the Union is not a party, it should be ensured that the Commission acts with full knowledge of any proceedings intended, or conducted by the Member State concerned, under such agreement and pertaining to the situation subject to the Commission's investigation. Member States should therefore be obliged to keep the Commission informed accordingly. In such a case, all Member States concerned should have the right to notify the Commission of their intention to address the practice distorting competition exclusively under the dispute settlement procedures contained in their respective air transport or air services agreements or any other agreement which contains provisions on air transport services concluded with a third country and to which the Union is not a party. If all the Member States concerned notify the Commission and no objection has been raised, the Commission should temporarily suspend its investigation.
- (19) If the Member States concerned intend to address the practice distorting competition exclusively by means of dispute settlement procedures applicable under the air transport agreements, air services agreements, or any other agreement which contains provisions on air transport services that they have concluded with the third country concerned in order to fulfil their obligations under these agreements, the Member States should endeavour to proceed expeditiously with the bilateral dispute settlement procedures and they should fully inform the Commission in that respect. Where the practice distorting competition persists and the Commission resumes the investigation, the findings acquired during the application of such an air transport or air services agreement or any other agreement which contains provisions on air transport services, should be taken into account in order to ensure that fair competition is restored as soon as possible.
- (20) Findings acquired during the application of the dispute settlement procedures under an international air transport or air services agreement or any other agreement which contains provisions on air transport services to which the Union or a Member State is a party should be taken into account.

- (21) For reasons of administrative efficiency and in view of a possible termination without measures, it should be possible to suspend the proceedings where the third country or third-country entity concerned has taken decisive steps to eliminate the relevant practice distorting competition or the ensuing injury or threat of injury.
- (22) Findings in respect of injury or threat of injury to the Union air carriers concerned should reflect a realistic assessment of the situation and should therefore be based on all relevant factors, in particular pertaining to the situation of those carriers and to the general situation of the affected air transport market.
- (23) It is necessary to lay down the conditions under which proceedings should be concluded, with or without the imposition of redressive measures.
- (24) Redressive measures in respect of practices distorting competition are aimed at offsetting the injury that occurs due to those practices. They should therefore take the form of financial duties or of other measures which, representing a measurable pecuniary value, are capable of achieving the same effect. In order to comply with the principle of proportionality, measures of any kind should be confined to what is necessary to offset the injury identified. The redressive measure should have regard to the proper functioning of the Union air market and should not result in an undue advantage being given to any air carrier or group of air carriers.
- (25) This Regulation does not aim to impose any standards on third-country air carriers, for instance with regards to subsidies, by introducing more restrictive obligations than those applying to Union carriers.
- (26) Situations investigated under this Regulation and their potential impact on Member States might differ according to the circumstances. It should therefore be possible to apply redressive measures, depending on the case, to one or more third-country air carriers, to a specific geographical area or for a specific period of time, or to set a date in the future from which they are to apply.
- (27) Redressive measures should not consist of the suspension or limitation of traffic rights which are granted by a Member State to a third country.
- (28) In line with the same principle of proportionality, redressive measures in respect of practices distorting competition should remain in force only as long as, and to the extent that, it is necessary in view of such practice and the ensuing injury. Consequently, where circumstances so warrant, a review should be provided for.
- (29) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(6)</sup>.
- (30) The Commission should inform, the European Parliament and the Council of the implementation of this Regulation, on a regular basis, by means of a report. That report should include information about: the application of redressive measures; the termination of investigations without redressive measures; reviews of redressive measures; and cooperation with Member States, interested parties and third countries. That report should be drafted and treated with the appropriate level of confidentiality.
- (31) Since the objective of this Regulation, namely the efficient protection — equal for all Union carriers and based on uniform criteria and procedures — against injury or threat of injury to one or more Union air carriers caused by practices distorting competition, adopted by third countries or third-country entities cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (32) Since this Regulation replaces Regulation (EC) No 868/2004, that Regulation should therefore be repealed,

<sup>(6)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

**GENERAL PROVISIONS**

*Article 1*

**Subject matter**

1. This Regulation lays down rules on the conduct of investigations by the Commission and on the adoption of redressive measures, relating to practices distorting competition between Union air carriers and third-country air carriers and causing, or threatening to cause, injury to Union air carriers.
2. This Regulation applies without prejudice to Article 12 of Regulation (EEC) No 95/93 and Article 20 of Directive 96/67/EC.

*Article 2*

**Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'air carrier' means an air carrier as defined in Regulation (EC) No 1008/2008 of the European Parliament and of the Council <sup>(7)</sup>;
- (2) 'air transport service' means a flight or a series of flights carrying passengers, cargo or mail for remuneration or hire;
- (3) 'interested party' means any natural or legal person, or any official body, whether or not it has its own legal personality, that is likely to have a significant interest in the result of proceedings, including, but not limited to, air carriers;
- (4) 'Member State concerned' means any Member State:
  - (a) which granted the operating licence to the Union air carriers concerned pursuant to Regulation (EC) No 1008/2008; or
  - (b) under whose air transport agreement, air services agreement or any other agreement containing provisions on air transport services with the third country concerned, the Union air carriers concerned operate;
- (5) 'third-country entity' means any natural or legal person, whether profit-making or not, or any official body whether or not it has its own legal personality, which is under the jurisdiction of a third country, whether controlled by a third-country government or not, and is directly or indirectly involved in air transport services or related services or in providing infrastructure or services used to provide air transport services or related services;
- (6) 'practices distorting competition' means discrimination and subsidies;
- (7) 'threat of injury' means a threat for which development into injury is clearly foreseeable, very likely and imminent, and which can be attributed beyond reasonable doubt to an action or decision by a third country or a third-country entity;
- (8) 'discrimination' means differentiation of any kind without objective justification in respect of the supply of goods or services, including public services, employed for the operation of air transport services, or in respect of their treatment by public authorities relevant to such services, including practices relating to air navigation or airport facilities and services, fuel, ground handling, security, computer reservation systems, slot allocation, charges, and the use of other facilities or services employed for the operation of air transport services;

<sup>(7)</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

(9) 'subsidy' means a financial contribution:

(a) granted by a government or other public organisation of a third country in any of the following forms:

- (i) a practice of a government or other public organisation involving a direct transfer of funds, potential direct transfer of funds or liabilities (such as grants, loans, equity infusion, loan guarantees, setting-off of operational losses, or compensation for financial burdens imposed by public authorities);
- (ii) revenue of a government or other public organisation that is otherwise due is foregone or not collected (such as preferential tax treatment or fiscal incentives such as tax credits);
- (iii) a government or other public organisation, including publicly controlled undertakings, provides goods or services, or purchases goods or services;
- (iv) a government or other public organisation makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions referred to in points (i), (ii) and (iii) which would normally be vested in the government and, in practice, in no real sense differs from practices normally followed by governments;

(b) conferring a benefit; and

(c) limited, in law or in fact, to an entity or industry or group of entities or industries within the jurisdiction of the granting authority;

(10) 'Union air carrier' means an air carrier with a valid operating licence granted by a Member State in accordance with Regulation (EC) No 1008/2008;

(11) 'Union air carrier concerned' means the air carrier which is allegedly subject to an injury or a threat of injury pursuant to point (b) of Article 4(1).

### Article 3

#### Union interest

1. A determination of the Union interest for the purpose of point (b) of Article 13(2) shall be made by the Commission based on an appreciation of all the various interests, which are relevant in the particular situation, taken as a whole. When determining the Union interest, priority shall be given to the need to protect consumer interests and to maintain a high level of connectivity for passengers and for the Union. In the context of the whole aviation chain, the Commission may also take into account relevant social factors. The Commission shall also take into consideration the need to eliminate the practice distorting competition, to restore effective and fair competition, and to avoid any distortion to the internal market.

2. The Union interest shall be determined on the basis of an economic analysis by the Commission. The Commission shall base that analysis on information collected from the interested parties. When determining the Union interest, the Commission shall also seek any other relevant information that it considers to be necessary, and shall, in particular, take into consideration the factors set out in Article 12(1). Information shall be taken into account only where it is supported by actual evidence which substantiates its validity.

3. A determination of the Union interest for the purpose of point (b) of Article 13(2) shall only be made where all interested parties have been given the opportunity to make themselves known, to present their views in writing, to submit information to the Commission or to apply to be heard by the Commission, in accordance with the time limits specified in point (b) of Article 4(8). Requests for a hearing shall outline the reasons pertaining to the Union interest in relation to which the parties wish to be heard.

4. The interested parties referred to in paragraphs 2 and 3 of this Article may request that the facts and considerations on which decisions are likely to be based are made available to them. Such information shall be made available to the extent possible, in accordance with Article 8, and without prejudice to any subsequent decision taken by the Commission.

5. The economic analysis referred to in paragraph 2 shall be transmitted, for information, to the European Parliament and to the Council.

## CHAPTER II

## COMMON PROVISIONS REGARDING PROCEEDINGS

## Article 4

**Initiation of proceedings**

1. An investigation shall be initiated following a written complaint submitted by a Member State, one or more Union air carriers or an association of Union air carriers, or on the Commission's own initiative, if there is prima facie evidence of the existence of all the following circumstances:

- (a) a practice distorting competition, adopted by a third country or a third-country entity;
- (b) injury or threat of injury to one or more Union air carriers; and
- (c) a causal link between the alleged practice and the alleged injury or threat of injury.

2. When it receives a complaint pursuant to paragraph 1, the Commission shall inform all Member States.

3. The Commission shall examine, in a timely manner, the accuracy and adequacy of the elements provided in the complaint or at the disposal of the Commission, in order to determine whether there is sufficient evidence to justify the initiation of an investigation in accordance with paragraph 1.

4. The Commission shall decide not to initiate an investigation where the facts put forward in the complaint neither raise a systemic issue nor have a significant impact on one or more Union air carriers.

5. The Commission shall inform the complainant and all Member States where it has decided not to initiate an investigation. The information provided shall contain the reasons for the decision. This information shall also be transmitted to the European Parliament, in accordance with Article 17.

6. Where the evidence presented is insufficient for the purposes of paragraph 1, the Commission shall inform the complainant about such insufficiency within 60 days of the date on which the complaint was lodged. The complainant shall be given 45 days to provide additional evidence. Where the complainant fails to do so within that time limit, the Commission may decide not to initiate the investigation.

7. Subject to paragraphs 4 and 6, the Commission shall decide whether to initiate an investigation in accordance with paragraph 1 within a maximum period of five months of the lodging of the complaint.

8. Subject to paragraph 4, when the Commission considers that there is sufficient evidence to justify initiating an investigation, the Commission shall take the following steps:

- (a) initiate the proceedings and notify the Member States and the European Parliament thereof;
- (b) publish a notice in the *Official Journal of the European Union*; the notice shall announce the initiation of the investigation, indicate the scope of the investigation, the third country or third-country entity which has allegedly been engaged in practices distorting competition and the alleged injury or threat of injury, the Union air carriers concerned, and state the period within which interested parties may make themselves known, present their views in writing, submit information or apply to be heard by the Commission. That period shall be at least 30 days;
- (c) officially notify the representatives of the third country and third-country entity concerned of the initiation of the investigation;
- (d) inform the complainant and the Committee provided for under Article 16 of the initiation of the investigation.

9. Where the complaint is withdrawn prior to the initiation of the investigation, the complaint is considered not to have been lodged. This is without prejudice to the right of the Commission to initiate an investigation on its own initiative in accordance with paragraph 1.

*Article 5***The investigation**

1. Following the initiation of proceedings, the Commission shall begin an investigation.
2. The investigation shall aim to determine whether a practice distorting competition, adopted by a third country or a third-country entity, has caused injury or threat of injury to the Union air carriers concerned.
3. Where, during the course of the investigation referred to in paragraph 2 of this Article, the Commission finds evidence that a practice might lead to a negative impact on air connectivity of a particular region, of a Member State or a group of Member States, and thus to passengers, that evidence shall be taken into account in the determination of the Union interest as referred to in Article 3.
4. The Commission shall seek all the information it considers to be necessary in order to conduct the investigation and shall verify the accuracy of the information it has received or collected with the Union air carriers concerned, or with the third country, an interested party, or the third-country entity concerned.
5. Where the information submitted pursuant to paragraph 4 is incomplete, it shall be taken into account, provided that it is neither false nor misleading.
6. If evidence or information is not accepted, the supplying party shall be informed immediately of the reasons thereof, and shall be granted an opportunity to provide further explanations within a specified time limit.
7. The Commission may request the Member States concerned to support it in the investigation. In particular, upon request by the Commission, they shall take the necessary steps to support the Commission in the investigation by supplying relevant and available information. Upon request by the Commission, any Member State shall endeavour to contribute to relevant verification and analyses.
8. If it appears necessary, the Commission may carry out investigations in the territory of a third country, provided that the third-country entity concerned has given its consent and the government of the third country has been officially notified and has not raised any objection.
9. Parties which have made themselves known within the time limits set out in the notice of initiation, shall be heard if they have made a request for a hearing showing that they are an interested party.
10. Complainants, interested parties, the Member States and the representatives of the third country or third-country entity concerned may consult all information made available to the Commission, except for internal documents that are for the use of the Commission and the administrations of the Union and of the Member States concerned, provided that such information is not confidential within the meaning of Article 8 and provided that they have addressed a request in writing to the Commission.

*Article 6***Suspension**

1. The Commission may suspend the investigation if it appears more appropriate to address the practice distorting competition exclusively under the dispute settlement procedures established by an applicable air transport or air services agreement to which the Union is a party, or to any other agreement which contains provisions on air transport services to which the Union is a party. The Commission shall notify the Member States of the suspension of the investigation.

The Commission may resume the investigation in any of the following cases:

- (a) the procedure conducted under the applicable air transport or air services agreement or any other agreement which contains provisions on air transport services has led to a finding of an infringement by the other party or parties to the agreement which has become final and binding upon such other party or parties, but corrective action has not been taken promptly, or within the period provided for under the relevant procedures;
- (b) the practice distorting competition has not been eliminated within 12 months from the date of suspension of the investigation.

2. The Commission shall suspend the investigation if, within 15 days from the date of the notification of the initiation of the investigation:

- (a) all the Member States concerned referred to in point (4)(b) of Article 2 have notified the Commission of their intention to address the practice distorting competition exclusively under the dispute settlement procedures applicable under the air transport or air services agreement, or any other agreement which contains provisions on air transport services, that they have concluded with the third-country concerned; and
- (b) none of the Member States concerned referred to in point (4)(a) of Article 2 has objected.

In such cases of suspension, Article 7(1) and (2) shall apply.

3. The Commission may resume the investigation in any of the following cases:

- (a) the Member States concerned referred to in point (4)(b) of Article 2 have not initiated the dispute settlement procedure under the relevant international agreement within three months from the date of the notification referred to in point (a) of paragraph 2;
- (b) the Member States concerned referred to in point (4)(b) of Article 2 notify the Commission that the outcome of the dispute settlement procedures referred to in paragraph 2 of this Article has not been enforced correctly and expeditiously;
- (c) all the Member States concerned ask the Commission to resume the investigation;
- (d) the Commission comes to the conclusion that the practice distorting competition has not been eliminated within 12 months of the date of the notification referred to in point (a) of paragraph 2 by the Member States concerned;
- (e) in the cases of urgency foreseen in Article 11(3), if, within nine months of the date of notification referred to in point (a) of paragraph 2 of this Article by the Member States concerned referred to in point (4)(b) of Article 2, the practice distorting competition has not been eliminated; at the request of a Member State concerned, that period may be prolonged by the Commission, in duly justified cases, by a maximum of three months.

#### *Article 7*

### **Cooperation with the Member States in respect of proceedings relevant to cases falling under Chapter III**

1. The Member State concerned shall inform the Commission of all relevant meetings scheduled in the framework of the air transport or air services agreement, or of any provision on air transport services included in any other agreement concluded with the third country concerned, to discuss the issue covered by the investigation. The Member State concerned shall provide the Commission with the agenda and all relevant information permitting an understanding of the topics to be discussed at those meetings.

2. The Member State concerned shall keep the Commission informed of the conduct of any dispute settlement procedure provided for in an air transport or air services agreement or in any provision on air transport services included in any other agreement concluded with the third country concerned and shall, where appropriate, invite the Commission to attend those procedures. The Commission may request further information from the Member State concerned.

#### *Article 8*

### **Confidentiality**

1. The Commission shall, if good cause is shown, treat as confidential any information which is by nature confidential, including but not limited to information the disclosure of which would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom the person supplying the information has acquired the information, or which is provided on a confidential basis by parties to an investigation.

2. Interested parties providing confidential information shall be required to provide non-confidential summaries thereof. Those summaries shall be sufficiently detailed so as to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, the interested parties may indicate that the confidential information cannot be summarised. In such exceptional circumstances, a statement of the reasons why a summary is not possible shall be provided.

3. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested. This paragraph shall not preclude the use of information received in the context of one investigation for the purpose of initiating another investigation in accordance with this Regulation.
4. The Commission and the Member States, including their respective officials, shall not reveal any information of a confidential nature received pursuant to this Regulation, or any information provided on a confidential basis by a party to an investigation, without specific permission from the party submitting such information. Exchanges of information between the Commission and Member States, or any internal document prepared by the authorities of the Union or the Member States, shall not be divulged except where this is specifically provided for in this Regulation.
5. Where it appears that a request for confidentiality is not justified and if the person supplying the information is unwilling either to make the information public or to authorise its disclosure in generalised or summary form, the information concerned may be disregarded.
6. This Article shall not preclude the disclosure of general information by the Union authorities and in particular the disclosure of the reasons on which decisions taken pursuant to this Regulation are based or the disclosure of the evidence relied on by the Union authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure shall take into account the legitimate interest of the parties concerned that their business or government secrets not be divulged.
7. Member States shall take any necessary and appropriate measures intended to ensure the confidentiality of the information that is relevant to the application of this Regulation and provided that they are compatible with its terms.

#### *Article 9*

### **Basis of findings in case of non-cooperation**

Where access to the necessary information is refused or is otherwise not provided within the time limits provided for in this Regulation, or where the investigation is significantly impeded, provisional or final findings, affirmative or negative, may be made on the basis of the facts and evidence available. Where the Commission finds that false or misleading information has been submitted, such information shall be disregarded.

#### *Article 10*

### **Disclosure**

1. The Commission shall disclose to the third country, the third-country entity and the third-country air carrier concerned, as well as the complainant, the interested parties, the Member States and the Union air carriers concerned the essential facts and considerations on the basis of which it intends to adopt redressive measures, or to terminate proceedings without adopting redressive measures, no later than one month before the Committee referred to in Article 16 is convened, in accordance with Article 13(2) or 14(1).
2. The disclosure referred to in paragraph 1 shall not prejudice any subsequent decision which may be taken by the Commission. Where the Commission intends to base such a decision on any additional or different facts and considerations, they shall be disclosed as soon as possible.
3. Additional information provided after disclosure shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 14 days, due consideration being given to the urgency of the matter. A shorter period may be set whenever an additional final disclosure has to be made.

#### *Article 11*

### **Duration of proceedings and suspension**

1. The proceedings shall be concluded within 20 months. That period may be prolonged in duly justified cases. In the case of a suspension of the proceedings as set out in paragraph 4, that period of suspension shall not be counted as part of the duration of the proceedings.

2. The investigation shall be concluded within 12 months. That period may be prolonged in duly justified cases. In the case of a suspension of the investigation as set out in Article 6, that period of suspension shall not be counted as part of the duration of the investigation. Where the period for the investigation is prolonged, the duration of the prolongation shall be added to the total duration of the proceedings laid down in paragraph 1 of this Article.
3. In the case of urgency, that is in situations where, following clear evidence submitted by the complainant or the interested parties, the injury to Union air carriers might be irreversible, the proceedings may be shortened to nine months.
4. The Commission shall suspend the proceedings where the third country or the third-country entity concerned has taken decisive steps to eliminate the practice distorting competition or the injury or threat of injury to the Union air carriers concerned.
5. In the cases referred to in paragraph 4, the Commission shall resume the proceedings if the practice distorting competition, the injury or the threat of injury to the Union air carriers concerned has not been eliminated following a reasonable period of time, which, in any event, shall not be longer than six months.

### CHAPTER III

#### PRACTICES DISTORTING COMPETITION

##### Article 12

#### **Determination of injury or threat of injury**

1. A finding of injury for the purposes of this Chapter shall be based on evidence and shall take account of the relevant factors, in particular:
  - (a) the situation of the Union air carriers concerned, notably in terms of aspects such as frequency of services, utilisation of capacity, network effect, sales, market share, profits, return on capital, investment and employment;
  - (b) the general situation on the affected air transport services markets, notably in terms of level of fares or rates, capacity and frequency of air transport services or use of the network.
2. A determination of a threat of injury shall be based on clear evidence and not merely on allegation, conjecture or remote possibility. The development into injury must be clearly foreseeable, very likely and imminent, and capable of being attributed beyond any reasonable doubt to an action or decision by a third country or a third-country entity.
3. In making a determination regarding the existence of a threat of injury, consideration shall be given to factors such as:
  - (a) the foreseeable evolution of the situation of the Union air carriers concerned, in particular in terms of frequency of services, utilisation of capacity, network effect, sales, market share, profits, return on capital, investment and employment;
  - (b) the foreseeable evolution of the general situation of the potentially affected air transport services markets, in particular in terms of level of fares or rates, capacity and frequency of air transport services or use of the network.

Although none of the factors listed in points (a) and (b), by themselves, is necessarily decisive, the totality of the factors considered shall be such as to lead to the conclusion that a further practice distorting competition is imminent and that, unless action is taken, injury will occur.

4. The Commission shall select an investigation period which includes, but is not limited to, the period during which the injury has allegedly taken place and analyse the relevant evidence over that period.
5. Where the injury or threat of injury to the Union air carriers concerned is caused by factors other than the practice distorting competition, they shall not be attributed to the practice under scrutiny and shall be disregarded.

##### Article 13

#### **Termination without redressive measures**

1. The Commission shall terminate the investigation without redressive measures being adopted where the complaint is withdrawn, unless the Commission continues the investigation on its own initiative.

2. The Commission shall adopt implementing acts, terminating the investigation conducted in accordance with Article 5 without adopting redressive measures where:

- (a) the Commission concludes that any of the following is not established:
  - (i) the existence of a practice distorting competition, adopted by a third country or a third-country entity;
  - (ii) the existence of injury or threat of injury to the Union air carriers concerned;
  - (iii) the existence of a causal link between the injury or threat of injury and the practice considered;
- (b) the Commission concludes that adopting redressive measures in accordance with Article 14 would be against the Union interest;
- (c) the third country or third-country entity concerned has eliminated the practice distorting competition; or
- (d) the third country or third-country entity concerned has eliminated the injury or threat of injury to the Union air carriers concerned.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

3. The decision to terminate the investigation in accordance with paragraph 2 shall be accompanied by a statement of the reasons thereof and shall be published in the *Official Journal of the European Union*.

#### Article 14

##### **Redressive measures**

1. Without prejudice to Article 13, the Commission shall adopt implementing acts, laying down redressive measures if the investigation conducted under Article 5 determines that a practice distorting competition, adopted by a third country or a third-country entity, has caused injury to the Union air carriers concerned.

The implementing acts laying down redressive measures referred to in point (a) of paragraph 3 of this Article shall be adopted in accordance with the examination procedure referred to in Article 16(2).

The implementing acts laying down redressive measures referred to in point (b) of paragraph 3 of this Article shall be adopted in accordance with the examination procedure referred to in Article 16(2) and (3).

2. Without prejudice to Article 13, the Commission may, adopt implementing acts, laying down redressive measures if the investigation conducted under Article 5 determines that a practice distorting competition, adopted by a third country or a third-country entity, causes a threat of injury, in accordance with Article 12(2) and (3), to the Union air carriers concerned. These redressive measures shall not enter into force before the threat of injury has developed into actual injury.

The implementing acts laying down redressive measures referred to in point (a) of paragraph 3 of this Article shall be adopted in accordance with the examination procedure referred to in Article 16(2).

The implementing acts laying down redressive measures referred to in point(b) of paragraph 3 of this Article shall be adopted in accordance with the examination procedure referred to in Article 16(2) and (3).

3. The redressive measures referred to in paragraphs 1 and 2 shall be imposed on the third-country air carriers benefiting from the practice distorting competition and may take the form of either of the following:

- (a) financial duties;
- (b) any operational measure of equivalent or lesser value, such as the suspension of concessions, of services owed or of other rights of the third-country air carrier. Priority shall be given to reciprocal operational measures, provided that they are not contrary to the Union interest, or incompatible with Union law or with international obligations.

4. The redressive measures referred to in paragraphs 1 and 2 shall not exceed what is necessary to offset the injury to the Union air carriers concerned. To this end, those redressive measures may be limited to a specific geographic area or may be limited in time.

5. The redressive measures shall not consist of the suspension or limitation of traffic rights granted by a Member State to a third country under an air transport agreement, an air service agreement or any provision on air transport services included in any other agreement concluded with that third country.
6. The redressive measures referred to in paragraphs 1 and 2 shall not lead the Union or the Member States concerned to violate air transport or air services agreements, or any provision on air transport services included in a trade agreement or any other agreement concluded with the third country concerned.
7. The decision to conclude the investigation with the adoption of redressive measures referred to in paragraphs 1 and 2 shall be accompanied by a statement of the reasons thereof and shall be published in the *Official Journal of the European Union*.

#### Article 15

### Review of redressive measures

1. The redressive measures referred to in Article 14 shall remain in force only as long as, and to the extent that, it is necessary in view of the persistence of the practice distorting competition and the ensuing injury. To that end, the review procedure set out in paragraphs 2, 3 and 4 of this Article shall apply. The Commission shall regularly provide a written report to the European Parliament and to the Council on the effectiveness and impact of redressive measures.
2. Where circumstances so warrant, the need for the continued imposition of redressive measures in their initial form may be reviewed, either on the initiative of the Commission or the complainant, or upon a reasoned request by the Member States concerned, the third country or the third-country entity concerned.
3. In the course of its review, the Commission shall assess the continued existence of the practice distorting competition, of the injury and of the causal link between the practice and the injury.
4. The Commission shall adopt implementing acts, repealing, amending or maintaining, as appropriate, the redressive measures set out in Article 14. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

#### CHAPTER IV

### FINAL PROVISIONS

#### Article 16

### Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

#### Article 17

### Report and information

1. On a regular basis, the Commission shall report to the European Parliament and to the Council on the application and implementation of this Regulation. With due regard to the protection of confidential information within the meaning of Article 8, the report shall include information about the application of the redressive measures, the termination of investigations without redressive measures, reviews of redressive measures and cooperation with Member States, interested parties and third countries.
2. The European Parliament and the Council may invite the Commission to present and explain any issues related to the application of this Regulation.

*Article 18***Repeal**

Regulation (EC) No 868/2004 is repealed. References to the repealed Regulation shall be construed as references to this Regulation.

*Article 19***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 17 April 2019.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

G. CIAMBA

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# DIRECTIVES

## 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Fraud and counterfeiting of non-cash means of payment are threats to security, as they represent a source of income for organised crime and are therefore enablers for other criminal activities such as terrorism, drug trafficking and trafficking in human beings.
- (2) Fraud and counterfeiting of non-cash means of payment also represent obstacles to the digital single market, as they erode consumers' trust and cause direct economic loss.
- (3) Council Framework Decision 2001/413/JHA <sup>(3)</sup> needs to be updated and complemented in order to include further provisions on offences in particular with regard to computer-related fraud, and on penalties, prevention, assistance to victims and cross-border cooperation.
- (4) Significant gaps and differences in Member States' laws in the areas of fraud and of counterfeiting of non-cash means of payment can obstruct the prevention, detection and sanctioning of those types of crime and other serious and organised crimes related to and enabled by them, and make police and judicial cooperation more complicated and therefore less effective, with negative consequences for security.
- (5) Fraud and counterfeiting of non-cash means of payment have a significant cross-border dimension, accentuated by an increasing digital component, which underlines the need for further action to approximate criminal legislation in the areas of fraud and of counterfeiting of non-cash means of payment.
- (6) Recent years have brought not only an exponential increase in the digital economy, but also a proliferation of innovation in many areas, including payment technologies. New payment technologies involve the use of new types of payment instruments, which, while creating new opportunities for consumers and businesses, also increase opportunities for fraud. Consequently, the legal framework must remain relevant and up-to-date against the background of those technological developments, on the basis of a technology-neutral approach.

<sup>(1)</sup> OJ C 197, 8.6.2018, p. 24.

<sup>(2)</sup> Position of the European Parliament of 13 March 2019 (not yet published in the Official Journal) and decision of the Council of 9 April 2019.

<sup>(3)</sup> Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ L 149, 2.6.2001, p. 1).

- (7) Fraud is not only used to fund criminal groups, but also limits the development of the digital single market and makes citizens more reluctant to make online purchases.
- (8) Common definitions in the areas of fraud and of counterfeiting of non-cash means of payment are important to ensure a consistent approach in Member States' application of this Directive and to facilitate information exchange and cooperation between competent authorities. The definitions should cover new types of non-cash payment instruments which allow for transfers of electronic money and virtual currencies. The definition of non-cash payment instruments should acknowledge that a non-cash payment instrument may consist of different elements acting together, for example a mobile payment application and a corresponding authorisation (e.g. a password). Where this Directive uses the concept of a non-cash payment instrument, it should be understood that the instrument puts the holder or user of the instrument in a position to actually enable a transfer of money or monetary value or to initiate a payment order. For example, unlawfully obtaining a mobile payment application without the necessary authorisation should not be considered as an unlawful obtainment of a non-cash payment instrument as it does not actually enable the user to transfer money or monetary value.
- (9) This Directive should apply to non-cash payment instruments only insofar as the instrument's payment function is concerned.
- (10) This Directive should cover virtual currencies only insofar as they can be commonly used for making payments. The Member States should be encouraged to ensure in their national law that future currencies of a virtual nature issued by their central banks or other public authorities will enjoy the same level of protection against fraudulent offences 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. The definition of the term 'digital means of exchange' should acknowledge that digital wallets for transferring virtual currencies may provide, but do not necessarily provide, the features of a payment instrument and should not extend the definition of a payment instrument.
- (11) Sending fake invoices to obtain payment credentials should be considered as an attempt at unlawful appropriation within the scope of this Directive.
- (12) By using criminal law to give legal protection primarily to payment instruments that make use of special forms of protection against imitation or abuse, the intention is to encourage operators to provide such special forms of protection to payment instruments issued by them.
- (13) Effective and efficient criminal law measures are essential to protect non-cash means of payment against fraud and counterfeiting. In particular, a common criminal law approach is needed as regards the constituent elements of criminal conduct that contribute to or prepare the way for the actual fraudulent use of a non-cash means of payment. Conduct such as the collection and possession of payment instruments with the intention to commit fraud, through, for instance, phishing, skimming or directing or redirecting payment service users to imitation websites, and their distribution, for example by selling credit card information on the internet, should thus be made a criminal offence in its own right without requiring the actual fraudulent use of a non-cash means of payment. Such criminal conduct should therefore cover circumstances where possession, procurement or distribution does not necessarily lead to fraudulent use of such payment instruments. However, where this Directive criminalises possession or holding, it should not criminalise mere omission. This Directive should not sanction the legitimate use of a payment instrument, including and in relation to the provision of innovative payment services, such as services commonly developed by fintech companies.
- (14) With regard to the criminal offences referred to in this Directive, the concept of intent applies to all elements constituting those criminal offences in accordance with national law. It is possible for the intentional nature of an act, as well as any knowledge or purpose required as an element of an offence, to be inferred from objective, factual circumstances. Criminal offences which do not require intent should not be covered by this Directive.
- (15) This Directive refers to classical forms of conduct, like fraud, forgery, theft and unlawful appropriation that had already been shaped by national law before the era of digitalisation. The extended scope of this Directive with regard to non-corporeal payment instruments therefore requires the definition of equivalent forms of conduct in the digital sphere, complementing and reinforcing Directive 2013/40/EU of the European Parliament and of the Council<sup>(4)</sup>. The unlawful obtainment of a non-corporeal non-cash payment instrument should be a criminal

<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 (OJ L 218, 14.8.2013, p. 8).

offence, at least when it involves the commission of one of the offences referred to in Articles 3 to 6 of Directive 2013/40/EU or the misappropriation of a non-corporeal non-cash payment instrument. 'Misappropriation' should be understood to mean the action of a person entrusted with a non-corporeal non-cash payment instrument, to knowingly use the instrument without the right to do so, to his own benefit or to the benefit of another. The procurement for fraudulent use of such an unlawfully obtained instrument should be punishable without it being necessary to establish all the factual elements of the unlawful obtainment and without requiring a prior or simultaneous conviction for the predicate offence which led to the unlawful obtainment.

- (16) This Directive also refers to tools which can be used in order to commit the offences referred to in it. Given the need to avoid criminalisation where such tools are produced and placed on the market for legitimate purposes and, though they could be used to commit criminal offences, are therefore not in themselves a threat, criminalisation should be limited to those tools which are primarily designed or specifically adapted for the purpose of committing the offences referred to in this Directive.
- (17) The sanctions and penalties for fraud and counterfeiting of non-cash means of payment should be effective, proportionate and dissuasive throughout the Union. This Directive is without prejudice to the individualisation and application of penalties and execution of sentences in accordance with the circumstances of the case and the general rules of national criminal law.
- (18) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules with regard to fraud and counterfeiting of non-cash means of payment, including a broader definition of offences.
- (19) It is appropriate to provide for more severe penalties where a crime is committed in the framework of a criminal organisation, as defined in Council Framework Decision 2008/841/JHA <sup>(5)</sup>. Member States should not be obliged to provide for specific aggravating circumstances where national law provides for separate criminal offences and this may lead to more severe sanctions. When an offence referred to in this Directive has been committed in conjunction with another offence referred to in this Directive by the same person, and one of those offences de facto constitutes a necessary element of the other, a Member State may, in accordance with general principles of national law, provide that such conduct is regarded as an aggravating circumstance to the main offence.
- (20) Jurisdictional rules should ensure that the offences referred to in this Directive are prosecuted effectively. In general, offences are best dealt with by the criminal justice system of the country in which they occur. Each Member State should therefore establish jurisdiction over offences committed on its territory and over offences committed by its nationals. Member States may also establish jurisdiction over offences that cause damage in their territory. They are strongly encouraged to do so.
- (21) Recalling the obligations under Council Framework Decision 2009/948/JHA <sup>(6)</sup> and Council Decision 2002/187/JHA <sup>(7)</sup>, competent authorities are encouraged in cases of conflicts of jurisdiction to use the possibility of conducting direct consultations with the assistance of the European Union Agency for Criminal Justice Cooperation (Eurojust).
- (22) Given the need for special tools to effectively investigate fraud and counterfeiting of non-cash means of payment, and their relevance to effective international cooperation between national authorities, investigative tools that are typically used for cases involving organised crime or other serious crime should be available to competent authorities in all Member States, if and to the extent that the use of those tools is appropriate and commensurate with the nature and gravity of the offences as defined in national law. In addition, law enforcement authorities and other competent authorities should have timely access to relevant information in order to investigate and prosecute the offences referred to in this Directive. Member States are encouraged to allocate adequate human and financial resources to the competent authorities in order to properly investigate and prosecute the offences referred to in this Directive.

<sup>(5)</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

<sup>(6)</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

<sup>(7)</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

- (23) National authorities investigating or prosecuting offences referred to in this Directive should be empowered to cooperate with other national authorities within the same Member State and their counterparts in other Member States.
- (24) In many cases, criminal activities are behind incidents that should be notified to the relevant national competent authorities under Directive (EU) 2016/1148 of the European Parliament and of the Council <sup>(8)</sup>. Such incidents may be suspected to be of a criminal nature even if there is insufficient evidence of a criminal offence at that stage. In such a context, relevant operators of essential services and digital service providers should be encouraged to share the reports required under Directive (EU) 2016/1148 with law enforcement authorities so as to form an effective and comprehensive response and to facilitate attribution and accountability by the perpetrators for their actions. In particular, promoting a safe, secure and more resilient environment requires systematic reporting of incidents of a suspected serious criminal nature to law enforcement authorities. Moreover, when relevant, computer security incident response teams designated under Directive (EU) 2016/1148 should be involved in law enforcement investigations with a view to providing information, as considered appropriate at national level, and also to providing specialist expertise on information systems.
- (25) Major security incidents as referred to in Directive (EU) 2015/2366 of the European Parliament and of the Council <sup>(9)</sup> may be of criminal origin. Where relevant, payment service providers should be encouraged to share with law enforcement authorities the reports they are required to submit to the competent authority in their home Member State under Directive (EU) 2015/2366.
- (26) A number of instruments and mechanisms exist at Union level to enable the exchange of information among national law enforcement authorities for the purposes of investigating and prosecuting crimes. To facilitate and speed up cooperation among national law enforcement authorities and make sure that those instruments and mechanisms are used to the fullest extent, this Directive should strengthen the importance of the operational points of contact introduced by Framework Decision 2001/413/JHA. It should be possible for Member States to decide to make use of the existing networks of operational points of contact, such as the one set up in Directive 2013/40/EU. The points of contact should provide effective assistance, for example by facilitating the exchange of relevant information and the provision of technical advice or legal information. To ensure the network runs smoothly, each point of contact should be able to communicate quickly with the point of contact in another Member State. Given the significant trans-border dimension of crimes covered by this Directive and in particular the volatile nature of electronic evidence, Member States should be able to deal promptly with urgent requests from the network and provide feedback within eight hours. In very urgent and serious cases, Member States should inform the European Union Agency for Law Enforcement Cooperation (Europol).
- (27) Reporting crime to public authorities without undue delay is of great importance in combating fraud and counterfeiting of non-cash means of payment, as it is often the starting point of criminal investigations. Measures should be taken to encourage reporting by natural and legal persons, in particular financial institutions, to law enforcement and judicial authorities. Those measures can be based on various types of action, including legislative acts containing obligations to report suspected fraud, or non-legislative actions, such as setting up or supporting organisations or mechanisms favouring the exchange of information, or awareness raising. Any such measure that involves processing of the personal data of natural persons should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(10)</sup>. In particular, any transmission of information for the purposes of preventing and combating offences relating to fraud and counterfeiting of non-cash means of payment should comply with the requirements laid down in that Regulation, notably the lawful grounds for processing.
- (28) In order to facilitate the prompt and direct reporting of crime, the Commission should carefully assess the establishment of effective online fraud-reporting systems by Member States and standardised reporting templates at Union level. Such systems could facilitate the reporting of non-cash fraud which often takes place online, thereby strengthening support for victims, the identification and analysis of cybercrime threats and the work and cross-border cooperation of national competent authorities.

<sup>(8)</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

<sup>(9)</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

<sup>(10)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (29) The offences referred to in this Directive often have a cross-border nature. Therefore, combating these offences relies on close cooperation between the Member States. Member States are encouraged to ensure, to the extent appropriate, effective application of mutual recognition and legal assistance instruments in relation to the offences covered by this Directive.
- (30) Investigation and prosecution of all types of fraud and counterfeiting of non-cash means of payment, including those involving small amounts of money, are particularly important in order to combat them effectively. Reporting obligations, information exchange and statistical reports are efficient ways to detect fraudulent activities, especially similar activities that involve small amounts of money when considered separately.
- (31) Fraud and counterfeiting of non-cash means of payment can result in serious economic and non-economic consequences for its victims. Where such fraud involves, for example, identity theft, its consequences are often aggravated because of reputational and professional damage, damage to an individual's credit rating and serious emotional harm. Member States should adopt assistance, support and protection measures aimed to mitigate those consequences.
- (32) Often a considerable amount of time can pass before victims find out that they have suffered a loss from fraud and counterfeiting offences. During that time a spiral of interlinked crimes might develop, thereby aggravating the negative consequences for the victims.
- (33) Natural persons who are victims of fraud related to non-cash means of payment have rights conferred under Directive 2012/29/EU of the European Parliament and of the Council <sup>(1)</sup>. Member States should adopt measures of assistance and support to such victims which build on the measures required by that Directive but respond more directly to the specific needs of victims of fraud related to identity theft. Such measures should include, in particular, the provision of a list of dedicated institutions covering different aspects of identity-related crime and victim support, specialised psychological support and advice on financial, practical and legal matters, as well as assistance in receiving available compensation. Member States should be encouraged to set up a single national online information tool to facilitate access to assistance and support for victims. Specific information and advice on protection against the negative consequences of such crime should be offered to legal persons as well.
- (34) This Directive should provide for the right for legal persons to access information in accordance with national law about the procedures for making complaints. This right is necessary in particular for small and medium-sized enterprises and should contribute to creating a friendlier business environment for small and medium-sized enterprises. Natural persons already benefit from this right under Directive 2012/29/EU.
- (35) Member States should, with the assistance of the Commission, establish or strengthen policies to prevent fraud and counterfeiting of non-cash means of payment and measures to reduce the risk of such offences occurring by means of information and awareness-raising campaigns. In this context, Member States could develop and keep up to date a permanent online awareness-raising tool with practical examples of fraudulent practices, in a format that is easy to understand. That tool could be linked to or be part of the single national online information tool for victims. Member States could also put in place research and education programmes. Special attention should be paid to the needs and interests of vulnerable persons. Member States are encouraged to ensure that sufficient funding is made available for such campaigns.
- (36) It is necessary to collect statistical data on fraud and counterfeiting of non-cash payment instruments. Member States should therefore be obliged to ensure that an adequate system is in place for the recording, production and provision of existing statistical data on the offences referred to in this Directive.
- (37) This Directive aims to amend and expand the provisions of Framework Decision 2001/413/JHA. Since the amendments to be made are substantial in number and nature, Framework Decision 2001/413/JHA should, in the interests of clarity, be replaced in its entirety for the Member States bound by this Directive.

<sup>(1)</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

- (38) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (39) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to TEU and to TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (40) Since the objectives of this Directive, namely to subject fraud and counterfeiting of non-cash means of payment to effective, proportionate and dissuasive criminal penalties and to improve and encourage cross-border cooperation both between competent authorities and between natural and legal persons and competent authorities, cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale or effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (41) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of the legality and proportionality of criminal offences and penalties, as well as the right not to be tried or punished twice in criminal proceedings for the same criminal offence. This Directive seeks to ensure full respect for those rights and principles and should be implemented accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### TITLE I

### SUBJECT MATTER AND DEFINITIONS

#### *Article 1*

#### **Subject matter**

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the areas of fraud and counterfeiting of non-cash means of payment. It facilitates the prevention of such offences, and the provision of assistance to and support for victims.

#### *Article 2*

#### **Definitions**

For the purpose of this Directive, the following definitions apply:

- (a) 'non-cash payment instrument' means a non-corporeal or corporeal protected device, object or record, or a combination thereof, other than legal tender, and which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange;
- (b) 'protected device, object or record' means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature;
- (c) 'digital means of exchange' means any electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council <sup>(12)</sup> or virtual currency;

<sup>(12)</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

- (d) 'virtual currency' means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of a currency or money, but is accepted by natural or legal persons as a means of exchange, and which can be transferred, stored and traded electronically;
- (e) 'information system' means information system as defined in point (a) of Article 2 of Directive 2013/40/EU;
- (f) 'computer data' means computer data as defined in point (b) of Article 2 of Directive 2013/40/EU;
- (g) 'legal person' means an entity having legal personality under the applicable law, except for states or public bodies in the exercise of state authority and for public international organisations.

## 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;
- (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.

*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.

## TITLE III

**JURISDICTION AND INVESTIGATION***Article 12***Jurisdiction**

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 8 where one or more of the following apply:

- (a) the offence is committed in whole or in part on its territory;
- (b) the offender is one of its nationals.

2. For the purposes of point (a) of paragraph 1, an offence shall be considered to have been committed in whole or in part on the territory of a Member State where the offender commits the offence when physically present on that territory and irrespective of whether the offence is committed using an information system on that territory.

3. A Member State shall inform the Commission where it decides to establish jurisdiction over an offence referred to in Articles 3 to 8 committed outside its territory, including where:

- (a) the offender has his or her habitual residence in its territory;
- (b) the offence is committed for the benefit of a legal person established in its territory;
- (c) the offence is committed against one of its nationals or a person who is a habitual resident in its territory.

*Article 13***Effective investigations and cooperation**

1. Member States shall take the necessary measures to ensure that investigative tools, such as those which are used in countering organised crime or in other serious crime cases, are effective, proportionate to the crime committed and available to the persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 3 to 8.
2. Member States shall take the necessary measures to ensure that, where national law obliges natural and legal persons to submit information regarding offences referred to in Articles 3 to 8, such information reaches the authorities investigating or prosecuting those offences without undue delay.

## TITLE IV

**EXCHANGE OF INFORMATION AND REPORTING OF CRIME***Article 14***Exchange of information**

1. For the purpose of exchanging information relating to the offences referred to in Articles 3 to 8, Member States shall ensure that they have an operational national point of contact available 24 hours a day, seven days a week. Member States shall also ensure that they have procedures in place so that urgent requests for assistance are promptly dealt with and the competent authority replies within eight hours of receipt, by at least indicating whether the request will be answered and the form of such an answer and the estimated time within which it will be sent. Member States may decide to make use of the existing networks of operational points of contact.
2. Member States shall inform the Commission, Europol and Eurojust of their appointed point of contact referred to in paragraph 1. They shall update that information as necessary. The Commission shall forward that information to the other Member States.

*Article 15***Reporting of crime**

1. Member States shall take the necessary measures to ensure that appropriate reporting channels are made available in order to facilitate reporting of the offences referred to in Articles 3 to 8 to law enforcement authorities and other competent national authorities without undue delay.
2. Member States shall take the necessary measures to encourage financial institutions and other legal persons operating in their territory to report suspected fraud to law enforcement authorities and other competent authorities without undue delay, for the purpose of detecting, preventing, investigating or prosecuting offences referred to in Articles 3 to 8.

*Article 16***Assistance and support to victims**

1. Member States shall ensure that natural and legal persons who have suffered harm as a result of any of the offences referred to in Articles 3 to 8 being committed by misusing personal data, are:
  - (a) offered specific information and advice on how to protect themselves against the negative consequences of the offences, such as reputational damage; and
  - (b) provided with a list of dedicated institutions that deal with different aspects of identity-related crime and victim support.
2. 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 referred to in Articles 3 to 8 being committed by misusing personal data.

3. Member States shall ensure that legal persons that are victims of the offences referred to in Articles 3 to 8 of this Directive are offered the following information without undue delay after their first contact with a competent authority:
- the procedures for making complaints with regard to the offence and the victim's role in such procedures;
  - the right to receive information about the case in accordance with national law;
  - the available procedures for making complaints if the competent authority does not respect the victim's rights in the course of criminal proceedings;
  - the contact details for communications about their case.

#### *Article 17*

### **Prevention**

Member States shall take appropriate action, including through the internet, such as information and awareness-raising campaigns and research and education programmes, aimed to reduce overall fraud, raise awareness and reduce the risk of becoming a victim of fraud. Where appropriate, Member States shall act in cooperation with stakeholders.

#### *Article 18*

### **Monitoring and statistics**

- By 31 August 2019, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Directive. The monitoring programme shall set out the means by which and the intervals at which the necessary data and other evidence will be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting, sharing and analysing the data and other evidence.
- Member States shall ensure that a system is in place for the recording, production and provision of anonymised statistical data measuring the reporting, investigative and judicial phases involving the offences referred to in Articles 3 to 8.
- The statistical data referred to in paragraph 2 shall, as a minimum, cover existing data on the number of offences referred to in Articles 3 to 8 registered by the Member States and on the number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 7.
- Member States shall transmit the data collected pursuant to paragraphs 1, 2 and 3 to the Commission on an annual basis. The Commission shall ensure that a consolidated review of the statistical reports is published each year and submitted to the competent specialised Union agencies and bodies.

#### *Article 19*

### **Replacement of Framework Decision 2001/413/JHA**

Framework Decision 2001/413/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of that Framework Decision into national law.

With regard to Member States bound by this Directive, references to Framework Decision 2001/413/JHA shall be construed as references to this Directive.

#### *Article 20*

### **Transposition**

- Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 May 2021. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

- Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

*Article 21***Evaluation and reporting**

1. The Commission shall, by 31 May 2023, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this Directive. Member States shall provide the Commission with the necessary information for the preparation of that report.
2. The Commission shall, by 31 May 2026, carry out an evaluation of the impact of this Directive on combating fraud and counterfeiting of non-cash means of payment, as well as on fundamental rights, and submit a report to the European Parliament and to the Council. Member States shall provide the Commission with necessary information for the preparation of that report.
3. In the context of the evaluation referred to in paragraph 2 of this Article, the Commission shall also report on the necessity, feasibility and effectiveness of creating national secure online systems to allow victims to report any of the offences referred to in Articles 3 to 8, as well as of establishing a standardised Union reporting template to serve as a basis for Member States.

*Article 22***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 17 April 2019.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
G. CIAMBA

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## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2019/714

of 7 March 2019

replacing Annex I and amending Annexes II and VII to Regulation (EU) No 211/2011 of the European Parliament and of the Council on the citizens' initiative

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative <sup>(1)</sup> and in particular Article 16 thereof,

Whereas:

- (1) Article 7(2) of Regulation (EU) No 211/2011 provides that, in at least one quarter of Member States, the minimum number of signatories of a citizens' initiative should correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by 750. Those minimum numbers are set out in Annex I to that Regulation.
- (2) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, that is to say from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (3) On 28 June 2018 the European Council adopted European Council Decision (EU) 2018/937 <sup>(2)</sup> establishing the composition of the European Parliament. That Decision, which entered into force on 3 July 2018, sets out the number of representatives in the European Parliament elected in each Member State for the 2019-2024 parliamentary term, which begins on 2 July 2019.

In order to mirror these rules with regard to the minimum number of signatories set out in Annex I to Regulation (EU) No 211/2011, it is appropriate to amend Annex I to Regulation (EU) No 211/2011. That amendment should start to apply on 2 July 2019, when the 2019-2024 parliamentary term begins. However, should the two-year period referred to in Article 50(3) of the Treaty on European Union be extended beyond that date, the amendment should become applicable after the extended period has expired. For reasons of clarity, Annex I should be replaced.

- (4) Article 4(1) of Regulation (EU) No 211/2011 provides that the organisers of a proposed citizens' initiative are required to register it with the Commission, providing the information set out in Annex II to that Regulation.

<sup>(1)</sup> OJ L 65, 11.3.2011, p. 1.

<sup>(2)</sup> European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament (OJ L 165 I, 2.7.2018, p. 1).

- (5) Article 9 of Regulation (EU) No 211/2011 provides that for the submission of the citizens' initiative to the Commission, the organisers are to make use of the form set out in Annex VII to that Regulation.
- (6) The forms in Annexes II and VII to Regulation (EU) No 211/2011 contain a footnote, providing information on how initiative organisers' and sponsors' personal data are processed. The information in that footnote needs to be shortened and simplified, in order to avoid confusion with the privacy statement used for the data processing concerned.
- (7) The text of the footnotes refers to Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(3)</sup>. Regulation (EC) No 45/2001 was repealed and replaced as of 11 December 2018 by Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(4)</sup>. The reference to Regulation (EC) No 45/2001 should thus be removed from those footnotes.
- (8) Annex I to Regulation (EU) No 211/2011 should therefore be replaced and Annexes II and VII to that Regulation should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EU) No 211/2011 is amended as follows:

- (1) Annex I is replaced by the text set out in the Annex to this Regulation;
- (2) in Annex II, the text in the footnote <sup>(1)</sup> is replaced by the following:

'<sup>(1)</sup> Only the full names of the organisers, the email addresses of the contact persons and information relating to the sources of support and funding, will be made available to the public on the Commission's online register.

Data subjects are entitled to object to the publication of their personal data on compelling legitimate grounds relating to their particular situation.';

- (3) in Annex VII, the text in the footnote <sup>(1)</sup> is replaced by the following:

'<sup>(1)</sup> Only the full names of the organisers, the email addresses of the contact persons and information relating to the sources of support and funding, will be made available to the public on the Commission's online register.

Data subjects are entitled to object to the publication of their personal data on compelling legitimate grounds relating to their particular situation.'.

#### Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Point 1 of Article 1 shall apply from 2 July 2019 or from the day following that on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) of the Treaty on European Union, whichever is the later.

<sup>(3)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>(4)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 March 2019.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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## ANNEX

## MINIMUM NUMBER OF SIGNATORIES PER MEMBER STATE

Belgium	15 750
Bulgaria	12 750
Czech Republic	15 750
Denmark	10 500
Germany	72 000
Estonia	5 250
Ireland	9 750
Greece	15 750
Spain	44 250
France	59 250
Croatia	9 000
Italy	57 000
Cyprus	4 500
Latvia	6 000
Lithuania	8 250
Luxembourg	4 500
Hungary	15 750
Malta	4 500
Netherlands	21 750
Austria	14 250
Poland	39 000
Portugal	15 750
Romania	24 750
Slovenia	6 000
Slovakia	10 500
Finland	10 500
Sweden	15 750









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