

Nru. 227

25. 06. 2021

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Edward Zammit Lewis, M.P., Ministru għall-Ġustizzja, l-Ugwaljanza u l-Governanza, u moqri għall-Ewwel darba fis-Seduta tal-1 ta' Ġunju 2021.

A BILL introduced by the Honourable Edward Zammit Lewis, M.P., Minister for Justice, Equality and Governance, and read the First time at the Sitting of the 1st June 2021.

ATT sabiex ikompli jemenda l-Kodiċi Kriminali, Kap. 9.

AN ACT to further amend the Criminal Code, Cap. 9.

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI
msejjah

ATT sabiex ikompli jemenda l-Kodiċi Kriminali, Kap. 9.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2021 li jemenda l-Kodiċi Kriminali (Emenda Nru 5) u dan l-Att għandu jinqara u jinftiehem bħala waħda mal-Kodiċi Kriminali, hawn iżjed 'il quddiem msejjah "il-Kodiċi".

Titolu fil-qosor.

Kap. 9.

2. Minnufih wara l-artikolu 301C tal-Kodiċi għandu jiżdied is-Sub-titolu ġdid:

Iżid Sub-titolu ġdid mal-Kodiċi.

"Sub-titolu IIIA

**FUQ FRODI U FALSIFIKAZZJONI TA' MEZZI
TA' PAGAMENT MHUX BI FLUS KONTANTI**

310D. Il-miżuri li jipprovdi għalihom dan is-Sub-titolu jittrasponu id-dispożizzjonijiet tad-Direttiva Direttiva (UE) 2019/713 tal-Parlament Ewropew u tal-Kunsill tas-17 ta' April 2019 dwar il-ġlieda kontra l-frodi u l-falsifikazzjoni ta' mezzi ta' pagament mhux bi flus kontanti u li tissostitwixxi d-Deċiżjoni Qafas tal-Kunsill 2001/413/ĠAI.

Skop.

310E. Għall-finijiet ta' dan is-Sub-titolu, sakemm ir-rabta tal-kliem ma teħtieġx xort'oħra:

(a) "strument ta' pagament mhux bi flus kontanti" tfisser apparat, oġġett jew rekord protett ta' natura korporali jew mhux korporali, jew kombinazzjoni tagħhom, minbarra valuta legali, li, waħdu jew flimkien ma' proċedura jew sett ta' proċeduri, jippermetti li d-detentur jew l-utent jittrasferixxi flus jew valur

monetarju, inkluż permezz ta' mezzi ta' skambju diġitali;

(b) "apparat, oġġett jew rekord protett" tfisser apparat, oġġetti jew rekord protett kontra imitazzjoni jew użu frodulent, pereżempju permezz ta' disinn, kodiċi jew firma;

(c) "mezz ta' skambju diġitali" tfisser kwalunkwe tip ta' flus elettronici kif imfissra fl-artikolu 2 tal-Att dwar Istituzzjonijiet Finanzjarji, jew munita virtwali;

(d) "munita virtwali" tfisser rappreżentazzjoni diġitali ta' valur li mhijiex maħruġa jew garantita minn bank ċentrali jew awtorità pubblika, u lanqas neċessarjament ma hi marbuta ma' munita stabbilita legalment u ma għandhiex status legali ta' munita jew flus, iżda hija aċċettata minn persuni fiżiċi jew ġuridiċi, bħala mezz ta' skambju, u li jista' jiġi trasferit, maħzun u negozjat b'mod elettroniku;

(e) "sistema tal-informazzjoni" għanda jkollha l-istess tifsira li għanda fis-subartikolu (1) tal-artikolu 337B;

(f) "data tal-kompjuter" għanda jkollha l-istess tifsira li għanda fis-subartikolu (1) tal-artikolu 337B;

(g) "persuna ġuridika" tfisser entità li għandha personalità ġuridika taħt il-liġi applikabbli, hliief Stati jew korpi pubbliċi fl-eżerċizzju ta' awtorità statali u organizzazzjonijiet internazzjonali pubbliċi.

Użu frodulent
ta' strumenti ta'
pagament mhux
bi flus kontanti.

310F. Kull persuna li intenzjonalment tikkommetti xi wiehed mill-atti li ġejjin għandha tkun ħatja ta' reat kontra dan l-artikolu:

(a) l-użu frodulent ta' strument ta' pagament mhux bi flus kontanti li jkun misruq jew b'xi mod ieħor approprjat jew miksub illegalment;

(b) l-użu frodulent ta' strument ta' pagament mhux bi flus kontanti li jkun kontrafatt jew iffalsifikat.

(c) is-serq jew xi tip ta' approprjazzjoni illegali oħra ta' strument korporali ta' pagament mhux bi flus kontanti;

(d) il-kontrafazzjoni jew falsifikazzjoni frodulent ta' strument korporali ta' pagament mhux bi flus kontanti;

(e) il-pussess ta' strument korporali ta' pagament mhux bi flus kontanti li jkun misruq jew approprjat illegalment b'xi mod ieħor, jew kontrafatt jew iffalsifikat bil-għan li jintuza

b'mod frodulent;

(f) l-akkwist għall-użu personali jew għal persuna oħra, inklużi r-riċezzjoni, l-appropriazzjoni, ix-xiri, it-trasferiment, l-importazzjoni, l-esportazzjoni, il-bejgħ, it-trasport jew id-distribuzzjoni ta' strument korporali ta' pagament mhux bi flus kontanti li jkun misruq, kontrafatt jew iffalsifikat bil-għan li jintuża b'mod frodulent;

(g) il-kisba illegali ta' strument mhux korporali ta' pagament mhux bi flus kontanti, tal-inqas meta din il-kisba tkun involviet it-twettiq ta' mill-inqas wieħed mir-reati msemmija fis-subartikolu (1) tal-artikolu 337Ċ jew misappropriazzjoni ta' strument mhux korporali ta' pagament mhux bi flus kontanti;

(h) il-kontrafazzjoni jew il-falsifikazzjoni frodulent ta' strument mhux korporali ta' pagament mhux bi flus kontanti;

(i) iż-żamma ta' strument mhux korporali ta' pagament mhux bi flus kontanti miksub illegalment, kontrafatt jew iffalsifikat għal użu frodulent, tal-inqas jekk l-origini illegali tkun magħrufa fil-ħin taż-żamma tal-istrument;

(j) l-akkwist għall-użu personali jew għal persuna oħra, inkluż il-bejgħ, it-trasferiment jew id-distribuzzjoni, jew it-tqegħid għad-dispożizzjoni ta' strument mhux korporali ta' pagament mhux bi flus kontanti li jkun miksub illegalment, kontrafatt jew iffalsifikat bil-għan li jintuża b'mod frodulent;

(k) meta ssir azzjoni li twassal għal, trasferiment ta' flus, valur monetarju jew munita virtwali u b'hekk jiġi kkawżat it-telf illegali ta' proprjetà għal persuna oħra bil-għan li jittiehed vantaġġ illegali għat-trasgressur jew għal terza persuna, meta jitwettaq intenzjonalment permezz ta':

(i) mingħajr dritt, it-tfixkil jew l-interferenza tal-funzjonament ta' sistema ta' informazzjoni;

(ii) mingħajr dritt, l-introduzzjoni, it-tibdil, it-tħassir, it-trasmissjoni jew it-trażżin ta' data tal-kompjuter;

(l) il-produzzjoni, l-akkwist għall-użu personali jew għal persuna oħra, inklużi l-importazzjoni, l-esportazzjoni, il-bejgħ, it-trasport jew id-distribuzzjoni, jew it-tqegħid għad-dispożizzjoni ta' apparat jew ta' strument, ta' data tal-kompjuter jew ta' kwalunkwe mezz ieħor iddisinjat primarjament jew adattat speċifikament għall-fini tat-twettiq ta' kwalunkwe wieħed

C 6008

mir-reati msemmija fil-paragrafi (ċ), (d), (g), (h) u (k) ta' dan l-artikolu, bl-intenzjoni li dawn il-mezzi jintużaw.

Pieni.

310G. (1) Min jikkommetti kwalunkwe mir-reati kontemplati fil-paragrafi (a), (b), (ċ), (d), (g), (h) u (l) tal-artikolu 310F jeġel, meta jinstab ħati, il-piena ta' prigunerija għal mhux iktar minn sentejn (2).

(2) Min jikkommetti kwalunkwe mir-reati kontemplati fil-paragrafi (e), (f), (i) u (j) tal-artikolu 310F jeġel, meta jinstab ħati, il-piena ta' prigunerija għal mhux iktar minn sena.

(3) Min jikkommetti r-reat ikkontemplat fil-paragrafu (k) tal-artikolu 310F jeġel, meta jinstab ħati, il-piena ta' prigunerija ta' mhux iktar minn tlett (3) snin.

(4) Min jikkommetti kwalunkwe mir-reati kontemplati fil-paragrafi (a) sa (k) tal-artikolu 310F u dawk ir-reati jitwettqu fil-qafas ta' organizzazzjoni kriminali, kif imfisser fid-Deċiżjoni Kwadru 2008/841/ĠAI tal-24 ta' Ottubru 2008 dwar il-ġlieda kontra l-kriminalità organizzata, jeġel, meta jinstab ħati, l-piena ta' mhux iktar minn ħames (5) snin.

Għajnuma u assistenza.

310H. (1) Kull min jgħin, jassisti jew iġieġel li jsir xi reat taht dan is-Sub-titolu jkun ħati ta' reat u jeġel meta jinstab ħati l-piena stabbilita għal dak ir-reat li jkun għen, assista jew instiga u l-artikoli 42 u 42 għandhom japplikaw *mutatis mutandis*.

(2) Tentattiv biex jitwettaq reat imsemmi f'dan is-Sub-Titolu għandu jkun punibbli bħala reat kriminali, u l-artikolu 41 għandu japplika *mutatis mutandis*.

Responsabbiltà ta' persuni ġuridici.

310I. (1) Minkejja kwalunkwe dispożizzjoni f'dan il-Kodiċi, meta reat kontemplat fl-artikolu 310F jew fl-artikolu 310H) isir għall-benefiċċju persuna ġuridika minn kwalunkwe persuna li taġixxi, waħedha jew bħala parti minn organu tal-persuna ġuridika, u li jkollha pożizzjoni ta' tmexxija fi ħdan il-persuna ġuridika, abbażi ta' waħda minn dawn li ġejjin:

(a) setgħa ta' rappreżentanza tal-persuna ġuridika;

(b) awtorità li tiegħu deċiżjonijiet fisem il-persuna ġuridika;

(ċ) awtorità li teżerċita kontroll fi ħdan il-persuna ġuridika;

(d) dik il-persuna li hekk taġixxi, meta tinstab ħatja, teġel multa ta' mhux inqas minn għoxrin elf euro (€20,000) u ta'

mhux iktar minn mitejn elf euro (€200,000).

(2) Is-subartikolu preċedenti għandu japplika *mutatis mutandis* fejn in-nuqqas ta' superviżjoni jew kontroll minn xi persuna msemmija fl-isemmi subartikolu tkun ħalliet it-twettiq tar-reati imsemmija fl-artikolu 310F jew l-artikolu 310H għal benefiċċju ta' persuna ġuridika.

(3) Ir-responsabbiltà ta' persuni ġuridiċi skont is-subartikoli (1) u (2) ma għandhiex teskludi proċedimenti kriminali kontra persuni fiżiċi li jkunu wettqu jew istigaw, jew kompliċi fi, kwalunkwe wieħed mir-reati msemmija fl-artikoli 310F jew fl-artikolu 310H.

(4) Mingħajr preġudizzju u b'żieda ma kwalunkwe piena li tista' tingħata taht is-subartikoli preċedenti, kwalunkwe persuna ġuridika li ir-reat isir għal benefiċċju tagħha kif isemmi fihom tista, jekk tinstab hatja, tehel kwalunkwe jew is-sanzjonijiet kollha li ġejjin:

(a) l-esklużjoni mid-dritt għal benefiċċji jew għajjnuna pubblika;

(b) l-esklużjoni temporanja mill-aċċess għal finanzjament pubbliku, inklużi proċeduri ta' sejhiet għall-offerti, għotjiet u konċessjonijiet;

(ċ) l-iskwalifika temporanja jew permanenti mill-prattika ta' attivitajiet kummerċjali;

(d) it-tqegħid taht sorveljanza tal-qorti;

(e) l-istralċ ġudizzjarju;

(f) l-għeluq temporanju jew permanenti ta' stabbilimenti li jkunu ntużaw biex jitwettaq ir-reat.

310J. (1) Mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 5, il-qrati ta' Malta għandhom ukoll ikollhom ġurisdizzjoni fuq ir-reati kontemplati fl-artikolu 310F jew fl-artikolu 310H fejn ikun applikabbli wieħed jew iktar minn dawn li ġejjin:- Ġurisdizzjoni.

(a) ir-reat jitwettaq kompletament jew parzjalment fit-territorju ta' Malta;

(b) l-akkużat ikun wieħed miċ-ċittadini ta' Malta jew b'residenza permanenti f'Malta;

(ċ) l-akkużat ikollu r-residenza abitwali tiegħu fit-territorju ta' Malta;

C 6010

(d) ir-reat ikun twettaq għall-benefiċċju ta' persuna ġuridika stabbilita fit-territorju ta' Malta;

(e) ir-reat ikun twettaq kontra wiehed miċ-ċittadini ta' Malta jew kontra persuna li għandha r-residenza abitwali fit-territorju ta' Malta.

(2) Għall-finijiet tal-paragrafu (a) tas-subartikolu (1), reat għandu jittqies bħala li twettaq kompletament jew parzjalment fit-territorju ta' Malta fejn l-akkużat wettaq ir-reat meta kien fizikament preżenti f'dak it-territorju u irrISPETTIVAMENT jekk ir-reat ikunx twettaq bl-użu ta' sistema ta' informazzjoni jew le f'dak it-territorju.

Setgħa biex isiru regolamenti taht dan is-Sub-titolu.

310K. Il-Ministru responsabbli għall-ġustizzja jista jagħmel regolament sabiex jagħti effett aħjar lid-dispożizzjonijiet ta' dan is-Sub-titolu."

Għanijiet u r-Raġunijiet

L-għanijiet u r-raġunijiet ta'dan l-Abbozz huma sabiex issir transpożizzjoni sħiħa tal-artikoli relattivi tad-Direttiva (UE) 2019/713 tal-Parlament Ewropew u tal-Kunsill tas-17 ta' April 2019 dwar il-ġlieda kontra l-frodi u l-falsifikazzjoni ta' mezzi ta' pagament mhux bi flus kontanti u li tissostitwixxi d-Deciżjoni Qafas tal-Kunsill 2001/413/ĠAI.

**A BILL
entitled**

An ACT to amend further amend the Criminal Code, Cap. 9.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and commencement.

1. The short title of this Act is the Criminal Code (Amendment No. 5) Act, 2021 and this Act shall be construed as one with the Criminal Code, hereinafter referred to as "the Code".

2. Immediately after article 310C of the Code there shall be added the following new Sub-title:

Addition of new Sub-title to the Code.

"Sub-title IIIA

OF FRAUD AND COUNTERFEITING OF
NON-CASH MEANS OF PAYMENT

310D. The measures provided for in this Sub-title transpose the provisions of 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.

Scope.

310E. For the purposes of this Sub-title, unless the context otherwise requires:

Interpretation.

(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;

C 6012

(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;

Cap. 376

(c) "digital means of exchange" means any electronic money as defined in article 2 of the Financial Institutions Act or virtual currency;

(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" shall have the same meaning as is assigned to it in sub-article (1) of article 337B;

(f) "computer data" shall have the same meaning as as is assigned to it in sub-article (1) of article 337B;

(g) "legal person" means an entity having legal personality under the applicable law, excluding states or public bodies in the exercise of state authority and public international organisations.

Fraudulent use
of non-cash
payment
instruments and
information
systems.

310F. Any person who intentionally commits any of the following acts shall be guilty of an offence against this article:

(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;

(c) the theft or other unlawful appropriation of a corporeal non-cash payment instrument;

(d) the fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument;

(e) the possession of a stolen or otherwise unlawfully appropriated, or of a counterfeit or falsified corporeal non-cash payment instrument for fraudulent use;

(f) 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;

(g) the unlawful attainment of a non-corporeal non-cash payment instrument when this attainment has involved the commission of at least one of the offences referred to in sub-article (1) of article 337C, or misappropriation of a non-corporeal non-cash payment instrument;

(h) the fraudulent counterfeiting or falsification of a non-corporeal non-cash payment instrument;

(i) 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;

(j) 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;

(k) 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, when such action is intentionally committed either by:

(i) without right, hindering or interfering with the functioning of an information system; or

(ii) without right, introducing, altering, deleting, transmitting or suppressing computer data;

(l) producing, procuring 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 paragraphs (c), (d), (g), (h) and (k), with the intention that such means be used.

310G. (1) Whosoever commits any offence referred to in paragraphs (a), (b), (c), (d), (g), (h) and (l) of article 310F (shall, on conviction, be liable to imprisonment for a term not exceeding two (2) years. Offences and penalties.

(2) Whosoever commits any offence referred to in paragraphs (e),

C 6014

(f), (i) and (j) of article 310F (shall, on conviction, be liable to imprisonment for a term not exceeding one year.

(3) Whosoever commits the offence referred to in paragraph (k) of article 310F shall, on conviction, be liable to imprisonment for a term not exceeding three (3) years.

(4) Whosoever commits any offence referred to in paragraphs (a) to (k) of article 310F within the framework of a criminal organisation, as defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years.

Aiding and abetting.

310H. (1) Whosoever aids, abets or instigates any offence under this Sub-title shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence aided, abetted or instigated and articles 42 and 43 shall apply *mutatis mutandis*.

(2) An attempt to commit any offence referred to in this Sub-title shall be punishable as a criminal offence, and article 41 shall apply *mutatis mutandis*.

Responsibility of legal persons.

310I. (1) Notwithstanding any other provision of this Code, where any offence referred to in article 310F or in article 310H (is committed for the benefit of a legal person by any person, acting either individually or as part of an organ of the legal person, who holds a leading position within that legal person on the basis of 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,
- (d) that legal person shall, on conviction be liable to a fine (multa) of not less than twenty thousand euro (€20,000) and not exceeding two hundred thousand euro (€200,000).

(2) The preceding sub-article shall apply *mutatis mutandis* where the lack of supervision or control by a natural person referred to therein has made possible the commission of any of the offences referred to in article 310F or in article 310H for the benefit of the legal person by a person under its authority.

(3) Liability of legal persons pursuant to sub-articles (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 article 310F or in article 310H.

(4) Without prejudice and in addition to any penalty that may be imposed pursuant to the preceding sub-articles, any legal person for whose benefit any offence as referred to therein is committed may, on conviction, be liable to any or all of the following sanctions:

- (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.

310J. (1) Without prejudice to the provisions of article 5, the Courts of Malta shall have jurisdiction over the offences laid down in article 310F or article 310H where one or more of the following apply: Jurisdiction.

- (a) the offence is committed in whole or in part on the territory of Malta;
- (b) the offender is a Maltese national or a permanent resident of Malta;
- (c) the offender has his or her habitual residence in the territory of Malta;
- (d) the offence is committed for the benefit of a legal person established in the territory of Malta;
- (e) the offence is committed against a Maltese national or a person who is a habitual resident in the territory of Malta.

(2) For the purposes of paragraph (a) of sub-article (1), an offence shall be considered to have been committed in whole or in part on the territory of Malta where the offender commits the offence when physically present on that territory and irrespective of whether the

C 6016

offence is committed using an information system on that territory.

Power to make
regulations
under this Sub-
title.

310K. The Minister responsible for justice may make regulations to give better effect to the provisions of this Sub-title."

Objects and Reasons

The objects and reasons of this Bill are to transpose the relevant articles of 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.

