

MALTA

**ATT Nru LIII tal-2021**

ATT maħruġ b'liġi mill-Parlament ta' Malta.

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

**ACT No. LIII of 2021**

AN ACT enacted by the Parliament of Malta.

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



Nagħti l-kunsens tiegħi.

(L.S.)

**GEORGE VELLA**  
**President**

27 ta' Lulju, 2021

**ATT Nru LIII tal-2021**

*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'ligi dan li ġej:-

**1.** It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2021 li jemenda l-Kodiċi Kriminali (Emenda Nru 7) u dan l-Att għandu jinqara u jinftiehem ħaġa waħda mal-Kodiċi Kriminali, hawn iżjed 'il quddiem imsejjaħ "il-Kodiċi".

Titolu fil-qosor.

Kap. 9.

**2.** Minnufih wara l-artikolu 310C tal-Kodiċi għandu jizdied is-subtitolu ġdid:

Żieda ta' subtitolu ġdid mal-Kodiċi.

"Subtitolu IIIA

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

Skop.

310D. Il-mizuri li jipprovdi għalihom dan is-subtitolu jittrasponu d-dispożizzjonijiet 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-Deċiżjoni Qafas tal-Kunsill 2001/413/ĠAI.

Tifsir.

310E. Għall-finijiet ta' dan is-subtitolu, sakemm ir-rabta tal-kliem ma tkunx teħtieġ 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, oġġett jew rekord protett kontra imitazzjoni jew użu frodulenti, pereżempju permezz ta' disinn, kodiċi jew firma;

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

Kap. 376.

(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" għandu jkollha l-istess tifsira li għandha fis-subartikolu (1) tal-artikolu 337B;

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

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

Użu frodulenti ta' strumenti ta' pagament mhux bi flus kontanti u ta' sistemi tal-informazzjoni.

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

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

(b) l-użu frodulenti 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 frodulenti 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 jintuża b'mod frodulenti;

(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 frodulenti;

(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 frodulenti 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 frodulenti, 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) it-twettagħ jew l-ikkawżar ta' 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 tali azzjoni titwettagħ intenzjonalment permezz ta':

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

(ii) mingħajr dritt, l-introduzzjoni, it-tibdil, it-tħassir, it-trasmissjoni jew it-trażzin 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-twettagħ ta' kwalunkwe wieħed mir-reati msemmija fil-paragrafi (ċ), (d), (g), (h) u (k) ta' dan l-artikolu, bl-intenzjoni li dawn il-mezzi jintużaw.

Reati u pieni.

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

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

(3) Kull min jikkommetti r-reat ikkontemplat fil-paragrafu (k) tal-artikolu 310F għandu jehel, meta jinstab ħati, il-piena ta' prigunerija ta' mhux iktar minn tliet (3) snin.

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

Għajjnuna u assistenza.

310H. (1) Kull min jgħin, jassisti jew iġieghel li jsir xi reat taht dan is-subtitolu għandu jkun ħati ta' reat u għandu jehel, meta jinstab ħati, il-piena stabbilita għal dak ir-reat li jkun għen, assista jew instiga u l-artikoli 42 u 43 għandhom japplikaw *mutatis mutandis*.

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

Responsabbiltà ta' persuni ġuridiċi.

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

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

(b) awtorità li tiegħu deċiżjonijiet f'isem il-persuna ġuridika;

(ċ) awtorità li teżercita kontroll fi ħdan il-persuna ġuridika,

dik il-persuna ġuridika li hekk taġixxi għandha, meta tinstab ħatja, tehel multa ta' mhux inqas minn għoxrin elf euro (€20,000) u ta' mhux iktar minn mitejn elf euro (€200,000).

(2) Is-subartikolu (1) għandu japplika *mutatis mutandis* fejn in-nuqqas ta' superviżjoni jew kontroll minn xi persuna fiżika msemmija fl-ismemmi subartikolu tkun ħalliet it-twettiq tar-reati msemmija fl-artikolu 310F jew l-artikolu 310H għall-benefiċċju tal-persuna ġuridika minn persuna taht l-awtorità tagħha.

(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-artikolu 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 r-reat isir għall-benefiċċju tagħha kif imsemmi fihom tista', jekk tinstab haġja, tehel kwalunkwe jew is-sanzjonijiet kollha li ġejjin:

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

(b) l-eskluzjoni 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 ġudizzjarja;

(e) l-istralċ ġudizzjarju;

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

Ġurisdizzjoni.

310J. (1) Mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 5, il-Qrati ta' Malta għandu jkollhom ġurisdizzjoni fuq ir-reati kkontemplati fl-artikolu 310F jew fl-artikolu 310H fejn ikun applikabbli wieħed jew iktar minn dawn li ġejjin:-

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

(b) l-akkużat ikun ċittadin Malti jew b'residenza permanenti f'Malta;

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

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

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

(2) Għall-finijiet tal-paragrafu (a) tas-subartikolu (1), reat għandu jitqies bħala li twettaq kompletament jew parzjalment fit-territorju ta' Malta fejn l-akkużat wettaq ir-reat meta kien fiżikament 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-subtitolu.

310K. Il-Ministru responsabbli għall-gustizzja jista' jagħmel regolamenti sabiex jagħti effett aħjar lid-dispożizzjonijiet ta' dan is-subtitolu."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 488 tat-13 ta' Lulju, 2021.

ANĠLU FARRUGIA

*Speaker*

RAYMOND SCICLUNA

*Skrivan tal-Kamra tad-Deputati*

A 1254

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

27th July, 2021

**ACT No. LIII of 2021**

*An ACT to 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.

Cap. 9.

Addition of new  
Sub-title to the  
Code.

- 1.** The short title of this Act is the Criminal Code (Amendment No. 7) Act, 2021 and this Act shall be read and 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:

"Sub-title IIIA

OF FRAUD AND COUNTERFEITING OF  
NON-CASH MEANS OF PAYMENT

- Scope. 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.
- Interpretation. 310E. For the purposes of this sub-title, unless the context otherwise requires:
- (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 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 may 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;
- Cap. 376

(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.

Offences and penalties.

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

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

said legal person who acts in that manner shall, on conviction, be liable to a fine (*multa*) of not less than twenty thousand euro (€20,000) and not more than two hundred thousand euro (€200,000).

(2) Sub-article (1) 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.

Jurisdiction.

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:

- (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 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 offence is committed using an information system on that territory.

A 1260

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."

Passed by the House of Representatives at Sitting No. 488 of the  
13th July, 2021.

ANĠLU FARRUGIA  
*Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*