

УДК 343.72

CRIMINAL LAW REGULATION OF CREDIT CARD FRAUD IN HUNGARY*

D. Tóth

*University of Pücs Faculty of Law,
48-as tőr 1., 7622, Pücs, Hungary,
e-mail: toth.david@ajk.pte.hu*

The aim of the article is to analyze the criminal law regulation of credit card fraud in Hungary according to the Criminal Code (Act C of 2012). Credit card fraud is relatively a new crime in Hungary and especially in the recent years the crime statistics has risen. Credit card fraud in the legal literature considered as an economic crime. In this article the following crimes will be analysed which are closely related to each other; counterfeiting of cash-substitute payment instruments and the aiding in counterfeiting cash-substitute payment instruments; cash-substitute payment instrument fraud.

The Hungarian regulation is based on the 2001/413/JHA: Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment. It is important to analyse the new Directive proposal, how can it effect the regulation of the Hungarian Criminal Code in the future.

The article also deals with the criminal statistics related to credit fraud crimes and gives conclusions about them.

Key words: credit card crimes, criminal code, prevention.

DOI: <http://dx.doi.org/10.30970/vla.2018.67.238>

The appearance of credit cards. The first idea of credit card was invented by a journalist Edward Bellamy in the late 19th century. He wrote the book titled «*Looking Backward*». This was quite impressive in terms of making predictions about the future and about how credit cards work in the modern era. For example he wrote down the concept of one receipt for the customer and one receipt for the buyer.¹

The predecessors of the cash replacing plastic cards were introduced by oil companies, hotels in the 1920s. The first credit card was introduced by the Bank of America in 1958, while the first European credit card the so called «*Karte Blau*» was introduced at a Rothschild Bank [3, p. 10–13; 4, p. 1; 5, p. 105–113].

In Hungary the first card which was linked to a foreign currency account appeared in 1988. In the same year appeared the first ATM card as well. The use of credit cards was allowed by a National Bank decree (precisely the: 3/1992. (MK 34.) Hungarian National Bank decree about the cash flow) in 1992 and started to spread gradually in the early 90's. Today in Hungary there are about 8.5 million credit cards which are supposed to perform financial transaction. There also more than 100 thousand plastic cards which are not produced by banks but from the American Express, oil companies, trading companies

* Supported BY the БНКР-17-3-IV.-PTE-110 New National Excellence Program of the Ministry of Human Capacities.

¹ <http://www.thesimpledollar.com/a-fascinating-look-at-edward-bellamy-inventor-of-the-credit-card/> (date of download: 01. 10. 2015.)

etc. The numbers of credit cards are decreasing due to the economic situation in Hungary¹.

Credit card fraud in the legal literature considered as an economic crime. There are several definitions of economic crime, and there is no consensus of it. In my opinion economic crime is best described with the definition of Professor Mihály Tyth: «In a criminological aspect economic crime is a form a crime which is realised in the economic process (or closely related to it). This form of crime is able to – in the aspect of perpetration behaviour (often with the use of legal forms of business or with the abuse of it) and in the aspect of the result of the crime – breach or endanger the fair and legal order of the economy» [11, p. 22].

The aim of this article is to analyse the Hungarian regulation of credit card related economic crimes. In this article the following crimes will be analysed which are closely related to each other: counterfeiting of cash-substitute payment instruments and the aiding in counterfeiting cash-substitute payment instruments; cash-substitute payment instrument fraud.

The legal history of credit card fraud in Hungary. After the introduction of credit cards in 1992 the legislator soon realized that credit cards are needed to be protected by criminal law measures. The Act IX of 1994 amended our Criminal Code and established two new statutory provisions: counterfeiting of credit card and credit card fraud.

The Hungarian Bank Association was not satisfied with the regulation because the preparation of these crime was not punishable at that time. The parliament responded to the critics by amending the Criminal Code with a Novel Act (the Act LXXXVII of 1998) and from 1998 the preparation of the crime was also punishable.

Another significant change in the regulation was in 2003. Before we joined the European Union we had to do some legal harmonization. The Act II of 2003 amended the statutory provisions. The legal harmonization was based on 2001/413/JHA: Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment. The scale of the object of perpetration expanded and thus the name of the crime changed to 1) counterfeiting of cash-substitute payment instruments; 2) cash-substitute payment instruments fraud [11, p. 445]; 3) one new crime was also introduced by the amending Act: aiding in counterfeiting cash-substitute payment instruments.

In 2005 with a modifying Act (the Act XCI of 2005) the legislator abolished the subsidiary nature of counterfeiting of cash-substitute payment instruments, which in my opinion – agreeing with Lószly Kxhalmi – was a significant change [6, p. 388–389]. The subsidiary nature of the crime meant that the crime can only be established by the courts if insofar as the act did not result in a more serious criminal offense.

Our previous Criminal Code (the Act IV of 1978) regulated the crimes in the Economic Crimes chapter and financial crimes title. The new Criminal Code (the Act C of 2012) which came into effect in the first of July 2013 has created a new chapter titled «Criminal offenses relating to counterfeiting currencies and philatelic forgeries». Currently these crimes are regulated alongside with counterfeiting money and forgery of stamps.

In the following chapters I will analyze these crimes one by one.

Counterfeiting of cash-substitute payment instruments and the aiding in counterfeiting cash-substitute payment instruments.

The *legal object* of the crime is the safety of the flow of the cash-substitute payment instruments as well as the legal order of the financial management [2, p. 592]. With this

¹ http://hvg.hu/gazdasag/20140703_Egyre_kevesebb_bankszamla_es_bankkartya_v (date of download 09. 09. 2015)

statutory provision not just the interests of the bank account owners are protected but the financial institutes as well [10, p. 288].

The *object of perpetration* are the cash-substitute payment instruments which may be in material or electronic form. The definition of these can be found in the closing provisions of the Hungarian Criminal Code: '*cash-substitute payment instrument*' shall mean non-cash means of payment provided for in the act on credit institutions, as well as treasury cards, traveller's checks, credit tokens and bills of exchange made out in accordance with the Personal Income Tax Act, provided they contain protective fixtures, such as coding or signature, against duplication, fraudulent making or forgery, and against unauthorized use. (Act C of 2012 Section 394 (2).

«*Electronic payment instrument*» shall mean, in addition to the non-cash means of payment provided for in the act on credit institutions, treasury cards and electronic credit tokens made out in accordance with the Personal Income Tax Act, provided that they are used through the information system (Act C of 2012 Section 459. (1) 20).

These includes credit cards, debit cards meal vouchers, cheques, travellers cheques etc. [9, p. 500].

Under the Criminal Code cash-substitute payment instruments and electronic payment instruments issued in other States shall receive the same protection as those issued in Hungary. (Act C of 2012 Section 392. (3).

The statutory provisions contains three perpetration conducts: falsification of non-cash payment instruments; manufacturing counterfeits and recording data stored on electronic payment instruments or the related security features; using technical means.

I would like to illustrate the last perpetration conducts with some examples.

ATM frauds: Nowadays more and more people are victimized by ATM frauds. The criminals can plant so-called skimmer devices (electronic card readers, tiny cameras etc.) to ATM slots. After the ATM user puts the credit card into the ATM card reader slot, the skimmer device picks up all the information from the card's magnetic strip. With miniature cameras offenders can obtain our PIN code as well. After the criminals obtained the data, they can create with these clone credit cards and use it as the original one.

Recording radio frequency signals. Easy and comfortable payment methods such as paypass has risks. Paypass credit card communicates with the point of sale terminal with radio frequency signals but these can recorded by skimmer devices [9, p. 501–502].

It is very easy to be victimized of this crime thus I would like to present some prevention proposals: try to use ATM machines which are inside of a building; if you notice some problem contact the bank, or the police and do not accept help from third persons; keep your certificate of the ATM transaction.

The *subject* (the offender) of the crime can be anybody. The crime can be committed only intentionally there is no negligent form of it.

This crime is a misdemeanour and punishable by imprisonment not exceeding one year. Lastly it is important to note that the preparation of this crime is also punishable [10, p. 287].

The independent crime of *aiding in counterfeiting cash-substitute payment instruments* is very similar to preparation of the previous crime. This crime is established when somebody – produces, supplies, receives, obtains, keeps, exports or imports, or transports in transit through the country, or distributes any material, means, equipment or computer program intended to be used for counterfeiting cash-substitute payment instruments or for the recording of data stored on electronic payment instruments or the related security features, using technical means.

The most important difference is comparing to the preparation of counterfeiting is that here to effectuate the crime, no intention of use required. The most typical example

when someone sells a skimmer device to a criminal. This crime was introduced in the Hungarian Criminal Code in 2003 due to legal harmonization and prevention purposes. The offence has an aggravated case: if somebody commits the in criminal association with accomplices or on a commercial scale and it is punished by imprisonment not exceeding two years [1, p. 493].

Cash-substitute payment instrument fraud. The *legal subject* and the *object of perpetration* of the crime is the same as mentioned above. However there are differences in the *perpetration conducts*. The conducts can be categorized into three groups – *unlawful obtainment* of cash-substitute payment instruments, *commandeer* cash-substitute payment instruments, and *transit* type of conducts: supplies, obtains, exports or imports, or transports in transit through the territory of Hungary any counterfeit or falsified cash-substitute payment instrument; or a cash-substitute payment instrument that has been commandeered or obtained in the manner specified in Paragraph a); or data stored on electronic payment instruments or the related security features; (Act C of 2012 Section 393. (1) b).

This crime in the basic case is a misdemeanour and punishable by imprisonment not exceeding one year.

Types of credit card abuse in the practice: 1) With the use of the stolen credit card: «Cloning», Withdrawal from an ATM, Buying in real life (e.g. in department stores.), Buying in cyberspace on the internet; 2) With the use of «cloned» credit cards: Withdrawal from an ATM, Buying in real life (e.g. in department stores.), Buying in cyberspace on the internet; 3) The use of credit card data: Buying in cyberspace on the internet; 4) Unlawful monetary gain, while the owner of the credit card tries use it legally.

The *subject* of crime can be anybody. The crime can be committed only intentionally.

The form of the crime has changed in the new Criminal Code. Earlier the crime was completed when financial damage was caused by the criminal act. Under the current regulation this is not required, the crime can be established even if the criminal did not cause any financial damage. Moreover if the criminal act caused financial damage not the cash-substitute payment instrument fraud but another crime, information system fraud shall be established by the courts [7, p. 1493]. To sum it up cash-substitute payment instrument fraud became an *immaterial crime*.

The aggravated case of this crime is a felony, and it is established when somebody commits the offence in criminal association with accomplices or on a commercial scale. (Act C of 2012 Section 393. (2)).

Lastly I would like to highlight one court decision regarding the crime. Under the BH 2009.43. (Court decision from the year of 2009 number 43.) the expired credit cannot be the perpetration object of the crime.

The regulation of the European Union. As I mentioned before the Hungarian regulation is based on the 2001/413/JHA: Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.

Under the organizations of the EU it is necessary that a description of the different forms of behaviour requiring criminalisation in relation to fraud and counterfeiting of non-cash means of payment cover the whole range of activities that together constitute the menace of organised crime in this regard. By giving protection by criminal law primarily to payment instruments that are provided with a special form of protection against imitation or abuse, the intention is to encourage operators to provide that protection to payment instruments issued by them, and thereby to add an element of prevention to the instrument.

According to the Framework decision «Payment instrument» shall mean: a corporeal instrument, other than legal tender (bank notes and coins), enabling, by its specific

nature, alone or in conjunction with another (payment) instrument, the holder or user to transfer money or monetary value, as for example credit cards, eurocheque cards, other cards issued by financial institutions, travellers' cheques, eurocheques, other cheques and bills of exchange, which is protected against imitation or fraudulent use, for example through design, coding or signature. (Council framework decision Article 1).

The list of examples are indicative and not exhaustive.

There are 3 groups of perpetration conducts under the EU regulation: 1) Offences related to payment instruments; 2) Offences related to computers; 3) Offences related to specifically adapted devices.

Offences related to payments instruments can be committed with the following the conducts: theft or other unlawful appropriation of a payment instrument; counterfeiting or falsification of a payment instrument in order for it to be used fraudulently; receiving, obtaining, transporting, sale or transfer to another person or possession of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument in order for it to be used fraudulently; fraudulent use of a stolen or otherwise unlawfully appropriated, or of a counterfeited or falsified payment instrument; (Council framework decision Article 2).

The second group can be committed only intentionally with the following conducts – performing or causing a transfer of money or monetary value and thereby causing an unauthorised loss of property for another person, with the intention of procuring an unauthorised economic benefit for the person committing the offence or for a third party, by: without right introducing, altering, deleting or suppressing computer data, in particular identification data, or without right interfering with the functioning of a computer programme or system. (Council framework decision Article 3).

The third group contains preparation type of conducts – the fraudulent making, receiving, obtaining, sale or transfer to another person or possession of: instruments, articles, computer programmes and any other means peculiarly adapted for the commission of any of the offences described under Article 2(b); computer programmes the purpose of which is the commission of any of the offences described under Article 3. (Council framework decision Article 4).

The council framework decision requires the Member States to punish these conducts in their Criminal Code because it is not directly applicable only after it is transferred into the national law. The EU also requires the Member States to punish the participation, instigation and attempt of these crimes. (Council framework decision Article 5)

As for punishment the framework decision requires that each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 to 5 is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition. (Council framework decision Article 6.)

Also it is important to mention that according to the council framework decision legal persons are also punishable if they commit these crime. The framework decision offers examples for sanctions against legal entities which can be applied by Member States: 1) exclusion from entitlement to public benefits or aid; 2) temporary or permanent disqualification from the practice of commercial activities; 3) placing under judicial supervision; 4) a judicial winding-up order. (Council framework decision Article 8).

All in all the Hungarian legislation fully adapts to the framework decision and thus no amendment is required for the Criminal Code at this moment.

A new Directive proposal. The European Commission drafted a new Directive proposal (Proposal for a Directive of the European Parliament and of the Council on

combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA {SWD(2017) 298 final} {SWD(2017) 299 final} Brussels, 13.9.2017 COM(2017) 489 final 2017/0226(COD) (Further referred as Directive proposal) for the European Parliament and the Council to replace the current framework decision and modernise the regulation regarding credit fraud type of crimes.

The reasons for the new Proposal is that the current EU legislation that provides too minimum rules to criminalise non-cash payment fraud. The European Agenda acknowledges that the Framework Decision no longer reflects today's realities and insufficiently addresses new challenges and technological developments such as virtual currencies and mobile payments.

Credit card fraud hinders the development of the digital single market in two ways: it causes important direct economic losses, as the estimated level of card fraud of EUR 1.44 billion mentioned above indicates. For example, the airlines lose around USD 1 billion per year globally in card fraud; it reduces consumers' trust, which may result in reduced economic activity and limited engagement in the digital single market. According to the most recent Eurobarometer on Cyber Security the vast majority of Internet users (85 %) feel that the risk of becoming a victim of cybercrime is increasing. In addition, 42 % of users are worried about the security of online payments. Because of security concerns, 12 % are less likely to engage in digital transactions such as online banking

The Directive draft has three specific objectives that address the problems identified: Ensure that a clear, robust and technology neutral policy/legal framework is in place; Eliminate operational obstacles that hamper investigation and prosecution; Enhance prevention.

The proposal has several important and modern definitions.

«*Payment instrument*» means a protected device, object or record, other than legal tender, which, alone or with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value or to initiate a payment order, including by means of digital mediums of exchange.

«*Protected device, object or record*» means a device, object or record safeguarded against imitation or fraudulent use, for example through design, coding or signature.

«*Payment order*» means a payment order as defined in point (13) of Article 4 of Directive (EU) 2015/2366.

«*Virtual currencies*» means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically.

The Member States if the Directive will be adopted has to implement the rules and punish the following crimes: Fraudulent use of payment instruments, Offences preparatory to the fraudulent use of payment instruments, Offences related to information systems, Tools used for committing offences.

Article 8 would consist the penalties for natural persons.

Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 7 are punishable by effective, proportionate and dissuasive criminal penalties.

Member States shall take the necessary measures to ensure that the offences referred to in Articles 3, 4 and 5 are punishable by a maximum term of imprisonment of at least three years.

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

Member States shall take the necessary measures to ensure that offences referred to in Articles 3, 4 and 5 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; they involve extensive or considerable damage or an aggregate advantage of at least EUR 20 000.

Article 10 would contain the sanctions for legal persons.

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 9(1) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and which may include other sanctions, such as: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishments which have been used for committing the offence.

Personally I think the legal definitions of virtual currencies progressive due to many countries have no regulation to these and these are in a «gray zone». Hopefully after the adoption of the Directive the regulation more effective regarding the prevention of these crimes.

Criminal statistics and Conclusions. The following table shows the registered numbers of computer economic related crimes per year.

The table.

The registered numbers of computer related economic crimes/year

	2010	2011	2012	2013	2014	2015	2016
counterfeiting of cash-substitute payment instruments	282	485	246	65	202	130	739
cash-substitute payment instrument fraud	10172	13057	17595	5804	1186	870	23064
aiding in counterfeiting cash-substitute payment instruments	11	3	3	3	1	3	1

Under the statistics the crime of the cash-substitute payment instrument fraud has the highest numbers but in 2013 a drastic reduction can be seen. The low numbers of counterfeiting of cash-substitute payment instrument can be misleading because in the legal practice can problems with the classification of these crimes. Sometimes the courts classify these crimes as extortion (When the criminal obtains the PIN Code with violence or threat) (Act C of 2012 Section 367.), fraud (when they use clone cards as payment in shops), (Act C of 2012 Section 373) or information system fraud (when someone pays with the stolen credit card number on the internet). (Act C of 2012 Section 373.).

On one hand these classification options inhibits us to get the true numbers of this crime. On the other hand, latency, can be another reason for the low numbers in statistics. The damage caused to the victims by these crimes are small comparing to the damage caused to the financial institutes good reputation (or good will) and thus the financial institutes are not interested to cooperate with the authorities. Obviously the clients would be mistrustful if the vulnerability of the banks information system is unfolded.

Unfortunately due to these reasons it is doubtful that we will get true numbers in the near future of this crime [9, p. 153–154].

In conclusion the best way of crime prevention is to pay attention to our everyday financial transaction and thus we can prevent from being victimized. It is expected in the not too distant future, that the chips will be replaced by biometric cards which would increase the financial transaction.

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КРИМІНАЛЬНО-ПРАВОВЕ РЕГУЛЮВАННЯ ШАХРАЙСТВА З ВИКОРИСТАННЯМ КРЕДИТНИХ КАРТ В УГОРЩИНІ

Д. Тос

*Пецький університет,
м. Печ, 1, 48-as tér, Угорщина, 7622,
e-mail: toth.david@ajk.pte.hu*

Метою статті є аналіз кримінально-правового регулювання шахрайства з використанням кредитних карт в Угорщині відповідно до Кримінального кодексу (від 2012 року). Шахрайство з використанням кредитних карт є відносно новим злочином в Угорщині, статистичні дані щодо випадків вчинення якого, особливо останнім часом, зросли. Шахрайство з використанням кредитних карт в юридичній літературі розглядають як злочин у сфері економіки. У цій статті проаналізовано злочини, які тісно пов'язані один з одним – підроблення засобів безготівкового розрахунку та пособництво у підробленні засобів безготівкового розрахунку і шахрайство зі засобами безготівкового розрахунку.

Угорське регулювання ґрунтується на 2001/413/JHA: Рамковому Рішенні Ради від 28 травня 2001 року щодо боротьби з шахрайством та підробкою неготівкових засобів платежу. Важливо аналізувати нову пропозицію Директиви в аспекті її впливу на суспільні відносини, врегульовані Кримінальним кодексом Угорщини, в майбутньому.

Згідно зі статистичними даними, шахрайство з засобами безготівкового розрахунку характеризується найвищим рівнем злочинності, але в 2013 р. можна спостерігати її суттєве зниження. Низький рівень підроблення засобів безготівкового розрахунку може бути оманливим, оскільки в юридичній практиці можуть виникнути проблеми з класифікацією цих злочинів. Іноді суди кваліфікують ці злочини як вимагання (коли злочинець отримує ПІН-код шляхом застосування насильства або погрози його застосування); шахрайство (коли він використовує картки-клони як засоби платежу в магазинах) або шахрайство з використанням інформаційних систем (коли хтось розраховується в Інтернеті, використовуючи вкрадений номер кредитної карти).

З одного боку, ці варіанти кваліфікації заважають нам отримати достовірні дані щодо справжньої кількості випадків вчинення цього злочину. З іншого боку, латентність може бути ще однією причиною низьких чисел у статистичних даних. Шкода, заподіяна потерпілим унаслідок вчинення цих злочинів, є невеликою порівняно зі шкодою, яка може бути заподіяна діловій репутації фінансової інституції, і, як наслідок, фінансові інституції не зацікавлені співпрацювати з органами влади.

Підводячи підсумок, варто зазначити, що найкращий спосіб запобігання таким злочинам – приділяти належну увагу нашим щоденним фінансовим транзакціям. Таким способом ми зможемо убезпечити себе від можливості стати потерпілим від злочинів цієї категорії. Очікується, що в недалекому майбутньому чипи будуть замінені біометричними картами, що підвищить безпеку фінансових транзакцій.

Ключові слова: підроблення засобів безготівкового розрахунку, фінансові транзакції, злочини у сфері економіки.

*Стаття: надійшла до редакції 07.09.2018
прийнята до друку 01.11.2018*