

## PROTECTION OF CURRENCY BY THE EUROPEAN AND DOMESTIC CRIMINAL LAW\*

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### 1. Introduction

Crimes committed against the order and security of cash-flow, as endangering the monetary interests of the state, are among the oldest criminal offences: money counterfeiting exist as long as money itself.<sup>1</sup>

Crime of counterfeiting money was considered as one of the most serious delictums in the Roman Law that violates the public confidence and public credibility.<sup>2</sup> Moreover, counterfeiting currency were punished by severe sanctions, often by death penalty, in every historic period and in every country. Criminal prosecution of these types of crimes is independent from the actual economic policy and the prohibition under criminal law is ethically justified.<sup>3</sup> The real threat of this crime is the damage it can cause to the economy. High numbers of fake money in the circulation can destabilize the economic relations and trust in a country's money.<sup>4</sup>

Monetary emission is a state monopoly in every country, however, in modern countries, not only legal tender in the strictest sense qualifies as currency, but also securities issued by the state or by certain legal entities can fulfill the role of currency, thus, function as currency.<sup>5</sup>

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<sup>1</sup> KONDOROSI András: Gondolatok a pénzforgalom rendjét sértő bűncselekmények kapcsán. *Jogelméleti Szemle*, 2012/4, p. 76.

<sup>2</sup> DERZSI Júlia: A pénzhamisítás bűncselekmény az erdélyi századok jogkönyvében (1583). *Korunk*, 3. folyam, 20. évf., 6. sz. (2009. június).

<sup>3</sup> GULA József: Pénzhamisítás. In: *Fejezetek az európai büntetőjogból* (szerk.: FARKAS Ákos). Bíbor Kiadó, Miskolc, 2017, p. 92.

<sup>4</sup> TÓTH Dávid: The Regulation of Counterfeiting Money in the German Criminal Code. *Zeszyty Naukowe Towarzystwa Doktorantów Uj Nauki Spoleczne*, Nr 19 (4/2017), S. 61.

<sup>5</sup> TÓTH Mihály: *Gazdasági bűnözés és bűncselekmények*. KJK-KERSZÖV Kft., Budapest, 2002, p. 374.

Penal action against criminal offences violating the order of circulation of money is fundamentally the duty of national criminal law, however, the nature of these acts justifies international co-operation, and the efforts of international organizations in these regards. International action against counterfeiting has already been taken in the first decades of the 20<sup>th</sup> century with the acceptance of the International Convention for the Suppression of Counterfeiting Currency signed in Geneva in 1929<sup>6</sup>, and on European level, the same purpose is served currently by the Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014, on the protection of the Euro and other currencies by criminal law against counterfeiting, and the replacing of Council Framework Decision 2000/383/JHA.<sup>7</sup>

The study, without attempting to be comprehensive, aims to give an overview of the European and domestic legislation of crimes committed against the order and security of money circulation, including the effective regulation and its case-law of these criminal offences. During my work I have sought to analyse the European Union Directive mentioned above, and try to answer the question whether the effective Hungarian regulation complies with the rules of the current EU provisions.

## **2. International actions against criminal acts violating the order of money circulation, especially counterfeiting currency**

### **2.1. Background**

Analyzing the methods of how action is taken against counterfeiting, we can distinguish between international, European Union and member state level. One can also differentiate between means that are included in criminal law and provisions relating to administrative measures.<sup>8</sup> In the current study, I am concentrating on the European Union level and on means included in criminal law, however, I need to note the importance of the International Convention mentioned above, which, firstly, determined precisely the scope of acts that are punishable as ordinary crimes<sup>9</sup>,

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<sup>6</sup> The Convention was transposed into the Hungarian law by the Act XI 1933. According to the one of the most important provisions of the Convention, money counterfeiting is an extraditable crime and the counterfeited money must be confiscated or seized.

<sup>7</sup> Official Journal of the European Union, L 151/1 of 21<sup>st</sup> of May 2014.

<sup>8</sup> See e.g. Regulation 974/98 of May 1998 on the introduction of the Euro, which requires all Member States to ensure adequate sanctions against counterfeiting and falsification of the Euro banknotes and coins; Regulation No. 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of the Euro coins and handling of the Euro coins unfit for circulation; Regulation No. 2182/2004 of 6 December 2004 concerning medals and tokens similar to the Euro coins.

<sup>9</sup> See Art. 3 of the Convention: "The following should be punishable as ordinary crimes:  
(1) Any fraudulent making or altering of currency, whatever means are employed;  
(2) The fraudulent uttering of counterfeit currency;  
(3) The introduction into a country of or the receiving or obtaining counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;  
(4) Attempts to commit, and any intentional participation in, the foregoing acts;  
(5) The fraudulent making, receiving or obtaining of instruments or other articles peculiarly adapted for the counterfeiting or altering of currency."

and secondly, provided that state parties should not differentiate between counterfeiting of national and foreign currency when sanctions are concerned.

From the viewpoint of the European-level struggle against counterfeiting, the Framework Decision of 29 May 2000 of the Council<sup>10</sup> had a major significance, which, among other things, determined the notion of currency, defined the punishable behaviours, and provided for punishment of incitement, aiding and abetting and attempt, and laid out the sanctions for natural persons and legal entities as well. The requirements of the sanctions to be applied were effectiveness, proportionality and having dissuasive effects, and the minimum of the upper bound of the possible imprisonment was at least eight years for fraudulent making or altering of currency.

In order to analyse the compliance with the Framework Decision, the Commission created many reports, and even the report of 2007 had to admit that the provisions of the Framework Decision had not been fully introduced to the law of every member state.

The Council adopted another framework decision in December 2001 (2001/888/JHA)<sup>11</sup> which added a new provisions to the 2000 Framework Decision (Art. 9a). According to this, member states must recognise as establishing habitual criminality the final decisions handed down in another member state for the counterfeiting of currency.

## ***2.2. The Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014***

The Directive is fundamentally built on the Council Framework Decision 2000 mentioned above, and it complements the Framework Decision with further provisions on the level of sanctions, on investigative tools, and on the analysis, identification and detection of counterfeit notes during judicial proceedings. [point (8) of the Directive]

The most important goal of the Directive is to establish minimum rules concerning the definition of criminal offences and sanctions in the area of counterfeiting of the euro and other currencies (Art. 1 of the Directive). This is due to the fact that the measures that had been taken against counterfeiting so far do not have the necessary level of dissuasion and therefore the protection against counterfeiting must be improved. Significant differences exist with respect to the severity of the sanctions applied in different member states in regards of the main forms of counterfeiting, namely, the production and distribution of counterfeit currency. These differences have a negative effect on cross-border law enforcement and judicial cooperation. To sum up: the current size of differences between the sanctioning systems of

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<sup>10</sup> Council framework decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, Official Journal of the European Communities, L 140/1 of 14<sup>th</sup> of June 2000.

<sup>11</sup> Official Journal of the European Communities, L 329/3 of 14<sup>th</sup> of December 2001.

the Member States have a negative impact on the protection of the euro and other currencies against counterfeiting by criminal law measures.<sup>12</sup>

It is worth mentioning that the accepted Directive is missing a provision included in the Proposal, according to which, in case of currencies with a total sum being lower than 5,000 EUR, and without especially aggravating circumstances, member states may apply sanctions other than imprisonment. The same thing happened to the idea that intended to establish the minimum of the upper bound of the possible penalty in eight years for all the criminal acts of counterfeiting, in case of a sum of minimum 5,000 EUR.<sup>13</sup>

The way in which the Proposal for the Directive has been received was controversial. The European Central Bank welcomed the Proposal, found the establishment of the provisions regarding the minimum of penalties necessary, along with the extension of the eight-year minimum of the upper bound of the penalty to every form of counterfeiting currency. Moreover, it considered this step justified even for criminal acts of preparatory nature.<sup>14</sup>

As opposed to this opinion, the European Economic and Social Committee questioned even the justification of the submission of the Proposal. The Committee regarded the dissuasive effect of the introduction of the minimal penalty threshold and the extension of the strict upper bound of imprisonment as controversial. According to its standpoint, the Proposal did not adequately take into account the differences between the legal traditions and legal systems.<sup>15</sup>

### **3. Provisions of the Directive 2014/62/EU in the context of the Hungarian Criminal Code**

#### ***3.1. The definition of currency in the Directive and in the Hungarian Criminal Code***

According to Art. 2(a) of the Directive, “currency means notes and coins, the circulation of which is legally authorised, including Euro notes and coins, the circulation of which is legally authorised pursuant to Regulation (EC) No 974/98”. It is worth to mention that the Directive, contrary to the Framework Decision, uses the expres-

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<sup>12</sup> Proposal for a Directive of the European Parliament and of the Council on the protection of the Euro and other currencies by criminal law against counterfeiting, and the replacing of Council Framework Decision 2000/383/JHA, Strasbourg, 5. 2. 2013 COM(2013) 42 final, 2013/0023 (COD) p. 3.

<sup>13</sup> GULA: op. cit. 110.

<sup>14</sup> Opinion of the European Central Bank of 28 May 2013 on a proposal for a directive of the European Parliament and of the Council on the protection of the Euro and other currencies by criminal law against counterfeiting, and the replacing of Council Framework Decision 2000/383/JHA, CON/2013/37, Official Journal of the European Union, C 179/9 of 25<sup>th</sup> of June 2013.

<sup>15</sup> Opinion of the European Economic and Social Committee on the ‘Proposal for a directive of the European Parliament and of the Council on the protection of the Euro and other currencies by criminal law against counterfeiting, and the replacing of Council Framework Decision 2000/383/JHA’, COM/2013 42 final, Official Journal of the European Union, C 271/42 of 19<sup>th</sup> of September 2013, pp. 44–46.

sions ‘note’ and ‘coin’ instead of ‘paper money’ and ‘metallic money’, as legal tender can be made of paper, metallic or other material as well. On the other hand, the Directive’s definition of currency includes also means that will function as legal tender only in the future.<sup>16</sup>

The Hungarian Criminal Code (HCC) currently in force does also establish the criminal law-definition of currency, although in a more casuistic way than the Directive, but in accordance with it. According to Articles 389(5a), (5b) and (6) of the HCC, currency means:

- banknotes and coins, the circulation of which is legally authorized;
- banknotes and coins that will be authorized in the future on the basis of law, European Union legislation, or official notice published by an institution vested with the privilege of monetary emission;
- banknotes and coins withdrawn from circulation, where the issuing national bank is required, or agreed, to redeem such withdrawn currency and exchange it to legal tender pursuant to the relevant national legislation or European Union legislation;
- printed *securities* issued as part of a series shall also be treated as banknotes, where the transfer of such securities is not restricted or precluded by law or by any endorsement made on the securities;
- foreign currencies and securities, including the Euro, since it is a legal tender in Hungary from 1 January 2002.

As seen from the above, marketable securities that are issued as part of a series, e.g. treasury bills, bonds and stocks, all qualify as currency, and their counterfeiting is punishable with an imprisonment for two to eight years. However, it is problematic that according to the Hungarian Civil Code, cheques, traveller’s cheques and bills of exchange are also securities, but according to the Criminal Code, these qualify as non-cash means of payment, the counterfeiting of which is punishable only with an imprisonment for two years.<sup>17</sup>

According to the court practice, the minimal condition of currency being considered fake in case of the imitation is merely that it should be trying to imitate the currency and its denomination of a certain country. The quality of the counterfeiting, and the extent to which it is capable to deceive, has no significance from the viewpoint of legal classification — it can only be a factor in sentencing<sup>18</sup>. Counterfeiting currency is realized even in case of an imitation being created with a black-and-white Xerox that is hardly suitable for deception.<sup>19</sup> Moreover, in an older case, the Supreme Court held that in case of obtaining counterfeit currency in order to

<sup>16</sup> See Art. 3(3): “Member States shall take the necessary measures to ensure that the conduct referred to in paragraphs 1 and 2 is punishable also in relation to notes and coins which are not yet issued, but are designated for circulation as legal tender.”

<sup>17</sup> TÓTH D.: *op. cit.* 128.

<sup>18</sup> Supreme Court, BH 1997. 7.

<sup>19</sup> Supreme Court, BH 1984. 482.

put it into circulation, counterfeiting currency is a completed crime even if it is a fake that is not suitable for deception.<sup>20</sup>

In my view however, *the counterfeit would need to be suitable for deception to a certain extent*, and this always needs to be examined in the given case,<sup>21</sup> namely because if the counterfeit is so rudimentary due to its primitive nature that even the abstract possibility of deception is not applicable, then no crime is realized.<sup>22</sup>

Currency with a denomination that is non-existent (so-called “fake money”) cannot be the object of perpetration in counterfeiting currency, thereby the creation of fake money is not a crime, but putting it in circulation involves fraud.<sup>23</sup>

The Supreme Court held that the perpetrator, who created metal discs identical in size and shape to the 10 forint-coin, used in that time in Hungary, in order to fool a slot machine, committed fraud instead of counterfeiting currency.<sup>24</sup> The reason for the decision was that the perpetrator in this case was not striving for anyone to think that the coins created are real currency. However, the legal qualification of the case as fraud is problematic, as the perpetrator wished to realize with the self-made metal discs one of the functions of currency, namely, the suitability for use on the slot machine. Furthermore, it is a question regarding the case of fraud realized by causing deception for an “other” (or keeping them deceived), whether deception can even be realized by fooling a computer system, in an indirect way, or only by the deception of a human being.

### 3.2. *The conducts of the crime in the Directive and the Hungarian Criminal Code*

Art. 3 of the Directive provides for the punishable criminal acts. According to (1), Member States shall take the necessary measures to ensure that the following conduct is punishable as a criminal offense, when committed intentionally:

- a) any fraudulent making or altering of currency, whatever means are employed;
- b) the fraudulent uttering of counterfeit currency;
- c) the import, export, transport, receiving or obtaining of counterfeit currency with a view to uttering the same and with the knowledge that it is counterfeit;
- d) the fraudulent making, receiving, obtaining or possession of

<sup>20</sup> Supreme Court, BH 1989. 346.

<sup>21</sup> TÓTH Dávid: *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények büntetőjogi és kriminológiai aspektusai*. PhD-dolgozat, Pécs, 2018, p. 130.

<sup>22</sup> KARSAI Krisztina: *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények*. In: KARSAI Krisztina–SZOMORA Zsolt–VIDA Mihály: *Anyagi büntetőjog Különös rész II*. Szeged, 2013, p. 241.

<sup>23</sup> TÓTH M.: op. cit. 381. According to other opinions, the order of money circulation can very well be disturbed by putting “currency” with a non-existent denomination into circulation, consequently, it would be justified to extend penal law-defense to fake money *de lege ferenda*. See KONDOROSI: op. cit. 79–80. In the case mentioned by the author, the perpetrator convicted for fraud paid the seller for three sheeps with two 54,000 forint denominated banknotes, emblazoned with the portrait of Ferenc Deák, found by him previously on a dunghill. (The 54,000 forint is a non-existent denomination in Hungary.)

<sup>24</sup> Supreme Court, BH 1986. 312.

- (i) instruments, articles, computer programs and data, and any other means peculiarly adapted for the counterfeiting or altering of currency; or
- (ii) security features, such as holograms, watermarks or other components of currency which serve to protect against counterfeiting.

With the exception of criminal conducts with a preparatory character, criminal law protection is extended to the formally valid currency which is made by using licensed materials and equipments but without entitlement.<sup>25</sup>

Chapter XXXVIII of the Hungarian Criminal Code currently in force, titled Crimes relating to Counterfeiting Currencies and Philatelic Forgeries, regulates *counterfeiting currency* (Article 389) as a criminal offence, and three forms of the crime can be distinguished:

a) *Imitating or counterfeiting currency with the purpose of distribution*, which comply with the “making or altering” criminal conducts mentioned in the Directive (and in the earlier framework decision), with the only difference being that the Hungarian regulation requires the intention to distribute. Consequently, counterfeiting without the intention to distribute does not qualify as a criminal offence, in this case, an administrative offence is established (see Article 213 of Act II 2012). *Since the Hungarian regulation, at first sight, adds an additional element to the statutory definition of the crime which is not existed in the Directive, one could ask whether it is narrowing down the punishability compared to the Directive or not?*

If the answer is positive, then it means that the regulation is less severe than the provisions of the Directive and their minimum requirements, which is not allowed.

According to my opinion however, the answer is negative, as the expression found in the English-language text of the Directive — which is unfortunately missing from the official Hungarian text —, “any *fraudulent* making or altering of currency”, is in accordance with *the intention to distribute*, because counterfeiting fraudulently implies exactly that the perpetrator intended to distribute the counterfeit money, and it was not his intention, for example, to make token money for their children.

A similar reasoning can be found in the Explanation of the Act CXXI 2001 that modified the earlier Criminal Code. It states that in case of counterfeiting currency, fraudulence must mean the deception of someone else, thus, the usage of the counterfeit as real currency, which in itself implies its distribution. Without distribution, fraudulence cannot be realized. The qualifier “fraudulent” and the intention to distribute both result in that for example the hand-made copy of a single banknote made by a designer to decorate a flat will not qualify as counterfeiting currency. On the other hand, according to the standpoint of *Jacsó*, we cannot consider distri-

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<sup>25</sup> See Article 3(2): “Member States shall take the necessary measures to ensure that the conduct referred to in points (a), (b) and (c) of paragraph 1 is punishable also with respect to notes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation of the rights or the conditions under which competent authorities may issue notes or coins.”

bution and fraudulence as synonyms in a contextual interpretation<sup>26</sup>, although the notion of distribution is interpreted quite widely by the Hungarian court practice. Anyway, the Commission, in the third report (2007), has raised no objections to the Hungarian legislation in this respect.

Imitating means the creation of a copy based on a sample, resulting in a new piece, and counterfeiting of currency means the modification of real money. The HCC expressly states that any alteration of currency that has been withdrawn from circulation to create an impression as if it was still in circulation shall be considered imitation of currency. The term of ‘counterfeiting’ should also be interpreted broadly, since the application or removal of a sign serving as an indication that the currency is valid only in a specific country, and the diminution of the precious metal content of the currency shall also be considered as counterfeiting. [Article 389(5) c, d]

b) *Obtaining counterfeit or falsified currency* with the purpose of distribution, *exporting or importing* such currency or *transporting* it in transit through the territory of Hungary. These conducts are also in accordance with the provisions of the Directive, though the Hungarian regulation does not mention the “acceptance” of counterfeit or falsified currency. The expression “obtaining”, which means taking into possession, in my opinion implies acceptance, so this difference does not concern the effective protection by the criminal law.<sup>27</sup>

The method of obtaining is indifferent, it can happen through an onerous contract or free-of-charge, but also in an unlawful way, by a criminal act.<sup>28</sup> At the time of obtaining, the perpetrator must be aware of the counterfeit or falsified nature of the currency, and must be motivated toward the goal of distribution. Finding foreign or native counterfeit currency in itself, without the intent to distribute, does not qualify as obtaining, it does not realize a criminal act, however, the subsequent distribution of found counterfeit currency is punishable.<sup>29</sup>

c) *Distributing counterfeit or falsified currency*, which conduct is harmonized with the “fraudulent uttering” included in the Directive, since if the perpetrator is aware of the counterfeit or falsified nature of currency — and this is a requisite for the establishment of an offence —, then the distribution cannot be anything else but fraudulent. Distribution means making it accessible for others, a typical example of which is paying with counterfeit currency, but giving it or donating it to a third person also qualifies as such.<sup>30</sup>

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<sup>26</sup> The author mentions that in case of the first two criminal conduct laid down in the framework decision (and in the directive), the legislator of the European Union uses the term “fraudulent” while in the third case, it explicitly includes the aim of the distribution. See JACSÓ Judit: Pénzhamisítás. In: *Az európai büntetőjog kézikönyve* (szerk.: KONDOROSI Ferenc–LIGETI Katalin). Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2008, pp. 482–483.

<sup>27</sup> Similarly GULA: op. cit. 111.

<sup>28</sup> Supreme Court, BH 1991. 138.

<sup>29</sup> MOLNÁR Gábor: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. In: *Magyar Büntetőjog. Kommentár a gyakorlat számára* (szerk. KÓNYA István). HVG-Orac Kft., 2013, p. 1461.

<sup>30</sup> Supreme Court, BH 1994. 173.



d) The Hungarian legislator defines as a separate criminal offence *the facilitation of counterfeiting currency*. The objects of the offense are any material, means, equipment, production plan, specifications or computer software that are necessary for counterfeiting currency, and the punishable acts are production, supply, receiving, obtaining, keeping, export, import or transport.

This criminal offence, a *sui generis delictum* that regulates preparatory acts related to counterfeiting currency as a completed crime,<sup>31</sup> is in accordance with the provision laid down in point d) of Art. 3 of the Directive, however, it has been subject to many years of heavy criticism in the Hungarian special literature. The background of the criticisms is that the Hungarian Criminal Code did previously and does now punish the preparation for counterfeiting currency, when the perpetrator realizes the preparatory acts<sup>32</sup> for the sake of committing counterfeiting currency. The separate crime of facilitating counterfeiting currency has been introduced by the Act CXXI 2001, modifying the previous Criminal Code. The Explanation of this Act states that it is possible to imagine a situation where the intent of the person who provides, obtains etc. the materials, means and computer software for counterfeiting currency may not imply committing counterfeiting currency. However, in this case, the rules of preparation cannot be applied. Since in the case of the conducts laid down in point d) of Art. 3 of the previous framework decision (and currently, of the Directive) it is not a requisite of the perpetrator's intent to imply the committing of counterfeiting currency, the Hungarian legislator

According to the criticism of Hungarian special literature, the separate crime of facilitating of counterfeiting currency is an unnecessary *duplum* beside the (real) preparation of counterfeiting currency, since it is unrealistic that the perpetrator is realizing the preparatory acts (the obtaining, creation, bearing etc. of special safety paper, printing machines, plates, paints) in order not to counterfeit currency.<sup>33</sup> Others claim that the criminal act of facilitating the counterfeiting of currency is seldom found in the Hungarian court practice.<sup>34</sup>

Further substantive criticism has been established regarding the *keeping* of materials, equipment, computer software necessary for counterfeiting currency without an intention to do it. According to *Varga*, the mentioned means can in most cases be legally created and possessed, so the punishability of these conduct is justified only if the perpetrator is motivated to commit the counterfeiting of currency.<sup>35</sup> *Jacsó* believes, that it is especially solicitous from a constitutional viewpoint to make the sole keeping of an equipment suitable for counterfeiting currency

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<sup>31</sup> GULA: op. cit. 101.

<sup>32</sup> The preparatory criminal act can be committed by a person who invites, volunteers, or undertakes to commit a crime, or agrees to commit a crime in league with others, or who provides the means necessary for the committing a criminal offense or facilitating that. See Article 11 of HCC.

<sup>33</sup> NAGY Zoltán: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. In: TÓTH Mihály–NAGY Zoltán (szerk.): *Magyar Büntetőjog Különös Rész*. Osiris Kiadó, Budapest, 2014, p. 497.

<sup>34</sup> TÓTH D. (2018): op. cit. 134.

<sup>35</sup> VARGA Zoltán: Formálódó gazdasági büntetőjog. *Belügyi Szemle*, 2002/10, p. 125.

without intention punishable.<sup>36</sup> According to *Gula*, being in harmony with the framework decision did not make the creation of the separate offence of facilitating the counterfeiting of currency inevitable, and this is also true regarding the accordance to the Directive.<sup>37</sup> Based on all this, the decriminalization of the offence of facilitating the counterfeiting of currency is *de lege ferenda* justified.

According to my standpoint, the fact that a criminal act is unrealistic or that it occurs seldom in practice is not the most powerful argument against or for its punishability. It is much more problematic that, according to the traditional principle of Hungarian criminal law, in order to criminalize a certain behavior preceding a criminal offence is required for that behavior, by main rule, to have a relation in any form to a particular criminal offence. In case of the facilitation of counterfeiting currency, this is not valid, since if the person possessing the special paper himself or herself wants to counterfeit currency, or if this person gives the paper to another person who is clearly going to use it to counterfeit currency, this person shall be found guilty of preparation for counterfeiting currency and not of facilitation of counterfeiting currency. It should be emphasized here that the person, who himself or herself does not intend to counterfeit currency, but commits the acts of a preparatory character knowing that related to his or her behavior, *someone else* is intending to commit a crime, is also punishable for preparation for counterfeiting currency.<sup>38</sup>

Regarding the behaviors included in the Hungarian regulation (producing, transferring, receiving, obtaining, keeping, the so-called transit behaviors and distribution), it is almost entirely unimaginable, *except for producing*, that the perpetrator would undertake these without the intention to counterfeit currency. However, in case of “producing”, there is a chance that the perpetrator, who is producing the paper necessary for counterfeiting currency and is specialized for and also undertakes the creation of special paint and computer software, does not do counterfeiting himself or herself, and he or she had not transferred the above-mentioned tools to anyone, and had not started to distribute them. *At this stage*, the correct classification is the crime of facilitating the counterfeiting of currency, since this behavior does not qualify as preparation for the counterfeiting currency.

There is no doubt that the criminal act of facilitating the counterfeiting of currency propagates new cases for shifting the criminal responsibility and is dogmatically solicitous. However, this seems to be the price for improvement in the effectiveness of the struggle against counterfeiting currency. The production of tools necessary for professional counterfeiting of currency is an indispensable condition for serious counterfeiting,<sup>39</sup> thus, this type of conduct can be considered as the most dangerous criminal act in connection with counterfeiting currency, and all of its

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<sup>36</sup> JACSÓ: op. cit. 489.

<sup>37</sup> GULA: op. cit. 112.

<sup>38</sup> AMBRUS István–DEÁK Zoltán: Súlyponti kérdések a bankkártyával kapcsolatos bűncselekmények köréből. *Belügyi Szemle*, 2011/2, p. 95.

<sup>39</sup> BELOVICS Ervin–MOLNÁR Gábor–SINKU Pál: *Büntetőjog Különös Rész*. HVG-Orac Lap- és Könyvkiadó Kft., Budapest, 2005, p. 569.

possible forms need to be persecuted, furthermore, the sanction envisaged should not be considered disproportionate compared to the gravity of the criminal act.<sup>40</sup>

e) *The distribution of currency of minor value or less, obtained as genuine, and in a lawful way.* According to Article 389(4) of the HCC, the penalty of any person who distributes counterfeit or falsified currency of minor value or less, obtained as genuine, may be reduced without limitation. The previous HCC ordered this behavior to be sanctioned as a separate criminal offence and a privileged case, under the name of issuing counterfeit currency, without considering the value of the currency. As opposed to that, the Criminal Code currently in force considers this behavior also as counterfeiting of currency, but leaves room for reducing penalty without limitation, provided that the value of currency does not exceed 500,000 forints.

This regulation is in accordance with the Directive, which — as opposed to the severe sanction ordered in case of the classic counterfeiting of currency followed by distribution — allows even to envisage the penalty of a fine [Art. 5(5)].<sup>41</sup> As the Directive does not consider the value of the currency as significant in this case, the Hungarian regulation currently in force is more severe compared to the Directive, as the option of reducing penalty without limitation can only be applied in case of a criminal act involving currency with a value not exceeding 500,000 forints.

It is not a coincidence that in the Hungarian special literature, many people consider it justified to re-codify the previous criminal act of issuing counterfeit currency. The point of this criminal act is that the perpetrator considered the counterfeit as genuine when receiving it, or was mistaken at the time of obtaining, and realized only later that he or she obtained falsified or counterfeit currency in a lawful way.

Lawfulness refers to the legitimate claim of the obtaining. Consequently, the obtaining is unlawful if the perpetrator receives counterfeit currency via a criminal act. Finding accidentally a currency can also not be considered as lawful obtaining.<sup>42</sup> But if the perpetrator had not realized the counterfeit nature of the currency even at the time of distribution, he or she cannot be sanctioned even if the mistake had been caused by his or her negligence.

### **3.3. Other provisions of the Directive and the domestic criminal law**

Following the provisions defined the criminal offences, the Directive requires member states to make the inciting or aiding and abetting of the offences punishable (Art. 4), this is coherent with the Hungarian criminal law.

<sup>40</sup> The Directive orders the application of imprisonment for this criminal act [Article 5(2)], and the Hungarian regulation is in accordance with it, since both the acts of preparation for the counterfeiting of currency and facilitation of the counterfeiting of currency are to be sanctioned by imprisonment for a maximum of three years.

<sup>41</sup> In relation to the offence referred in point (b) of Art. 3(1), Member States may provide for effective, proportionate and dissuasive sanctions other than that referred to in paragraph 4 of this Article, including fines and imprisonment, if the counterfeit currency was received without knowledge, but passed on with the knowledge that it is counterfeit

<sup>42</sup> Supreme Court, BH 1991. 138.

Art. 5 set out the minimum standards to be applied in the field of criminal sanctions againsts natural persons. According to the Art. 5(3) and 5(4), the fraudulent making or altering currency shall be punishable by a maximum term of imprisonment of at least eight years and at least five years in relation to the other criminal conducts. Counterfeiting currency is punishable by imprisonment between two to eight years in relation to any criminal conduct in the HCC. On this basis, *provisions on criminal sanctions of the Hungarian regulation are more stringent than is required by the Directive.*

The Directive contains rules on the liability of legal persons and the organizational sanctions (Art. 6 and Art. 7). Since the Act CIV 2001, titled ‘Criminal measures applicable againsts legal persons’ can be applied in case of committing any intentional crime and criminal measures provided by the Act (winding-up of a legal person, restriction of a legal person’s activities and fine) can be considered as effective, proportionate and dissuasive sanctions, *provisions of the Directive in relation the liability of legal entities are in conformity with the Hungarian criminal law.*

#### **4. Closing remarks**

According to the crime statistics, crimes committed againsts the order and security of cash-flow are rather frequent in Hungary. The registered numbers of counterfeiting currency: 187 crimes in 2013, 609 crimes in 2014, 584 in 2015, 497 in 2016 and 540 in 2017).<sup>43</sup> In contrast, the facilitation of counterfeiting currency is very rare, one or two case per year. To sum up, Hungary fulfilled the requirements of harmonization laid down in the Directive, moreover, the HCC contain more stringent provisions in relation to the punishable conducts and the applicable sanctions.

That is also true for the case of the distribution of currency of minor value or less, obtained as genuine, and in a lawful way. On basis of this, consideration has been given to amending the HCC and recodify as a separate criminal offence the crime of issuing counterfeit currency.

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<sup>43</sup> Source: Egységes Nyomozhatósági és Ügyészégi Bűnügyi Statisztika (ENYÜBS).