

## **E-BANKING TAKES OFF (RULES OF ELECTRONIC PAYMENT INSTRUMENTS IN HUNGARY)**

International Law Office Internet Publication  
April, 2000

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### **1. Motivation for specific legislation**

While the use of electronic payment instruments (plastic cards, office/home banking, reloadable payment instruments) in Hungary is still relatively low compared to the European Union, in absolute terms, a 33% increase in sales of plastic cards occurred in 1999 as compared to 1998 which clearly shows an increased demand for electronic payment instruments in Hungary.<sup>1</sup>

Therefore, for the purposes of increasing the confidence of electronic payment instrument holders in regard to "electronic payment transactions", the Hungarian legislation, based on EU norms, recently introduced new regulations for increasing the level of consumer protection and more precisely defined the tasks and liabilities of the issuer and holder of electronic payment instruments.

Act of CXII of 1996 on Credit Institutions and Financial Services Companies (and the former Banking Act as of 1991) ("ACI") already defined the possibility of issuing certain cash equivalents (e.g., cheques and bank cards), within the specified forms of financial services, and Decree no. 6/1997. (MK 61) issued by the National Bank of Hungary on Payments already established the definition of electronic money transfer via bank cards as a valid payment method.

However, electronic payment instruments other than bank cards were not regulated. In addition, the specific liability of the issuer was not specified in the legal regulations beyond the obligation of the issuer to enable the holders to submit claims and requests in connection with the card use via the continuous (24 hours a day) operation of issuer's complaint recording services. Previously, only general contractual liability applied to the relationship between the issuer and the holder, provided that the applicable laws only required that "the issuer must have informed the holder on the terms of use of the card" in a contract concluded with the holder and such contract must have contained the notification address of the issuer, as well as the costs and charges related to the use of the card. The decree - still in force - established, however, in a very general manner the bank's liability for the identification of the holder in the course of a card transaction, and therefore, the obligation of the issuer to cause the holder to sign the card in front of the issuer at the time of issuance. Banks, therefore, individually established in their general contractual terms and conditions the commencement of their liability in the case of losses sustained as a consequence of the loss or theft of the holder's card. Some banks established that they would only bear liability for unauthorized card use 24 or 48 hours after the time of notification of the issuer by the holder as per a request for the prohibition of the use of such card, for whatever reason.

On the basis of Hungary's obligations set forth in the European Agreement concluded by and between Hungary and the European Communities' associate states with respect to the harmonization of Hungarian laws with European norms, and therefore, in accordance with 97/489/EC Commission's Recommendation of July 30 1997 concerning transactions using electronic payment instruments and in particular the relationship between issuers and holders ("Recommendation"), the Hungarian Government adopted Decree no. 77/1999 (V. 8).

## **2. Decree No. 77/1999. (V.28.) on certain rules concerning the issuance and use of electronic payment instruments ("Decree")**

The Decree actually specifies the rules related to the transfer of funds and cash withdrawals via electronic payment instruments (i.e., remote access payment instruments and electronic money) and the mandatory rules to be applied in the contractual relationship of the issuer and the holder of the electronic payment instrument. The scope of transactions and definitions of the Decree (i.e., electronic payment instruments, remote access payment instruments - cards and office/home banking - and electronic money instrument, issuer, holder) are regulated in harmony with the scope and terms of the Recommendation, provided that the issuer to whom the Decree applies is a Hungarian credit institution (or an authorized branch of a foreign credit institution) as defined in the ACI.

The Decree further specifies the rights and obligations of the issuer and the holder, as well as the mandatory elements of their contractual relationship<sup>2</sup>, in compliance with the Recommendation.

One of the most important elements of the specific legislation is the establishment of the so-called "objective liability" of the issuer. This means that except for the fraudulent actions of the holder, as of the time of the holder's notification of the issuer on the loss or theft of the electronic payment instrument, the issuer shall bear any loss arising as a consequence of the loss of the instrument.

The Decree requires that the issuer keep records of each and every notification submitted by the holder of electronic payment instruments for 5 years in an accurate and unalterable format which is suitable for evidencing the exact time of the notification and its content in an unalterable manner.

In the case of any disputes between the issuer and the holder on payments and withdrawals made by the holder with the electronic payment instrument, on the basis of the Recommendation, it is set forth in the Decree that the burden of proof to evidence that a transaction was accurately recorded and entered into the accounts and was not affected by a technical breakdown or other deficiency lies with the issuer.

Nevertheless, it should be noted that for the settlement of disputes between the issuer and the holder in connection with the keeping of the account related to the electronic payment instrument - except for disputes arising from unauthorized use of the electronic payment instrument by third parties - the general rules of the Civil Code shall apply to the liability of the Parties.

It should also be noted that until the time of the notification of the loss or theft to the issuer, the liability of the holder according to the Recommendation, except for the holder's gross negligence, is limited to an amount equal to 150 ECU. Such a limitation on the holder's liability has not been introduced by the Decree.

## **3. Application of the new rules**

According to the Decree, the credit institution which has a licence to issue electronic payment instruments must have amended its general contractual terms and conditions, as well as to have initiated the amendment thereof with a 30-day response deadline for the existing client agreements on electronic payment instruments by December 1, 1999.

## **4. Outstanding considerations**

In light of the worldwide exponential increase of electronic commerce, the impending problems are only partially solved by the above summarized regulations and introduction of criminal sanctions against the fraudulent use of cards<sup>3</sup>. The complete security and the continued fight against the fraudulent use of electronic payment instruments, however, can not be entirely

addressed by legislation. Therefore, in Hungary, similarly to the worldwide EUROPAY and VISA campaigns, issuer banks established an association for identifying retailers and other organizations which have participated in fraudulent transactions, i.e. accepted counterfeit cards. This has been an important step which has helped to reduce by 90% the abusive use of counterfeit cards, by the refusal of entering into card acceptance agreements and placement of POS (point of sale) terminals with suspicious business entities (acceptance places). Initially refused businesses (acceptance places) initiated claims against the leading banks in Hungary alleging abuse of economic practices violations. Thus, the Office of Economic Competition stated in a decision<sup>4</sup> that, “a bank has an essential interest to maintain a good reputation but also to avoid losses as a result of abusive client conducts. Therefore, it is reasonable that where the bank has experienced abuses with the acceptance of cards, to refuse the conclusion of a legal relationship with such client or refuse to contract with such potential client which is in an area, operating a business or may have such clients - which according to criminal statistics - potentially implies abusive card uses.”

Another problem is the sophisticated forms of abusive actions in the course of payment transactions via electronic payment instruments, where the actual use of plastic cards is not necessary i.e. in the course of payment for products ordered via the Internet by the holder for mail delivery, by specifying the plastic card number of the holder. Hungarian banks have also started to develop value added electronic payment instrument products - e.g. where even the holder does not have to specify the credit card number - to promote safer methods and confidence with electronic payments, by enabling their business customers to use Secured Socket Layer (SSL) and Secured Electronic Transaction (SET) standards in the course of electronic commerce. The currently contemplated legislation on electronic signature and documents may, however, create a safer environment in Hungary for on-line commerce, including the security of on-line payments.

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1. According to non-official sources, in 1999 the number of i.e. plastic cards used for electronic payment transactions, i.e. payment and cash withdrawal, used in Hungary was approximately 1% of the number of plastic cards used in the EU. For example, 17% of payments were made with plastic cards in 1999, however, the number of business accepting cards has continuously grown, i.e. in 1999, approximately 14,000 Europay and 15,000 VISA acceptance places were known. Appr. 85% of the card use transactions in 1999 were still cash withdrawals. The relative increase in the demand for electronic payment instruments does not only characterise business demand in Hungary. Private customers also tend to use electronic payment instruments for business and day-to-day transactions, e.g. a number of corporations, as well as the state make salary payments via transfer, therefore, more and more private individuals demand plastic cards, primarily for cash withdrawals. The increasing supply of electronic payment instruments (i.e. payment cards, phone- and home-banking applications) and the sphere of use (i.e. E-commerce), however, may quickly motivate households to benefit from significantly faster payment arrangements of the various transactions.
2.
  - (a) the precise and clear description and terms of use of the electronic payment instrument;
  - (b) the minimum technical requirement with respect to the holder's communication equipment, if any;
  - (c) data for notification of the issuer, if the holder lost the instrument, or its secret ID information has unlawfully been acquired by third parties, or unauthorized transaction has been recorded on the holder's account;
  - (d) obligations and liability of the issuer and holders, with respect to the latter the obligation of the holder to take all reasonable steps to safe keep his/her confidential code or other identification number;
  - (e) period of time during which a given transaction can be contested by the holder and an indication of the redress and complaints procedure available to the holder and the method of gaining access to them;
  - (f) applicable foreign exchange rate, if the instrument can be used abroad;
  - (g) applicable interest - and interest calculation date, if different from the accounting date - fixed and eventual charges, commissions;
  - (h) frequency of notification of the holder on the balance of the account related to the instrument and transactions.
3. Sections 300/C (computer fraud) 312/A (extension of the budget of credit cards), 313/B (counterfeiting cards) and 3131/C (abuse with cards) of the Criminal Code / Act of IV of 1978.
4. No. 114/1997.VJ