



## Fraudulent Currency Emission in Romanian Law

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**Abstract:** In this paper we analyzed the offence that is mentioned with a marginal title, taking into consideration the provisions in force at this time. We considered elements of identity, as well as of differentiation in relation to previous laws, constitutive content, forms, modalities and some aspects concerning legal precedents and transitory situations. Novelty elements concern both the analysis itself in relation to recent doctrine, as well as recent and relevant case law. Critical analysis of the incrimination text has imposed also critical opinions, supplemented by corresponding *de lege ferenda* proposals. The paper may be useful both for students of law schools as well as for practitioners in the field of criminal law. This paper is part of a university course to be published at the Universul Juridic publishing house this year.

**Keywords:** Offence; constitutive content; legal precedents

### 1. Introduction

The offence of fraudulent currency emission is explicitly provided in the provisions of art. 315 of the Criminal code, consisting in the fabrication of authentic currency by use of installations or materials for this purpose, in breach of the terms set by competent authorities or without their approval.

Also, the mentioned offence may also consist in the action of circulating currency fabricated in the shown conditions or receiving, owning or transmission of such currency in order to circulate it. The act is punished also in the terms of the imperfect form of the attempt.

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According to the provisions of art. 316 of the Criminal Code, the same offence may be retained in the case in which the incriminated action had the purpose of fabricating, circulating, receiving, owning or transmission in order to circulate authentic foreign currency (fraudulently fabricated).

Our relatively recent doctrine retained that “at art. 315 Criminal code the act of fraudulent emission of currency is incriminated, as *main act*, and the act of circulating fraudulently fabricated currency, as *derived act*” Ilie Pascu in (Dobrinouiu, et al., 2016, p. 636).

Another author considers that the act provided at par. (2) “constitutes a *derived variant* of the offence of circulating currency fabricated by use of installations or materials for this purpose, in breach of terms set by competent authorities or without their approval, as well as receiving, detaining and transmitting it, in order to circulate it” (Udroiu, 2021, p. 1021).

It is also claimed that “at par. (2) there is another variant typical for circulating currency fabricated in the conditions of par. (1), as well as receiving, detaining and transmitting it, in order to circulate it.” Constantin Duvac in (Brutaru, et al., 2016, p. 460).

Another author appreciated that art. 315 Criminal Code, “provides for three offences, and not three different modalities that differ through the content of the objective aspect and that in this case of assimilated incrimination two *derived acts* would be described: circulating fraudulently fabricated currency and the act of receiving, owning or transmission of that currency, in order to circulate it, of course, along with the act described at par. (1)”<sup>1</sup>

Other authors “treat the acts provided at art. 315 as a unique incriminated offence in a typical variant and one which is explicitly (Boroi, 2021, p. 453) or implicitly assimilated (by not approaching that matter)” (Brutaru, et al., 2016, p. 461).

In an extensive analysis it is shown that “From the perspective of the constitutive content, the new incrimination represents a specific variant of forgery offences, and circulating forged currency (art. 310 and art. 313 Criminal code). The specificity is granted by the modality of performance, which is the use of installations or materials for the fabrication of authentic currency, use that is, however, made in breach of the terms set by the competent authorities or without their approval. In this case, the fabrication of currency is fraudulent, the use of installations/materials as procedure that fabricates is also fraudulent (by breaching the terms set by the competent authorities or without their approval), but those installations/materials

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<sup>1</sup> (Dungan, 2011, p. 284) *apud* (Brutaru, et al., 2016, pp. 460-461)

are not, in themselves, fraudulent (in the case of other forgery offences, the instruments too are fraudulent). The product of the offence is designated in the legal text through the expression *authentic currency*. The authentic character of the currency refers to the fact that in fabricating it they used those instruments that are legally used to fabricate it (to mark the authentic, licit character of the instruments, not of their use – *n.n.*). The fact that the use of the instruments is fraudulent (other conditions than the legal conditions) determines, finally, that the product of the offence – the currency – is fake (not materially, as in art. 310 Criminal Code, but intellectually, of affecting the real will of the competent authority)” Iuliana Nedelcu in (Bodoroncea, et al., 2020, pp. 1482-1483).

As to what concerns us, we believe that regarding the legal content, the text may determine different interpretations concerning the possibility of having more offences.

In this context, also taking into consideration the opinions expressed in the doctrine and previously presented, we appreciate that the text of art. 315 Criminal code, includes three offences: the fabrication of authentic currency by use of installations or materials for this purpose, in breach of the terms set by competent authorities or without their approval, circulating currency fabricated in the mentioned conditions and receiving, owning or transmission of that currency in order to circulate it.

Regarding electronic currencies we mention that the discussed text does not take into consideration the sanctioning of fraudulent emission of electronic currency.

This act is, however, sanctioned through the provisions of art. 109 of the Law no. 210/2019 regarding the activity of emission of electronic currency<sup>1</sup>.

## **2. The Text in Force in Relation to the Previous Law**

The offence to be analyzed was not included in the initial Criminal code of 1969 and it was not introduced through the successive changes and additions made after 1990.

We remark that in the Recitals it is shown that “in order to ensure the transposing in the internal legislation of the provisions of the Framework-Decision no. 2000/383/JAI of the Council of the European Union, concerning the consolidation, through criminal sanctions, of the prevention of currency forging, the texts in this chapter have been added with new normative modalities and a new incrimination was introduced. Thus, in the content of the forgery offence, the modality of forging

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already issued currency was included, before its actual circulation (art. 5 of the Framework-Decision). At the same time, in the case of offences of circulating forged currency and owning instruments for forging new modalities of committing the offence have been included (art. 3 of the Framework-Decision). Finally, a new incrimination was provided, *fraudulent emission of currency* that operates when the emission was made by using installations or materials that are legally used to issue currency, but without the approval of the competent authority or in breach of the terms set by them. The incrimination is required by art. 4 of the Framework-Decision<sup>1</sup>.

### 3. Preexisting Elements

#### 3.1. Legal Object

*The legal object* is constituted by the social relations appearing and developing in relation to public confidence in authentic currency.

#### 3.2. Material Object

In the case of the normative modality provided at par. (1) there is no *material object*, the authentic currency that is fraudulently fabricated, that is esthetically and materially identical to the official currency, in circulation, represents the product of the offence.

In the modalities provided at par. (2) the *material object* consists in the circulated currency or the currency received, owned or transmitted in order to be circulated<sup>2</sup>.

#### 3.3. Subjects of the Offence

*The active subject* may be any natural or legal person that has the criminal capacity required by the law.

Usually, *the active subject* may be “a person who has the functional competence to fabricate currency, but does so by breaching professional attributions (for example, an employee of the Bureau of Engraving who, according to the job description, participates in the fabrication process of the metal coin, using installations and materials for this purpose, fabricates a larger number of such coins than that set by the competent authorities). However, it may be that the active subject is any person, without attributions in fabricating currency, who has access to the installations or materials used to fabricate currency and that they use to this purpose” (Bodoroncea, et al., 2020, p. 1483)

<sup>1</sup> Criminal code – Recitals (...), available at [www.just.ro](http://www.just.ro).

<sup>2</sup> In the same sense see (Udroiu, 2021, p. 1029; Dungan, 2011, p. 285).

*Criminal participation* is possible in all its forms.

*The passive subject* is the state in its quality of owner of the defended social value, as well as the institution that issues the official currency, the Romanian National Bank.

According to the provisions of art. 316 Criminal code, the quality of *passive subject* of this offence may also be of a foreign state or a foreign entity (the European Union, in the case of the euro) whose currency is fraudulently issued.

#### **4. Constitutive Content of the Offence**

##### **4.1. Objective Aspect**

In the case of the offence provided at par. (1) *the material element* of the objective aspect is met through the action of fabricating authentic currency, fabrication and production happening in the same quality conditions as those issued by the competent authorities in the terms set by the law.

The action of *manufacturing* refers to fabrication, production of authentic currency by use of specific installations and materials by persons who are accredited or not to perform this activity.

The term *currency* refers to “a metal coin or paper with a legal course on a state’s territory” (DEX, 2009, p. 669)

*Essential requirements.* In order for the offence to exist, some essential requirements must be met.

The first essential requirement is that the manufacturing activity uses installations or materials meant for manufacturing. The use of other installations or materials which are not meant for the legal manufacturing of currency will lead to this requirement not being met and to the inexistence of the offence.

The second essential requirement is that the manufacturing action is performed in breach of the terms set by the competent authorities or without their approval.

The last requirement is that the manufactured currency is authentic, official, it corresponds in quality and materials used, it is identical to an official authentic currency, issued in the terms of the law.

We mention that, in order to ascertain the existence of the offence it is necessary that these essential requirements are met at the same time.

For the offence provided at par. (2), thesis I of art. 315 Criminal code, the action through which the material element of the objective aspect is met consists in the *circulation* of a currency manufactured by using installations or materials for this purpose, in breach of the terms set by the competent authorities or without their approval.

*Essential requirements.* In order for the offence to exist, besides the essential requirements mentioned in the case of the offence provided at par. (1) it is necessary to meet another essential requirement, that the active subject who actually performs the incriminated action knows the fact that the currency he is circulating is part of the category of those manufactured in the conditions exposed at par. (1).

In case the active subject who circulates such currency has the notion that the currency is authentic, official, with circulation value, issued in the terms of the law, the act will not meet the objective typical conditions for the existence of this offence.

In the case of the offence provided at art. 315 par. (2) thesis II, the material element of the objective aspect is met through three alternative actions that consist in *receiving, owning or transmitting* currency manufactured in the conditions of par. (1), in order to circulate it.

The analyzed offence may exist only if there is an incidence of an essential requirement that involves that the subject who receives, owns or transmits such currency, knows the fact that it has been manufactured in the conditions of par. (1).

Not knowing this will lead to the inexistence of this offence.

If the same person receives, owns and then transmits such currency, knowing that it has been manufactured in the conditions described at par. (1), one offence will be charged for this person, the offence at art. 315 par. (2) thesis II Criminal code.

If the same person, after having performed one, two or all the incriminated actions, mentioned above, proceeds also to circulating the currency manufactured in the conditions described at par. (1) of art. 315 Criminal Code, two offences will be charged for this person, those mentioned in par. (2) of art. 315 Criminal Code.

In case the person manufacturing the authentic currency in the conditions described in the text of art. 315 par. (1) of the Criminal code, and circulates it, two concurring offences shall be retained, those mentioned in the provisions of art. 315 par. (1) and art. 315 par. (2) thesis I. The offence provided at par. (2) thesis II shall not be retained, since it is logical that, along with manufacturing, implicitly, the active

subject has owned the currency, owning does not represent, in this case, anything else than an activity circumscribed by manufacturing.

*The immediate consequence* consists in producing a state of danger for the social values protected by the incrimination norm, public confidence in authentic, official currency.

*The causal connection* results in the material character of the act, judicial organs not being compelled to prove it.

#### **4.2. Subjective Aspect**

The guilt form with which the offence mentioned in the provisions of par. (1) is committed is *intent*, in both forms, *direct* or *indirect*.

In the case of the two offences at par. (2) the guilt form is just *direct intention*, which is qualified by purpose.

Recent doctrine has appreciated that “in the case of the derived variant, the guilt form is *direct intention*, since the law maker requires that the incriminated action (circulation, receiving, owning or transmitting the fraudulently manufactured currency) is performed for a certain purpose and that is to circulate it. So, in this case, the intention is qualified by the purpose of the perpetrator” (Ristea, 2020, p. 153).

The mobile has no relevance concerning the existence of the offence, this being important in the activity of individualizing the criminal law sanction to be applied by the court.

#### **5. Committing Ways**

The doctrine appreciated that “at art. 315 Criminal code, the law maker incriminated the act of fraudulent currency emission as main act and the act of circulating fraudulently manufactured currency as derived act” (Ristea, 2020, p. 153).

Thus, “the main act is regulated by par. (1) and it consists in manufacturing authentic currency by using installations and materials for this purpose, in breach of the terms set by the competent authorities and without their approval.

The derived act is provided at par. (2) and consists in circulating the currency manufactured in the conditions of par. (1), that means fraudulently, as well as receiving, owning and transmitting it in order to circulate it” (Ristea, 2020, p. 153).

In our opinion, the text of art. 315 Criminal code, presents three normative modalities, a typical (main) modality and two derived normative modalities.

The typical (main) modality is provided at art. 315 par. (1) and consists in manufacturing authentic currency by using installations and materials for this purpose, in breach of the terms set by the competent authorities or without their approval.

The first derived normative modality consists in circulating the currency manufactured in the conditions retained for the typical (main) modality.

The second derived normative modality consists in receiving, owning or transmitting the manufactured currency in the conditions retained for the typical (main) modality.

We notice that the Romanian law maker included a different legal treatment in the case of fraudulent emission of electronic currency, incriminating this act in the provisions of art. 109 of the Law no. 210/2019 regarding the activity of emission of electronic currency.

So, the text incriminates the typical modality, the act of issuing electronic currency, without right.

Also, the offence also presents an alleviated normative modality when the author uses an expression specific to a person who has the right to issue electronic currency professionally, in breach of the provisions of art. 6 par. (2) of the framework law we referred to.

## **6. Critical Opinions and *de Lege Ferenda* Proposals**

As previously mentioned, the Criminal code in force does not sanction fraudulent emission of electronic currency.

No doubt that the fraudulent action did not remain unsanctioned, this being included as offence in the provisions of art. 109 the Law no. 210/2019 regarding the activity of emission of electronic currency.



So, according to the provisions of art. 109 in the mentioned law, “Issuing, without having the right to do so, electronic currency constitutes an offence and is punished with imprisonment from 6 months to 3 years or with a fine”.

Par. (2) sanctions the “use of an expression specific for a person who has the right, according to this law, to professionally issue electronic currency, in breach of the provisions of art. 6 par. (2), constitutes an offence and is punished by fine.”

The provisions of art. 6 par. (2) to which the text refers mention that “it is forbidden to any entity which is not electronic currency issuer in the sense of art. 2 to use in their name, their header or in other identification attributes or in connection with the activities they perform expressions such as electronic currency issuing institution, electronic currency issuer or derived versions or translations of these”.

Furthermore, at art. 110 par. (1) of the mentioned normative act, it is mentioned that “the unjustified refusal by institutions issuing electronic currency to provide Romanian National Bank, in at most 10 days since the communication of the request, the information and documents necessary to verify compliance with the requirements of this law constitutes an offence and is punished by imprisonment from one month to one year or by fine”.

Also, par. (2) mentions that “obstruction, under any form, of the exertion of the attributions of the National Bank of Romania, as competent authority, constitutes an offence and is punished by imprisonment from one month to one year or by fine”.

Therefore, we remark that the text of art. 315 of the Criminal code in force sanctions not only the acts of fraudulent emission of currency, except for the issuing of electronic currency, this latest act being sanctioned by the provisions of art. 109 of the Law no. 210/2019.

We appreciate as being appropriate to include in the Criminal code some provisions that criminally sanction the action of issuing electronic currency with no right.

In this context, *de lege ferenda* we propose adding to the provisions of art. 315 of the Criminal code, a new paragraph, that includes sanctioning provisions for the action of issuing, with no right, electronic currency, as distinct modality of committing the offence of fraudulent emission of currency.

In particular, we appreciate that the provisions of art. 109 of the Law no. 210/2019 regarding the activity of issuing electronic currency must be transposed in art. 315 Criminal code, in two paragraphs, after the current paragraph (2).

## Conclusions

The previous Criminal code did not incriminate this act, the evolution of criminality in recent years in this field imposing the necessity to include it in the current Criminal code. At the same time, we appreciate that the evolution of the criminal phenomenon concerning forging currency, fraudulent emission of currency imposes the necessity of mentioning these offences in the Criminal code. We believe it is necessary, as emphasized in this paper, to include in the incrimination text in the Criminal code the action of forging electronic currency, the current incrimination of this offence being provided in special legislation. We appreciate that the current incrimination text responds to current needs, being able to contribute to preventing and fighting criminality of this sort. As a general conclusion, we appreciate and support the necessity of the inclusion of the incrimination text in the Criminal code, with the observation of taking into consideration, by the law maker, of an addition variant, by including the sanctioning of the issuing of electronic currency with no right.

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