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The scope of eurocrimes and their possible extension

ABSTRACT: Article 83(1) of the Treaty on the Functioning of the European Union empowers the European legislator to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension. This legal harmonisation competence was frequently used by the EU and resulted in the adoption of several criminal law directives. The Treaty determines ten areas of crime which can subject to legal harmonisation and most of which have already been regulated at the EU level. The objective of the article is to provide a detailed analysis of the requirements of the legal harmonisation competence, the scope of harmonisation, its procedural conditions and the possibility of the extension of the list of EU crimes. The paper also intends to present and analyse the legislative practice of the EU institutions and tries to formulate the relevant tendencies in connection with the current EU criminal policy.

KEYWORDS: EU criminal law, legal harmonisation, eurocrimes, cross-border criminality, emergency brake procedure.

1. Introductory remarks

The European criminal policy of the 20th and 21st centuries faces several fundamental challenges[1], including the significant *increase in cross-border, transnational criminality*. Due to the intensive technological, economic and political changes caused by the globalisation, criminality has become borderless, the international dimension of criminal offences has increased, and new forms of cross-border crimes have emerged. The development of the European integration also played an important role in this process. Along their incontestable advantages, the abolishment of the internal borders between the Member States and the recognition of the principle of

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[1] See in detail: Sieber, 1997, pp. 369-370. See also: Cotterrell, 2015, pp. 7-23.

free movement of persons, goods, services and capital also resulted in numerous security risks, since their benefits can be exploited not only by law-abiding citizens, but also by criminals.[2]

The European Union also realised the risks posed by the increasing cross-border criminality which forced the Member States to begin a slow intergovernmental cooperation in the field of criminal law. This collaboration later resulted in the signature of the Treaty of Maastricht in 1992 which extended the European integration to justice and home affairs. Later, the Treaty of Amsterdam, entered into force in 1999, explicitly provided the European Union the possibility to adopt *'measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking'*.[3] Finally, the Treaty of Lisbon signed in 2007 and entered into force in 2009, determined ten criminal offences, the so-called *'eurocrimes'* or *'EU crimes'* which can be regulated at the EU level. This legislative competence is regulated in Article 83(1) of the Treaty on the Functioning of the European Union. According to the rule

> *the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis*.[4]

Under this provision, the European Union intends to combat the most serious forms of crimes with cross-border dimension through the establishment of minimum rules concerning the definition of these criminal offences and their sanctions.

In order to combat serious cross-border criminal offences, the main tool in the hand of the European Union is the so-called *'legal harmonisation'*. Harmonisation of criminal offences and sanctions primarily aims to gradually eliminate the differences between the criminal law

[2] Hecker, 2015, pp. 18-19.
[3] Article 34(e) of the Treaty on European Union.
[4] See: Article 83(1) of the Treaty on the Functioning of the European Union (TFEU)

systems of the Member States.[5] Since criminal law is deeply rooted in national, historical and cultural traditions and specificities of the Member States, significant disparities can be observed between their national criminal laws. Due to these differences, it can easily happen that the same conduct is considered a criminal offence in one Member State, an administrative offence in a second, and a non-punishable act in a third.[6] Even if a criminal conduct is punishable in each Member States, significant differences could be marked regarding the factual elements of the offence, the scope of criminal liability and the type and level of criminal sanctions. The criminals can easily take advantage of this and, through the so-called *'forum shopping'*, they can choose the country for the commission of the offence where the chances of criminal liability are the lowest and the criminal penalties are the less severe.[7] The gradual reduction and elimination of differences between national criminal laws may deprive criminals of this forum shopping.[8] With the approximation of national substantive criminal laws, the European Union tries to ensure that all Member States criminalise certain unlawful conduct in the same way and prescribe similar sanctions against offenders committing these offences.

The objective of this paper is to provide a thorough analysis of the legal harmonisation competence of the European Union under Article 83(1) TFEU. In this regard, the article presents the conditions of the competence, the scope of criminal harmonisation, the procedural provisions and requirements of legal harmonisation and the possibility of the extension of the list of eurocrimes. The paper not only provides for a dogmatical examination of the provisions of the Treaty but also dissects the post-Lisbon legislative practice of the European institutions. It should be noted, however, that the European Union processes another harmonisation competence under Article 83(2) TFEU whose conditions are different.[9] This so-called *'ancillary harmonisation competence'* is not examined within the framework of this paper.

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[5] See in detail: Klip, 2000, pp. 627-628; Spencer, 2002, pp. 43-53; Vogel, 2002, pp. 59-63.
[6] Hecker, 2007, p. 562.
[7] Ligeti, 2005, p. 22.
[8] See: Van der Wilt, 2002, p. 78; Vogel, pp. 279-280.
[9] Under Article 83(2) TFEU, *'(i)f the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned'*.

2. The conditions of the legal harmonisation competence under Article 83(1) TFEU

As it can be seen from its phrasing, Article 83(1) TFEU empowers the European Union to counter certain *particularly serious, cross-border, transnational crimes*. The exercise of this legal harmonisation competence is subject to two conjunctive criteria: the offence concerned must be particularly serious and have a transnational dimension.[10] However, the exact meaning of these requirements is not precisely defined by the Treaty.

The first condition of *particular seriousness* requires that the offence reach a certain sufficient level of gravity to justify the fight against it at supranational level. It is obvious that there is no need for legal harmonisation at the level of the EU in case of bagatelle, petty offences.[11] However, the particular seriousness alone is not sufficient to legitimise the harmonisation competence; the condition of *cross-border nature* of the crime is also required. The transnational dimension of an offence is determined by the Treaty based on three alternative criteria: the *nature of the offence*, the *impact of the offence* and the *special need to combat it on a common basis*.

- A crime is considered to have a cross-border dimension by its nature if the criminal conduct is typically carried out in the territory of more than one state. This is typical e.g. in case of illegal drug trafficking, human trafficking, smuggling, money laundering or terrorism.
- The cross-border dimension of a crime by its effect can be established if the criminal conduct committed in a Member State causes harmful result in other countries. The harmful effects of the offence can involve more states, e.g. in case of environmental crimes or counterfeiting of money, since neither the pollution caused by illegal conduct nor the counterfeit money entering international financial circulation stops at national borders.
- The particular need to combat the offence based on a common basis requires that action at EU level represents an *added value*[12] in the fight

[10] See in detail: Böse, 2012, pp. 1073-1074; Mansdörfer, 2010, p. 16; Safferling, 2011, p. 413; Satzger, 2016, pp. 140-141.
[11] Asp, 2012, pp. 85-87; Böse, 2013, pp. 154-156.
[12] See: Mitsilegas, 2016, p. 59.

against the crime in question, compared with the sole national repressive measures.[13]

As it was mentioned above, Article 83(1) TFEU lists ten areas of crime which meet the above-mentioned two conditions and can therefore be subject for possible legal harmonisation: *'terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime'.*

On the legal basis of the harmonisation competence under Article 83(1) TFEU, the EU legislator has already adopted a total of eight directives on the aforementioned eurocrimes: *trafficking in human beings*[14], *sexual abuse and sexual exploitation of children and child pornography*[15], *attacks against information systems*[16], *counterfeiting of the euro and other currencies*[17], *terrorism*[18], *money laundering*[19], *fraud and counterfeiting of non-cash means of payment*[20] and *violence against women and domestic violence*[21], while another directive on *fight against corruption*[22] is currently

[13] Asp, 2012, pp. 86-87; Dorra, 2013, pp. 195-200; Simon, 2012, pp. 247-248.

[14] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101, 15.4.2011, pp. 1-11]

[15] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [OJ L 335, 17.12.2011, pp. 1-14]

[16] Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA [OJ L 218, 14.8.2013, pp. 8-14]

[17] 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 against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA [OJ L 151, 21.5.2014, pp. 1-8]

[18] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [OJ L 88, 31.3.2017, pp. 6-21]

[19] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law [OJ L 284, 12.11.2018, pp. 22-30]

[20] Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA [OJ L 123, 10.5.2019, pp. 18-29]

[21] Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence [OJ L, 2024/1385, 24.5.2024, ELI: http://data.europa.eu/eli/dir/2024/1385/oj]

under negotiations. In 2022, the list of eurocrimes was extended (see in detail in Chapter 5) to the violation of Union restrictive measures about which another directive has already been adopted.[23] It can therefore be ascertained that the European Union has actively used its legal harmonisation competence and has already regulated almost all ten eurocrimes.[24]

However, it shall be mentioned that these EU directives are not without precedent, because the European Union have already adopted several *third pillar legal acts* in connection with these crimes before the Treaty of Lisbon[25], most of which have been repealed by the newer

[22] Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council [COM(2023) 234 final, 3.5.2023]

[23] Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 [OJ L, 2024/1226, 29.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1226/oj]

[24] It should also be briefly mentioned that the EU legislator has also adopted some criminal law directives based on its harmonisation competence under Article 83(2) TFEU, which is not subject to the examination of the article. See: Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse [OJ L 173, 12.6.2014, pp. 179-189], Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law [OJ L 198, 28.7.2017, pp. 29-41], Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC [OJ L, 2024/1203, 30.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1203/oj]

[25] See for example: Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro [OJ L 140, 14.6.2000, pp. 1-3], Council Framework Decision 2001/888/JHA of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro [OJ L 329, 14.12.2001, p. 3], Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment [OJ L 149, 2.6.2001, pp. 1-4], Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime [OJ L 182, 5.7.2001, pp. 1-2], Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [OJ L 164, 22.6.2002, pp. 3-7], modified by Framework Decision 2008/919/JHA [OJ L 330, 9.12.2008, pp. 21-23], Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human

directives. Moreover, there are other criminal offence which were regulated in third pillar instruments under the Treaty of Amsterdam but are not included in the catalogue of Article 83(1) TFEU, e.g. racism and xenophobia[26], facilitation of unauthorised entry, transit and residence[27] or environmental crimes[28]. Therefore, one can argue that the catalogue of the Treaty about the criminal offences is not an absolute novelty. However, as a counter-argument, it has to be highlighted that the Treaty of Amsterdam mentioned only three criminal offences (organised crime, terrorism and illicit drug trafficking) with regard to the legal harmonisation competence, therefore, the adoption of criminal law secondary legal acts in the field of other criminal offences was mostly due to the extensive interpretation of the Treaty by the European Commission and the Council. Therefore, according to our point of view, the most important significance of the Treaty of Lisbon in this context is that it provided for an *'expressis verbis'* catalogue of criminal offences which can indisputably be subject to legal harmonisation. Consequently, legal acts regarding these categories of crime can now be adopted on the basis of a clear primary law provision, rather than through barely an expansive interpretation of the Treaty.

As a critical remark regarding the legal competence in Article 83(1) TFEU, it should be mentioned that the catalogue of offences listed does not always mention specific criminal offences as in national criminal laws, but

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beings [OJ L 203, 1.8.2002, pp. 1-4], Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector [OJ L 192, 31.7.2003, pp. 54-56], Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography [OJ L 13, 20.1.2004, pp. 44-48], Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking [OJ L 335, 11.11.2004, pp. 8-11], Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems [OJ L 69, 16.3.2005, pp. 67-71], Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [OJ L 300, 11.11.2008, pp. 42-45]

[26] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [OJ L 328, 6.12.2008, pp. 55-58]

[27] Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence [OJ L 328, 5.12.2002, pp. 1-3]

[28] Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law [OJ L 29, 5.2.2003, pp. 55–58], Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution [OJ L 255, 30.9.2005, pp. 164-167]

rather relatively broad, vaguely worded and fairly imprecisely describe *criminological categories of crime* (e.g. terrorism, sexual exploitation of women and children, cybercrime, organised crime). Obviously, it cannot be required from a Treaty provision to contain too precise and detailed legal concepts and definitions. In connection with this, the real problem lies in the fact that such vague wording and lack of precision of the categories of offences makes it difficult to foresee the extent and the limits of EU competence in practice.[29] If the experiences of the recent legislative practice of the Union is analysed, a tendency of over-criminalisation can clearly be observed which can also be partly led back to this regulatory peculiarity. It can be observed that the recently adopted criminal law directives (e.g. the Directive 2017/541 on combating terrorism or the Directive 2024/1385 on combating violence against women and domestic violence) cover a wide range of punishable acts, some of which are only very distantly related to the categories of crimes listed in the Treaty. This extensive criminalisation trend is highly questionable, with regard to the *ultima ratio* principle, because the criminal sanctioning of these behaviours cannot in every case be justified with a legitimate purpose, since some of the criminal conducts regulated in the directives do not necessarily meet the requirements of particular seriousness and cross-border dimension determined by Article 83(1) TFEU.

A more serious objection in connection with Article 83(1) TFEU can also be formulated, namely that some of the offences listed in the catalogue do not fully meet the general conditions (particular seriousness and cross-border dimension) laid down in the Treaty.[30] There are criminal offences that cannot be considered particularly serious (e.g. certain types of computer crime or corruption), while others do not necessarily affect more than one states (e.g. sexual exploitation of women and children, corruption or counterfeiting of currency). Furthermore, other offences could also be cited which could meet the conditions laid down in the Treaty (e.g. offences against intellectual property or environmental crimes). It is therefore important to clarify how the general conditions of Article 83(1) TFEU relate to the list of offences. In this regard, the following three theoretical solutions can be set up:

[29] See: Asp, 2012, pp. 90-91; Mitsilegas, 2016, pp. 59-60; Satzger, 2016, p. 140. See also: Kubiciel, 2010, p. 743.
[30] See: Rosenau and Petrus, 2012, pp. 469-470.

- The general requirements are decisive for the use of the competence, and the catalogue only provides with examples that meet the conditions of the Treaty.
- As regards the competence of the European Union, the catalogue has priority, which means that the legislator may adopt legal acts only in relation to these ten offences. Consequently, the general conditions have a merely descriptive nature.
- As regards the assessment of the scope of harmonisation, both the general conditions and the catalogue are relevant, i.e. the European Union is entitled to adopt harmonisation measures if the criminal offence concerned in among the ten listed offences and if it meets the parameters of particular seriousness and cross-border dimension set out in Article 83(1) TFEU.[31]

As regards these possible interpretations, the first one clearly seems the less plausible[32], since the wording of the Treaty *('These criminal offences* are *the following')* clearly indicates that the criminal law competence of the European Union only applies to the listed ten eurocrimes. Based on the grammatical interpretation of the Treaty, the second interpretation seems to be more acceptable. In this case, however, the question arises whether it was necessary at all to include the general requirements of legal harmonisation in the text of the Treaty. Therefore, it can be concluded that the third solution is the more convincing, which results that the harmonisation competence of the EU only covers the ten eurocrimes, however, during the exercise of the competence, the legislator shall consider that only those types of the listed crimes could be criminalised which are particularly serious and have cross-border dimensions. In case of less serious minor offences or crimes affecting only one state, legal harmonisation is unnecessary and unjustified.[33] This interpretation is also in line with the observance of the general principles of *ultima ratio*, *subsidiarity* and *proportionality* which requires that EU criminal law can only be used as a last resort[34], if the proposed action cannot be sufficiently achieved by the Member States, and be better achieved at Union level.[35]

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[31] Asp, 2012, pp. 80-81.
[32] See: Asp, 2012, pp. 81-84.
[33] See: Dorra, 2013, pp. 191-192.
[34] See further: Herlin-Karnell, 2009, p. 356.
[35] See: Article 5(3) TEU

Fortunately, several positive examples can be found in the adopted directives which respect this interpretation. Some legal acts only require the criminalisation of the most serious forms of the criminal offences concerned and leave the opportunity to the Member States to use non-criminal means for the less severe conducts. Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, for example, refers to the discretionary right of the Member States whether to criminalise certain consensual conducts (e.g. consensual sexual activities between peers, who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse; or production and possession of pornographic material by the producer solely for his/her private use provided that the act involves no risk of dissemination of the material).[36] Similarly, Directive 2013/40/EU on attacks against information systems do not require the Member States to punish with criminal punishments each conducts, they can use criminal means only *'at least for cases which are not minor'*.[37] Furthermore, part of the directives only require the Member States to prescribe effective, proportionate and dissuasive criminal penalties in case of less serious forms of conducts and leaves the decision on type and extent of the sanction to the national legislators, while they set out the minimum level of the upper limit of the imprisonment only in case of the more severe punishable conducts.[38] These regulatory examples are definitely in line with the *ultima ratio* and subsidiarity principle.

3. The scope and content of legal harmonisation

According to the provisions of Article 83(1) TFEU, the legislator of the European Union is entitled to adopt *'minimum rules concerning the definition of criminal offences and sanctions'.* It can therefore be stated that the Treaty does not provide for full legal harmonisation, but rather for so-called *'minimum harmonisation'*, which imposes on Member States the obligation to comply with the minimum standards laid down in the EU legal acts.[39] It means that Member States are obliged to criminalise the conduct

[36] Articles 5(8) and 8 of Directive 2011/93/EU
[37] Articles 3-7 of Directive 2013/40/EU
[38] See for example: Article 5 of Directive 2014/62/EU, Article 5 of Directive 2018/1673, Article 10 of Directive 2024/1385, Article 5 of Directive 2024/1226
[39] Asp, 2012, pp. 110-111, Böse, 2012, pp. 1077-1078; Klip, 2012, pp. 162-163.

defined in directives as criminal offences and prescribe minimum sanctions for the perpetrators committed the offences. However, Member States can neither add additional elements to the criminal offences which could narrow the scope of criminalisation, nor can national legislator prescribe sanctions that are less severe than those laid down in EU standards.[40] Notwithstanding, minimum harmonisation, do not prevent Member States from introducing or maintaining stricter rules compared to the EU legal sources. Therefore, national legislators are entitled to criminalise other conducts not included in EU legal acts or to prescribe more severe penalties.[41]

Under the provisions of the Treaty, the European Union cannot regulate all criminal law-related issues, minimum rules can be adopted only in connection with the *definition of criminal offences and sanctions*. However, the Treaty does not answer the question of what exactly the harmonisation of criminal offences and penalties may cover. However, if the post-Lisbon legislative practice of the European Union is analysed[42], it can be ascertained that the legal harmonisation competence is interpreted broadly compared to the narrow grammatical meaning of the Treaty, and in addition to definition of criminal offences and sanctions, the directives often include other regulatory elements as well.

Regarding the *definition of offences*, directives can define the elements of the crimes, i.e. the description of the *actus reus* and *mens rea* elements of the prohibited, punishable conducts.[43] Some of the directives (e.g. Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting or Directive 2018/1673 on combating money laundering) only limit its scope to one criminal offence, while other directives (e.g. Directive 2011/93/EU on combating the sexual abuse and sexual

[40] Böse, 2013, pp. 157-158; Dorra, 2013, pp. 219-221.
[41] Böse, 2013, p. 157; Buisman, 2011, p. 138; Klip, 2011, pp. 24-25; Safferling, 2011, p. 417; Satzger, 2016, p. 144; Schermuly, 2013, p. 56.
[42] See in detail: Asp, 2012, pp. 95-102; Böse, 2013, pp. 158-159; Csonka and Landwehr, 2019, pp. 264-265; Dorra, 2013, pp. 79-91, 222-229; Hecker, 2015, pp. 286-287; Killmann, 2014, pp. 296-301; Klip, 2012, pp. 179-211, 316-330; Miettinen, 2013, pp. 134-142; Mitsilegas, 2009, pp. 87-90; Peers, 2016, pp. 197-209; Safferling, 2011, pp. 417-419; Satzger, 2016, pp. 144-146; Spencer, 2011, pp. 356-357; Stuckenberg, 2013, pp. 386-405.
[43] Article 2 of Directive 2011/36/EU, Articles 3-6 of Directive 2011/93/EU, Articles 3-7 of Directive 2013/40/EU, Article 3 of Directive 2014/62/EU, Articles 3-12 of Directive 2017/541, Article 3 of Directive 2018/1673, Articles 3-7 of Directive 2019/713, Article 3 of Directive 2024/1226, Articles 3-8 of Directive 2024/1385

exploitation of children and child pornography or Directive 2017/541 on combating terrorism) cover a wide range of punishable acts and prescribe extensive criminalisation. In addition to specifying the definition of criminal offences, several directives also address other issues arising from the nature of the crime.[44] Because of the differences in the criminal justice systems of the Member States, directives also *'expressis verbis'* refer to the criminalisation of *ancillary conducts* (instigating, aiding and abetting) as well as the *attempt* to commit the offence.[45] However, the directives fail to give exact definitions for these notions and do not specify further which kind of criminal offences should be created to punish the inciting, aiding, abetting and attempt. In the absence of unified, autonomous EU definitions, the national criminal law regulations of the Member States has to be applied, which sometimes show significant differences which could also affect the punishablility of these conducts.[46] EU criminal law norms primarily punish *intentional acts or omissions*, but in some cases, they also sanction *more serious forms of negligence*.[47] However, the definition of serious negligence is also not defined by the EU directives. Because of the principle of guilt, the EU directives cannot oblige the Member States to criminalise and punish certain behaviour with *strict liability*, regardless of the guilt of the perpetrator.[48]

Apart from offences committed by natural persons, EU legal acts, with the exception of Directive 2024/1385 on combating violence against women and domestic violence, also regulate the *liability of legal persons* for the committed crimes.[49] In connection with the liability of legal persons, it has

[44] For this purpose, for example, Article 8 of Directive 2011/93/EU contains provisions in connection with the age of sexual consent and the criminalisation of consensual sexual acts by the Member States; while Article 2(1) of Directive 2018/1673 defines the catalogue of the predicate offences of money laundering and the determines special rules for proving them.

[45] Article 3 of Directive 2011/36/EU, Article 7 of Directive 2011/93/EU, Article 8 of Directive 2013/40/EU, Article 4 of Directive 2014/62/EU, Article 14 of Directive 2017/541, Article 4 of Directive 2018/1673, Article 8 of Directive 2019/713, Article 4 of Directive 2024/1226, Article 9 of Directive 2024/1385

[46] See: Di Francesco Maesa, 2018, pp. 1463; Karsai, 2019, p. 465.

[47] Article 3(2) of Directive 2018/1673, Article 3(3) of Directive 2024/1226

[48] Kaiafa-Gbandi, 2011, p. 31.

[49] Article 5 of Directive 2011/36/EU, Article 12 of Directive 2011/93/EU, Article 10 of Directive 2013/40/EU, Article 6 of Directive 2014/62/EU, Article 17 of Directive 2017/541, Article 7 of Directive 2018/1673, Article 10 of Directive 2019/713, Article 6 of Directive 2024/1226

to be mentioned that that the EU norms completely respect the national sovereignty and criminal law tradition of the Member States[50] in this respect, because they only oblige them to sanction the legal persons, but does not refer that the sanctions have to be criminal sanctions. Therefore, it is up to the Member States whether they fulfil their sanctioning obligation by means of criminal law or by other less restrictive (e.g. civil or administrative) measures.

As regards *sanctions*[51], the directives usually use the requirement of *effective, proportionate and dissuasive penalties* which was elaborated by the Court of Justice of the European Union.[52] The requirement of effectiveness means that the sanction must be suitable for achieving the desired objective. The condition of proportionality demands that the selected penalty must be proportionate to the gravity of the crime, and its effects must not exceed the necessary extent to achieve its aim. And finally, the criterion of dissuasiveness requires that the sanction must have an appropriate deterrent effect on future offenders.[53] Besides this general requirement, the EU legislator can also determine the type and/or the minimum level of the penalties which could be imposed to natural or legal persons having committed the criminal offences defined in the directives. Relating to sanctions against natural persons, the directive primarily prescribe imprisonment. In some cases, the directives leave to the Member States to determine the minimum and/or maximum limit of the imprisonment, while in other cases the directives set out the minimum level of the upper limit of the imprisonment. The legal acts often define the range of imprisonment in a differentiated manner based on the punishable conducts, the value of or the damage caused by the offense, or other aspects.[54] Some of the legal acts also determines other type of sanctions against natural persons as well (e.g. prevention from exercising professional

[50] Some Member States reject the introduction of criminal responsibility of legal persons because it is inconsistent with the principle of guilt. See: Kaiafa-Gbandi, 2011, p. 31.

[51] On the critical analysis of the harmonisation affecting sanctions see further: Satzger, 2019, pp. 116-119; Kert, 2019, pp. 7-20.

[52] Judgement of 21 September 1989, Case 68/88, Commission v. Greece, ECLI:EU:C:1989:339, para. 24.

[53] Hecker, 2015, pp. 238-239.

[54] Article 4 of Directive 2011/36/EU, Articles 3-6 of Directive 2011/93/EU, Article 9 of Directive 2013/40/EU, Article 5 of Directive 2014/62/EU, Article 15 of Directive 2017/541, Article 5 of Directive 2018/1673, Article 9 of Directive 2019/713, Article 5 of Directive 2024/1226, Article 10 of Directive 2024/1385

activities involving direct and regular contacts with children[55], fines, withdrawal of permits and authorisations to pursue activities, disqualification from holding a leading position within a legal person, temporary bans on running for public office, or publication of the judicial decision[56]). Sanctions against legal persons typically include criminal and non-criminal fines and other sanctions, e.g. exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from commercial activities, placing under judicial supervision or judicial winding-up.[57] One of the latest criminal law directive also determines the maximum level of fines against legal persons.[58] Furthermore, most of the EU legal acts also often define certain aggravating (e.g. committed within the framework of a criminal organisation) and/or mitigating circumstances (e.g. providing information to the administrative or judicial authorities).[59]

In addition to the regulation on criminal offences and sanctions, the EU directives often regulate other relevant issues which can be classified to the *general part of the criminal law* or to the *criminal procedural law* (e.g. establishment of jurisdiction[60], freezing and confiscation instrumentalities and proceeds from the criminal offences[61], statutory limitation period[62], protection of victims of crime[63], crime prevention measures[64], criminal law

[55] Article 10 of Directive 2011/93/EU

[56] Article 5(5) of Directive 2024/1226

[57] Article 6 of Directive 2011/36/EU, Article 13 of Directive 2011/93/EU, Article 11 of Directive 2013/40/EU, Article 7 of Directive 2014/62/EU, Article 18 of Directive 2017/541, Article 8 of Directive 2018/1673, Article 11 of Directive 2019/713, Article 7 of Directive 2024/1226

[58] Article 7(2) of Directive 2024/1226

[59] Article 4(2)-(3) of Directive 2011/36/EU, Article 9 of Directive 2011/93/EU, Article 9(4)-(5) of Directive 2013/40/EU, Articles 15(4)-16 of Directive 2017/541, Article 6 of Directive 2018/1673, Article 9(6) of Directive 2019/713, Articles 8-9 of Directive 2024/1226, Article 11 of Directive 2024/1385

[60] Article 10 of Directive 2011/36/EU, Article 17 of Directive 2011/93/EU, Article 12 of Directive 2013/40/EU, Article 8 of Directive 2014/62/EU, Article 19 of Directive 2017/541, Article 10 of Directive 2018/1673, Article 12 of Directive 2019/713, Article 12 of Directive 2024/1226, Article 12 of Directive 2024/1385

[61] Article 7 of Directive 2011/36/EU, Article 11 of Directive 2011/93/EU, Article 9(4)-(5) of Directive 2013/40/EU, Article 20(2) of Directive 2017/541, Article 9 of Directive 2018/1673, Article 9(6) of Directive 2019/713, Article 10 of Directive 2024/1226

[62] Article 11 of Directive 2024/1226, Article 13 of Directive 2024/1385

[63] Articles 11-17 of Directive 2011/36/EU, Articles 18-21 of Directive 2011/93/EU, Articles 24-26 of Directive 2017/541, Article 16 of Directive 2019/713, Articles 14, 16-21, 25-33 of Directive 2024/1385

cooperation and exchange of information with Member States and EU bodies[65]).

4. Procedural requirements of legal harmonisation

According to the provisions of Article 83(1) TFEU legal harmonisation measures can be adopted in the form of *directives*. It is a significant step forward compared to the pre-Lisbon state when special third-pillar instruments (mostly framework decisions) could be adopted. A directive is a stronger legal act compared to a framework decision, since the European Commission may bring infringement proceedings before the European Court of Justice against a Member State which fails to implement the provisions of the directive.[66] It means that after the Treaty of Lisbon the European Union has legal means to enforce the implementation and application of the criminal law norms. However, it also shall be highlighted that Article 83(1) TFEU only allows the adoption of directive; directly applicable regulations are excluded.[67]

Under the Treaty, criminal law directives can be adopted by the European Parliament and the Council on the proposal of the European Commission or a quarter of the Member States[68], with the *ordinary legislative procedure by qualified majority*. The prescription of the ordinary legislative procedure and the qualified majority voting is also a significant improvement compared to the provision of the Treaty of Maastricht and Amsterdam, since these treaties required unanimous voting within the Council regarding the application of criminal law norms.

Although the previous unanimity was replaced by qualified majority voting, it shall be highlighted that the Member States have included a special provision in the Treaty in order to protect their national sovereignty in the field of criminal law. This is the so-called *'emergency brake procedure'* which allows any Member State to interrupt the legislative

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[64] Article 18 of Directive 2011/36/EU, Articles 22-24 of Directive 2011/93/EU, Article 17 of Directive 2019/713, Articles 34-37 of Directive 2024/1385

[65] Article 9 of Directive 2011/36/EU, Articles 15-16 of Directive 2011/93/EU, Articles 13-14 of Directive 2013/40/EU, Article 9 of Directive 2014/62/EU, Article 20(1) of Directive 2017/541, Article 11 of Directive 2018/1673, Articles 13-15 of Directive 2019/713, Articles 13, 15-16 of Directive 2024/1226, Articles 15, 40-44 of Directive 2024/1385

[66] See: Article 258 TFEU

[67] See: Ambos and Bock, 2017, p. 196.

[68] See: Article 76 TFEU

process[69] by exercising a kind of *suspensive veto*.[70] According to this procedure, under Article 83(3) TFEU, any Member States can request to suspend the ordinary legislative procedure and to refer the draft directive to the European Council if the state considers that the draft would *'affect fundamental aspects of its criminal justice system'*. The Treaty does not answer to the question of which of the principles of a Member State's national criminal law can be regarded as of fundamental importance, its determination falls within the exclusive right of the states.[71] Examples of these fundamental principles can be the *ultima ratio* principle, the legality principle, the *lex certa* requirement, the principle of guilt, the principle of proportionality, the prohibition of retroactive effect or the liability of legal persons.[72] It is irrelevant whether other states or EU institutions share the position of the Member State concerned.[73] If the draft directive is referred to the European Council, it has four months to discuss it. If the European Council reach a consensus within this period, the draft shall be referred back to the Council which terminate the suspension and continue the ordinary legislative procedure. However, if there is disagreement within the European Council within the same timeframe, the legislative procedure cannot be pursued. In this case, however, it is possible that at least nine Member States establish *enhanced cooperation*[74] based on the draft directive, about which they are obliged to notify the European Parliament, the Council and the Commission.

The emergency brake clause can be regarded as a serious exception to the qualified majority rule.[75] With this provision, the national veto implicitly remained around judicial cooperation in criminal matters, since even one state can stop and suspend the ordinary legislative procedure. However, the emergency brake procedure is not a real veto, since the Member State cannot prevent the other states from adopting the draft proposal within the framework of enhanced cooperation. In fact, the vetoing countries can only achieve that they do not have to participate in a decision that they found

[69] See: Satzger, 2016, p. 146.
[70] Böse, 2013, p. 163.
[71] Satzger, 2016, p. 147.
[72] Hecker, 2014, pp. 291-292; Heger, 2009, pp. 414-415; Mylonopoulos, 2011, p. 639.
[73] Heger, 2009, p. 414; Safferling, 2011, p. 420.
[74] Detailed rules on enhanced cooperation can be found in Article 20 TEU and Articles 326-334 TFEU.
[75] See: Heger, 2009, p. 414.

unfavourable to them.[76] Therefore, the emergency brake procedure can ultimately be regarded as a *'mini opt-out right'*.[77] However, Member States cannot use the emergency brake procedure unjustifiably or abusively. In such cases, the European Commission may initiate infringement proceedings against the Member State because of the breach of its obligations under the *principle of sincere cooperation*[78].[79]

The inclusion of the emergency brake procedure in the Treaty is the result of a compromise aimed at protecting the national sovereignty and the coherence of their criminal law systems of the Member States. This provision guarantees that the EU legislator cannot force a Member State to accept any regulation that is contrary to its own criminal law dogmatic system.[80] However, the emergency brake clause and possibility of enhanced cooperation may raise serious problems, as their application may entail the risk of creating a *'multi-speed Europe'*, in which a number progressive Member States can deepen criminal law integration between themselves. This would create several different areas of freedom, security and justice, which would fundamentally jeopardise the objectives of the European Union and would increase the fragmentation.[81] However, until now, the emergency brake has not been used and it is highly unlikely that this procedure will be used too often in the future, since the fundamental principles of the criminal law system are common (or at least very similar) to most Member States. Consequently, if a directive infringes one of these fundamental principles, it is likely that not just one or few, but a vast majority of Member States will object to it. Therefore, the adoption of the draft would fail not due to the emergency procedure but because of the lack of the necessary majority.[82] However, it can be easily imagined that contrary to its original function, the emergency brake procedure becomes primarily a mean of exerting political pressure.[83]

[76] Safferling, 2011, p. 422.
[77] Herlin-Karnell, 2010, p. 61.
[78] Article 4(3) TEU
[79] Ambos, 2018, pp. 575-576.
[80] Dorra, 2013, pp. 251-252, Klip, 2012, p. 36.
[81] Satzger, 2008, p. 27.
[82] See: Asp, 2012, p. 140.
[83] See in detail: Öberg, 2021, pp. 506-530.

5. The extension of the legal harmonisation competence

As it has already been mentioned above, the European Union can exercise its legal harmonisation competence in connection with the ten eurocrimes listed in Article 83(1) TFEU. However, the provisions of this Article also stipulate that *'on the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph'.* This provision of the Treaty allows the EU legislator to respond to changes in delinquency and the threats posed by emerging new forms of criminality.[84] According to the Treaty, the catalogue of crimes may be expanded on the basis of the development of crime, however, it is an important requirement that the general conditions determined by the Treaty have to be applied to the new criminal offence which is intended to be included in the scope of the harmonisation. Therefore, the Council must prove whether the new crime concerned meets the requirements of particular seriousness and cross-border dimensions.[85] The scope of eurocrimes can be extended through a secondary legal act, no Treaty-amendment is needed.[86] During the adoption of such decision, the Council acts *'unanimously after obtaining the consent of the European Parliament.'*

5.1. The violation of Union restrictive measures as a new eurocrime

The Council used its competence laid down in Article 83(1) TFEU for the first time on 28 November 2022, when, based on the proposal from the Commission[87] and with the consent of the European Parliament[88], it extended the Union's legislative harmonisation competence to the *violation*

[84] Dorra, 2013, pp. 214-215; Jacsó, 2017, pp. 66-67; Safferling, 2011, p. 414.
[85] See: Asp, 2012, p. 81; Jacsó, 2011, p. 113; Schermuly, 2013, p. 55.
[86] Mansdörfer, 2010, p. 16.
[87] Proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union [COM(2022) 247 final, 25.2.2022]. At the same time, the Commission also issued a Communication to the European Parliament and the Council: Towards a Directive on criminal penalties for the violation of Union restrictive measures [COM(2022) 249 final, 25.2.2025]
[88] European Parliament legislative resolution of 7 July 2022 on the draft Council Decision on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union (10287/1/2022 — C9-0219/2022 — 2022/0176(NLE))

of Union restrictive measures adopted on the basis of Articles 29 TEU and 215 TFEU.[89].

In the preamble of its Decision, the Council provided detailed arguments for the fact that the violation of EU restrictive measures[90] meets the conditions set out in Article 83(1) TFEU.[91] In connection with the requirement of *particular seriousness*, the Decision states that the violation of Union restrictive measures, in terms of gravity, is of a similar degree of seriousness to the areas of crime listed in Article 83(1) TFEU, since it can pose perpetuate threats to international peace and security, undermine the consolidation of and support for democracy, the rule of law and human rights and result in significant economic, social, societal and environmental damage. Furthermore, violation of Union restrictive measures can also be related to some of the ten eurocrimes, such as terrorism and money laundering.[92] The *cross-border dimension* of this criminal offence is proved by the Council by the fact that these violations are often be committed by natural persons or with the involvement of legal entities operating on a global scale, and, in some cases, Union restrictive measures, such as restrictions on banking services, even prohibit cross-border operations. Their violation therefore equates to conduct on a cross-border scale requiring a common cross-border response at Union level.[93] In addition to its cross-border nature, the Council also stressed the *need for common action at EU level* against this criminal offence. In connection with this, the Decision stipulates that although violation of Union restrictive measures is already a criminal offence in the majority of the Member States, there are significant differences between the regulation of the states. Some countries use broad definitions (e.g. *'breach of UN and EU sanctions'* or *'breach of EU regulations'*) while others have more detailed provisions (e.g. providing a list of prohibited conducts). The criteria of criminalisation vary among

[89] Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union [OJ L 308, 29.11.2022, pp. 18-21]

[90] Such restrictive measures can be for example the freezing of funds and economic resources, the prohibition on making funds and economic resources available and the prohibition on entry into the territory of a Member State of the Union, as well as sectoral economic measures and arms embargoes. See: Preamble (3) of Council Decision 2022/2332

[91] See: Van Ballegooij, 2022, pp. 147-148.

[92] Preamble (6) and (10) of Council Decision 2022/2332

[93] Preamble (13) of Council Decision 2022/2332

Member States, they are usually related to the gravity of offence (serious nature), or determined in qualitative (intent, serious negligence) or quantitative (damage) terms. Because of the differences in the national criminal laws, the enforcement of EU sanctions highly depends on the Member State where the infringement is pursued, which can even lead to forum shopping by offenders and a form of impunity because they could choose to conduct their activities in those Member States that provide for less severe penalties for the violation of Union restrictive measures. This undermines the Union objectives of safeguarding international peace and security and upholding Union common values, and the consistent application of Union policy on restrictive measures. Consequently, there is a particular need for common action at Union level to address the violation of EU restrictive measures by means of criminal law and by effective, proportionate and dissuasive penalties. Legal harmonisation in this area would, therefore, increase the effectiveness, proportionality and dissuasiveness of Union restrictive measures, enhance law enforcement and judicial cooperation and contribute towards a global level playing field among Member States and third countries.[94]

Based on this justification, the Decision of the Council established that violation of Union restrictive measures shall be an area of crime within the meaning of second subparagraph of Article 83(1) TFEU.[95] However, the Decision was not stopped here, but also declared that, as a second step, it is necessary to adopt a substantive secondary legislation on the establishment of minimum rules concerning the definition of criminal offences and penalties for the violation of Union restrictive measures.[96] Based on the authorisation of the Council Decision, the European Commission submitted an already prepared directive proposal on 2 December 2022, just a few days after the adoption of the Decision.[97] The proposal on the definition of criminal offences and sanctions for infringements of EU restrictive measures was adopted by the European Parliament and the Council on 24 April 2024.[98] This new directive determines the detailed rule concerning the

[94] Preamble (9), (12) and (14) of Council Decision 2022/2332
[95] Article 1 and Preamble (15) of Council Decision 2022/2332
[96] Preamble (18) of Council Decision 2022/2332
[97] Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures [COM(2022) 684 final, 2.12.2022]
[98] Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union

definition of criminal offences and penalties for the violation of Union restrictive measures.

5.2. Future tendencies about the extension of legislative competence

Beside the violation of Union restrictive measures, the question of extension of the legal harmonisation competence of the European Union has already been on the European agenda in connection with another type of offences. In 2021, the European Commission submitted a Communication[99] in which it suggested the extension of the list of eurocrimes to *hate speech and hate crime* based on race, colour, religion, descent or national or ethnic origin.[100] In the communication, the Commission established that all forms and manifestations of hatred and intolerance are incompatible with the values of respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities, as enshrined in Article 2 TEU. According to the Commission, *'hate speech and hate crime are particularly serious crimes because of their harmful impacts on the individuals and on society at large, which undermine the foundations of the EU'*. The particular seriousness of these criminal offences are also proven by the fact that they endanger the common values and fundamental rights of the European Union, as enshrined in Articles 2 and 6 of the TEU and in the Charter of Fundamental Rights of the EU; violate the victims' fundamental right to dignity and to equality; have serious and often long-lasting consequences on victims' physical and mental health and well-being; threaten the democratic values, social stability and peace; heighten social divisions, erode social cohesion and trigger retaliation, resulting in violence and counter-violence. The Commission also emphasised that hate speech and hate crime have cross-border dimension too which *'is evidenced by the nature and by the impact of these phenomena as well as by the existence of a special need to combat them on a common basis'*. The cross-border dimension of these crimes is evident in case of

restrictive measures and amending Directive (EU) 2018/1673 [OJ L, 2024/1226, 29.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1226/oj]

[99] Communication from the Commission to the European Parliament and the Council: A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime [COM(2021) 777 final, 9.12.2021]

[100] It has to be mentioned that a framework decision has already been adopted in connection with hate crimes. See: Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [OJ L 328, 6.12.2008, pp. 55-58]

online perpetration, however, hate messages expressed offline (e.g. in written press, in television broadcasts, in political speech or sport events) could also have a cross-border dimension evidenced by their impact as they are easily reproduced and widely disseminated across borders.

Despite the efforts of the European Commission and the support of the European Parliament[101], the Communication of the Commission has not been followed by the adoption of a Council decision yet. Moreover, the question of criminalisation of hate crimes has currently been taken off the European agenda. According to our opinion, it was a right decision, because it is highly questionable whether these criminal offences comply with the requirements of Article 83(1) TFEU. While the particular seriousness of hate crime is without doubt, the criterion of cross-border dimension is not necessary fulfilled in each case, since this criminal offence is not inevitably committed in more Member States. Therefore, the criminalisation of these criminal offences doesn't seem to be necessary at EU level, and it could also be opposite to the conditions of the legal basis of Article 83(1) TFEU.

Although the extension of the list of eurocrimes to hate speech and hate crime has not been supported by the Council yet, there are several other criminal offences which clearly meet the requirements of particular seriousness and cross border dimension set out by Article 83(1) TFEU, e.g. *cross-border economic crimes* (insider trading, market manipulation etc.), *tax-related crimes* (in particular VAT fraud), *crimes related to data protection, crimes against the interests of consumers, illegal employment and facilitation of illegal entry, transit or residence, environmental crimes* or *crimes against intellectual property*. Although some of these criminal offences were already regulated by directives adopted on the legal basis of Article 83(2) TFEU[102], it is quite plausible that the Council will further use its competence in the future and extend the legal harmonisation competence of the European Union to other categories of criminal offences.

6. Final thoughts

It can be concluded that the Treaty of Lisbon provided a *widespread and effective legal harmonisation competence* to combat certain particular serious cross-border criminal offences. The Treaty determines ten

[101] European Parliament resolution of 18 January 2024 on extending the list of EU crimes to hate speech and hate crime (2023/2068(INI) – P9_TA(2024)0044)
[102] See: fn. 25.

eurocrimes, which can be subject to harmonisation, and the scope of these criminal offences can further be extended as it has already happened. It is also positive that the competence of the Treaty did not remain on paper, since the European legislator has frequently used its legal harmonisation competence and has adopted several criminal law directives related to most of the listed eurocrimes.

If the current EU criminal law legislation is analysed, an *increasing trend of criminal law repression* can be observed, which is even more obvious if the post-Lisbon directives are compared with the pre-Lisbon framework decisions. Directives adopted after the Treaty of Lisbon usually contain increasingly detailed and severe rules with regards to both the criminal offences and the sanctions than the previous legal acts. The new directive often expanded the range of the punishable offences; their scope generally involves more and more criminal conducts. In some cases, they even prescribe the criminalisation of certain criminal offences which could hardly be justified with the legitimising factors of EU criminal law and could be opposite to the requirements of Article 83(1) TFEU. The regulation of the sanctions also becomes more and more harsh. While the previous framework decisions did not in all cases determine the maximum level of the penalties and often prescribed only the requirement of effective, proportionate and dissuasive sanctions, the directives stipulate almost in each case the minimum upper limit of the imprisonment, usually more strictly than the prior framework decisions. The latest directives not only define the extent of imprisonment but also the maximum level of fines against legal persons. Most of the directives also expanded the range of aggravating circumstances. Although the legal harmonisation competence under Article 83(1) TFEU is limited to the adoption of minimum rules of definition of criminal offences and sanctions, the legislative practice clearly shows that the EU legislator interprets its authority broadly compared to the strict grammatical wording of the Treaty and often includes other issues in the scope of regulation in addition to factual elements and sanctions (e.g. statutory limitation period, jurisdiction).

In this context, it is important to point out that the growth of the legal harmonisation activity of the European Union and the excessive criminalisation and repression cannot be considered a negative tendency, since common EU norms and regulations are necessary to ensure effective fight against cross-border criminality. The real problem is that the strengthening repression and the expansion of criminalisation could lead to

the violation of the regulation of the Treaty, since the provisions of the criminal law directives not always fully comply with the regulatory requirements set out by Article 83(1) TFEU. Furthermore, an excessive and growing criminal legislation could also lead to the possible violation or jeopardy of the different criminal law principles (e.g. *ultima ratio* principle, subsidiarity principle, legality principle etc.) laid down in the Manifesto on European Criminal Policy[103] and the criminal policy initiatives of the European institutions.[104] These two important aspects should be kept in mind by the European legislator during the adoption of criminal law directives.

Although it was not analysed in detail, it shall be briefly mentioned that the increasing criminal legislation of the European Union gives huge tasks to the national legislators too. The provisions of the criminal law directives shall be implemented to the national criminal laws and national legislators shall ensure that their national regulation is always in compliance with the EU requirements. In the recent years, for example, several criminal offences in Hungarian Criminal Code[105] (e.g. terrorism-related offences in 2017, trafficking in human being and forced labour in 2020 or money laundering in 2021) was modified significantly because of the implementation of the EU directives. With the continuous and even growing criminal law activity of the EU, we are convinced that this tendency will continue or even intensify in the future.

[103] European Criminal Policy Initiative, 2009, pp. 707-716.

[104] See for example: Draft Council conclusions on model provisions, guiding the Council's criminal law deliberations [16542/2/09, REV 2, 27.11.2009], Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law [COM(2011) 573 final, 20.9.2011], Resolution of the European Parliament of 22 May 2012 on an EU approach to criminal law [2010/2310(INI)) – P7_TA(2012) 208, 22.5.2012]

[105] Act C of 2012 on the Criminal Code

Bibliography

[1] Ambos, K. (2018) *Internationales Strafrecht. Strafanwendungsrecht – Völkerstrafrecht – Europäisches Strafrecht – Rechtshilfe*. München: C. H. Beck Juristischer Verlag.

[2] Ambos, K., Bock, S. (2017) 'Brexit and the European Criminal Justice System – An Introduction', *Criminal Law Forum*, Vol. 28, pp. 191-217.

[3] Asp, P. (2012) *The Substantive Criminal Law Competence of the EU*. Stockholm: Jure Bokhandel.

[4] Böse, M. (2012) 'Justizielle Zusammenarbeit in Strafsachen', in Schwarze, J. (ed.) *EU-Kommentar*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 1048-1100.

[5] Böse, M. (2013) 'Kompetenzen der Union auf dem Gebiet des Straf- und Strafverfahrensrechts', in Böse M. (ed.) *Europäisches Strafrecht mit polizeilicher Zusammenarbeit*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 149-178.

[6] Buisman, S. (2011) 'The Influence of the European Legislator on the National Criminal Law of Member States: It is All in the Combination Chosen', *Utrecht Law Review*, Vol. 7/3, pp. 137-155.

[7] Cotterrell, R. (2015) 'The Concept of Crime and Transnational Networks of Community', in: Mitsilegas, V., Alldridge, P., Cheliotis, L. (eds.) *Criminalization, Criminal Law and Criminal Justice. Theoretical, Comparative and Transnational Perspective*. Oxford – Portland Hart Publishing, pp. 7-23.

[8] Csonka, P., Landwehr, O. (2019) '10 Years after Lisbon – How "Lisbonised" is the Substantive Criminal Law in the EU?', *Eucrim*, 4/2019, pp. 161-167.

[9] Di Francesco Maesa, C. (2018) 'Directive (EU) 2017/1371 on the Fight Against Fraud to the Union's Financial Interests by Means of Criminal Law: A Missed Goal?' *European Papers*, 3(3), pp. 1455-1469.

[10] Dorra, F. (2013) *Strafrechtliche Legislativkompetenzen der Europäischen Union. Eine Gegenüberstellung der Kompetenzlage vor und nach dem Vertrag von Lissabon*. Baden-Baden: Nomos Verlagsgesellschaft.

[11] European Criminal Policy Initiative (2009) 'A Manifesto on European Criminal Policy' *Zeitschrift für Internationale Strafrechtsdogmatik*,' 12/2009, pp. 707-716.

[12] Hecker, B. (2007) 'Sind die nationalen Grenzen des Strafrechts überwindbar? Die Harmonisierung des materiellen Strafrechts in der Europäischen Union', *Juristische Arbeitsblätter*, 8-9/2007, pp. 561-567.

[13] Hecker, B. (2014) 'Harmonisierung', in: Sieber, U., Satzger, H., von Heintschel-Heinegg, B. (eds.) *'Europäisches Strafrecht'*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 272-293.

[14] Hecker, B. (2015) *Europäisches Strafrecht*. Berlin – Heidelberg: Springer Verlag.

[15] Heger, M. (2009) 'Perspektiven des Europäischen Strafrecht nach dem Vertrag von Lissabon. Eine Durchsicht des (wohl) kommenden EU-Primärrechts vor dem Hintergrund des Lissabon-Urteils des BVerfG vom 30.6.2009', *Zeitschrift für Internationale Strafrechtsdogmatik*, 8/2009, pp. 406-417.

[16] Herlin-Karnell, E. (2009) 'Subsidiarity in the Area of EU Justice and Home Affairs Law – A Lost Cause?', *European Law Journal*, 15(3), pp. 351–361.

[17] Herlin-Karnell, E. (2010) 'The Lisbon Treaty. A Critical Analysis of its Impact on EU Criminal Law', *Eucrim*, 2/2010, pp. 59-64.

[18] Jacsó, J. (2011) ‘Freiheit und Sicherheit im Spiegel der Geldwäschebekämpfung in Europa’, in Karsai K., Nagy F., Szomora, Zs. (eds.) *Freiheit – Sicherheit – (Straf)Recht. Beiträge eines Humboldt-Kollegs*. Universitätsverlag Osnabrück: V&R unipress, pp. 103-126.

[19] Jacsó, J. (2017) *Europäisierung des Steuerstrafrechts am Beispiel der gesetzlichen Regelungen in Deutschland, Österreich und Ungarn*. Miskolc: Bíbor Verlag.

[20] Kaiafa-Gbandi, M. (2011) ‘The Importance of Core Principles of Substantive Criminal Law for a European Criminal Policy Respecting Fundamental Rights and the Rule of Law’, *European Criminal Law Review*, 1(1), pp. 7-34.

[21] Karsai, K. (2019) ‘External Effects of the European Public Prosecutor’s Office Regime’, *Miskolci Jogi Szemle*, 2019/2, special issue, pp. 461-470.

[22] Kert, R. (2019) ‘Die Angleichung von Strafen in der Europäischen Union’, *Miskolci Jogi Szemle*, 2019/2. special issue, pp. 7-20.

[23] Killmann, B-R. (2014) ‘Systematisierung’ in Sieber, U., Satzger, H., von Heintschel-Heinegg, B. (eds.) *‘Europäisches Strafrecht’*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 294-302.

[24] Klip, A. (2000) ‘Harmonisierung des Strafrechts – eine fixe Idee?’, *Neue Zeitschrift für Strafrecht*, 12/2000, pp. 626-630.

[25] Klip, A. (2011) ‘Towards a General Part of Criminal Law for the European Union’, in: Klip, A. (ed.) *Substantive Criminal Law of the European Union*. Antwerp – Apeldoom – Portland: Maklu Publishers, pp. 15-33.

[26] Klip, A. (2012) *European Criminal Law. An Integrative Approach*. Cambridge – Antwerp – Portland: Intersentia Publishing.

[27] Kubiciel, M. (2010) ‘Strafrechtswissenschaft und europäische Kriminalpolitik’ *Zeitschrift für Internationale Strafrechtsdogmatik*, 12/2010, pp. 742-748.

[28] Ligeti, K. (2005) *Strafrecht und strafrechtliche Zusammenarbeit in der Europäischen Union*. Berlin: Duncker & Humblot GmbH.

[29] Mansdörfer, M. (2010) ‘Das europäische Strafrecht nach dem Vertrag von Lissabon – oder: Europäisierung des Strafrechts unter nationalstaatlicher Mitverantwortung’, *Höchstrichterliche Rechtsprechung zum Strafrecht*, 1/2010, pp. 11-23.

[30] Miettinen, S. (2013) *Criminal Law and Policy in the European Union*. London – New York: Routledge.

[31] Mitsilegas, V. (2009) *EU Criminal Law*. Oxford – Portland: Hart Publishing.

[32] Mitsilegas, V. (2016) *EU Criminal Law After Lisbon. Rights, Trust and the Transformation of Justice in Europe*. Oxford – Portland: Hart Publishing.

[33] Mylonopoulos, Ch. (2011) ‘Strafrechtsdogmatik in Europa nach dem Vertrag von Lissabon – Zur materiellen Legitimation des Europäischen Strafrechts’, *Zeitschrift für die gesamte Strafrechtswissenschaft*, 123(3), pp. 633-650.

[34] Öberg, J. (2021) ‘Exit, Voice and Consensus – A Legal and Political Analysis of the Emergency Brake in EU Criminal Policy’, *European Law Review*, Vol. 46/4, pp. 506-530.

[35] Peers, S. (2016) *EU Justice and Home Affairs Law*. Oxford – New York: Oxford University Press.

[36] Rosenau, H., Petrus, Sz. (2012) ‘Der Raum der Freiheit, der Sicherheit und des Rechts’, in: Vedder, Ch, Heintschel von Heinegg, W. (eds.) *Europäisches Unionrecht*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 424-480.

[37] Safferling, Ch. (2011) *Internationales Strafrecht. Strafanwendungsrecht – Völkerstrafrecht – Europäisches Strafrecht*. Heidelberg – Dordrecht – London – New York: Springer Verlag.

[38] Satzger, H. (2008) 'Das Strafrecht als Gegenstand europäischer Gesetzgebungstätigkeit', *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft,* 1/2008, pp. 17-38.

[39] Satzger, H. (2016) *Internationales und Europäisches Strafrecht, Strafanwendungsrecht – Europäisches Straf- und Strafverfahrensrecht – Völkerstrafrecht*. Baden-Baden: Nomos Verlagsgesellschaft.

[40] Satzger, H. (2019) 'The Harmonisation of Criminal Sanctions in the European Union. A New Approach', *Eucrim*, 2/2019, pp. 115-120.

[41] Schermuly, K. (2013) *Grenzen funktionaler Integration: Anforderungen an die Kontrolle europäischer Strafgesetzgebung durch den EuGH*. Frankfurt am Main: Peter Lang Verlag

[42] Sieber, U. (1997) 'Memorandum für ein Europäisches Modellstrafgesetzbuch', *JuristenZeitung*, 52(8), pp. 369-381.

[43] Simon, P. (2012) 'The Criminalisation Power of the European Union after Lisbon and the Principle of Democratic Legitimacy', *New Journal of European Criminal Law,* Vol. 3/3-4, pp. 242-256.

[44] Spencer, J. R. (2002) 'Why is harmonisation of penal law necessary?', in Klip, A., Van der Wilt, H. (eds.) *Harmonisation and harmonising measures in criminal law*. Amsterdam: Royal Netherlands Academy of Arts and Sciences, pp. 43-53.

[45] Spencer, J. R. (2011) 'EU Criminal Law – the Present and the Future?', in Arnull, A., Barnard, C., Dougan, M., Spaventa E. (eds.) *A Constitutional Order of States? Essays in the EU Law in Honour of Alan Dashwood*. Oxford – Portland: Hart Publishing, pp. 341-364.

[46] Stuckenberg, C-F. (2013) 'Allgemeiner Teil eines Europäischen Strafrechts', in Böse, M. (ed.) *Europäisches Strafrecht mit polizeilicher Zusammenarbeit*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 379-412.

[47] Van der Wilt, H. (2002) 'Some critical reflections on the process of harmonisation of criminal law within the European Union', in Klip, A., Van der Wilt, H. (eds.) *Harmonisation and harmonising measures in criminal law*. Amsterdam: Royal Netherlands Academy of Arts and Sciences, pp. 77-86.

[48] Vogel, J. (2002) 'Why is harmonisation of penal law necessary? A comment' in Klip, A., Van der Wilt, H. (eds.) *Harmonisation and harmonising measures in criminal law*. Amsterdam: Royal Netherlands Academy of Arts and Sciences, pp. 55-64.

[49] Vogel, J. (2003) 'Stand und Tendenzen der Harmonisierung des materiellen Strafrechts in der Europäischen Union' in Zieschang, F., Hilgendorf, E., Laubenthal, K. (eds.) *Strafrecht und Kriminalität in Europa*. Baden-Baden: Nomos Verlagsgesellschaft, pp. 29-56.

[50] Van Ballegooij, W. (2022) 'Ending Impunity for the Violation of Sanctions through Criminal Law', *Eucrim*, 2/2022, pp. 147-151.