



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 2

Shaping Factors for the Area of Freedom, Security and Justice

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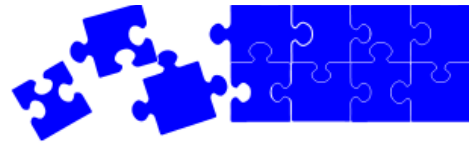
Reading Lecture 3

BLUE BADGE – Supranational Interests

1. In this lecture you will learn about...

- the dynamic of the evolution within the AFSJ (justice and home affairs),
- the concept of supranational interests of the EU,
- the combat against counterfeiting of the euro and
- the concept of the financial interests of the EU.

Learning time – approximately 2 hours



Criteria of Europeanization



union law

unfolding the legal relationship between EU law and national criminal law



functional integration

protecting EU supranational interests through criminal law



ius puniendi

development of supranational ius puniendi



competence gaining at supranational level

extension of justice and home affairs competencies in the supranational framework



cooperation in criminal matters

facilitation and juridification of cooperation between MS



procedural law & fundamental rights

approximation of criminal procedure; fundamental rights context; European standards



2. Blue Badge

Read the following text!



functional integration

protecting EU supranational interests through criminal law

Significant milestones in EU integration indicate the crystallization of the EU's independent interests as an international organization (and a supranational entity), the most important consequence of which is the emergence of criminal law protection of the EU's supranational interests which are to some extent independent of those of the Member States. On the one hand, by mobilizing the criminal justice systems of the Member States (as an EU obligation) and on the other hand by setting substantive (minimum) requirements at EU level.

The first 'must-be-mentioned' step in this development was the so-called **Greek maize case**.¹

In the 1980's certain consignments of maize were imported from Yugoslavia into Greece without a levy being collected, and the goods were declared to be of Greek origin upon exportation to other Member States. Two consignments of maize (by the vessels of Alfonsina and Flamingo) were exported from Greece to Belgium in May 1986 by a company named ITCO, which in fact comprised maize

¹ 68/88 Judgment of the Court of 21 September 1989. Commission of the European Communities v Hellenic Republic ("Greek maize' case")



imported from Yugoslavia, even though the goods had been officially declared by the Greek authorities as comprising Greek maize. At the end of 1986, prompted by certain information brought to its attention, the Commission concluded that the agricultural levy payable to Community resources had not been collected from Greece. **According to the Commission's findings, fraud had been committed with the complicity of Greek civil servants, and later several senior civil servants had produced false documents and made false statements to conceal the activity.** On 21 January 1987 the Commission informed the Greek Government of the conclusions of its investigation and called upon the government make payment to the Commission of the agricultural levies, and to recover the unpaid sums from the authors of the fraud, as well as to instigate criminal or disciplinary proceedings against the authors of the fraud and their accomplices. The Greek authorities were given a period of two months under which they were to inform the Commission of the measures they had taken. The facts were as follows: the payment was not undertaken, the Greek authorities had taken no action to recover the agricultural levies uncollected when the Yugoslav maize was imported into Greece, and that **the Greek authorities had not instituted criminal or disciplinary proceedings against the persons who took part** in the commission and concealment of the fraud denounced by the Commission or that there was any impediment to the institution of such proceedings. The only procedure initiated was that by a competitor of ITCO, which was in connection with the fraud related to the consignment carried by the vessel *Alfonsina*.

Article 5 Treaty on the European Economic Communities (EEC in 1986) – the principle of loyalty. Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.

Is it a proper behaviour showed by the MS? What is the essential interest of the EU (in that time EC) in such cases?

The CJEU stated that by failing to institute criminal or disciplinary proceedings against the persons responsible for helping conceal the transactions and thus making it possible to evade the abovementioned agricultural levies the Hellenic Republic had

MS must ensure the infringements of Community law to be penalized.

failed to fulfil its obligations under Article 5 of the EEC Treaty. **The CJEU observed that in areas where Community legislation does not specifically provide any penalty** for an infringement or refers for that purpose to national laws, regulations and



administrative provisions, Article 5 of the Treaty [in that time, old version of TEC] sets forth a requirement that MS shall take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, whilst the choice of penalties remains within the discretion of Member States, they must nonetheless ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, that are analogous to those applicable to infringements of national law of similar nature (principle of assimilation) and importance and which, in any event, make the penalty effective, proportionate, and dissuasive. This is **the minimum triangle requirement toward sanctions for breaches** of norms flown from Community obligations. The principle of assimilation has another element which requires that the national authorities must proceed, with respect to infringements of Community law, with the same diligence as that which they bring to bear in implementing corresponding national laws.

Another milestone is the **Convention on the protection of the financial interests** of the European Communities (1995). Since 1995, a convention has been in place which seeks to protect, under criminal law, the financial interests of the EU and its taxpayers. Over the years, the Convention has been supplemented by a series of protocols. The Convention and its protocols provide a harmonised legal definition of fraud require their signatories to adopt criminal penalties for fraud. **EU countries must introduce effective, proportionate, and dissuasive criminal penalties to deal with fraud affecting the EU's financial interests.** The first Protocol to the Convention, adopted in 1996, differentiates between 'active' and 'passive' corruption of public officials. It also defines an 'official' (both at national and EU levels) and harmonises the penalties for corruption offences. The Convention entered into force on 17 October 2002, along with its first protocol and the protocol on its interpretation by the Court of Justice. The second protocol entered into force on 19 May 2009.

What do you think, which are the financial interests of the EU?

Criminal protection of financial interests are those interests that are moved to the MS to agree on the use of significant integration tools. Although the PIF convention was established as a 'normal' international public law convention, the fact that MS were able to compromise on the conceptual elements of certain offenses as well as on the threshold level of penalties is significant and important in itself. That is, the protection of financial interests, which can be identified as a direct interest of the supranational entity (EU), also prepares for the (partial) approximation of Member States' criminal law.²

² The convention will be replaced in 2017 by an EU directive (but still in force for MS which opted out from AFSJ); 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



3. Protection of the euro against counterfeiting

Read the following text!

A further blue-badge milestone is the protection of the euro through criminal law.³

To protect the euro in the euro area and beyond, EU legislation aims to ensure proper coordination of **anti-counterfeiting measures** between national authorities and adequate penalties for counterfeiters under national criminal law. The Directive 2014/62/EU entered into force on 22 May 2014. This Directive is meant to boost the protection of the euro against counterfeiting by criminal law measures. The Directive replaces Framework Decision 2000/383/JHA and supplements and helps implement the 1929 Geneva Convention on the suppression of counterfeiting. The new measures include tougher sanctions for criminals and improved tools for cross-border investigation.

The Directive obliges Member States **to punish the fraudulent making or altering of currency (production of counterfeits), the distribution of counterfeit currency, the making and possessing counterfeiting equipment**. The union law sets the minimum standard for maximum penalties of imprisonment in Member States: maximum penalty of at least eight years for production and at least five years for distribution of fake notes and coins. This law ensures that special investigative tools that are used for organised crime cases can be used also in serious cases of counterfeiting, thus improving the quality of cross-border investigations and makes it possible to analyse seized counterfeits earlier during judicial proceedings, which improves detection of counterfeit euros and prevents their circulation, finally requires Member States to collect data on the number of counterfeiting offences, persons prosecuted and convicted, and transmit these data to the Commission.⁴

Read the following news to understand how criminals are active in the 'businesses' of euro-counterfeiting.

<https://www.europol.europa.eu/newsroom/news/euro-counterfeit-ring-circulated-fake-banknotes-italy-to-spain-busted>

<https://www.europol.europa.eu/newsroom/news/no-crime-goes-unpunished-darknet-11-arrested-for-buying-counterfeit-euros>

³ Further examples you can read in MODULE 4.

⁴ https://ec.europa.eu/info/business-economy-euro/euro-area/anti-counterfeiting/legislation-against-euro-counterfeiting_en



<https://www.occrp.org/en/daily/12806-italian-police-bust-largest-ever-euro-forging-network>

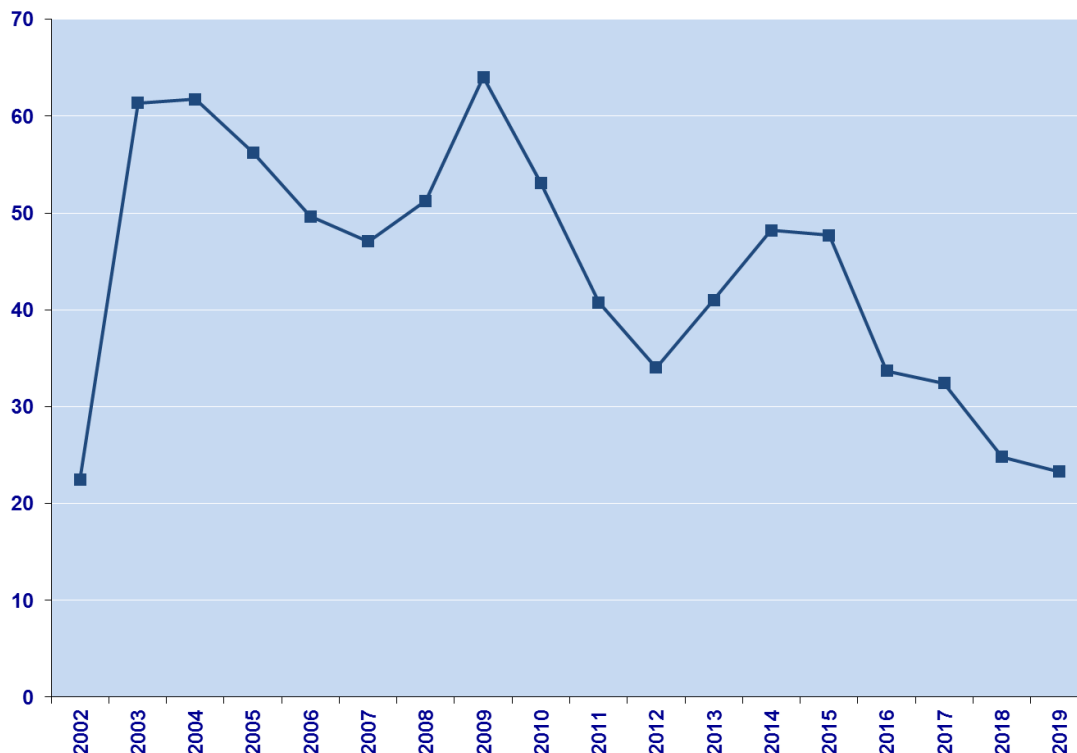
While currency forgery is expected to diminish over time as cash becomes less relevant in the digital age, banknotes will not be replaced entirely by electronic means of payment. As a result, **criminals will continue to forge banknotes**. The raw materials used for currency counterfeiting will become even more widely available, particularly on the darknet, the hidden internet that exists beneath the “surface web”. As the worldwide contact point for combating the counterfeiting of the euro, the European Police Office (an agency of the EU), the Europol is involved in all major currency forgery investigations in the EU. The agency coordinates joint investigation teams and provides financial and forensic support, as well as on-the-spot assistance, to law enforcement partners in the EU.⁵

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Check the data of the European Central Bank.

Number of counterfeits detected annually per 1 million genuine notes in circulation

<https://www.ecb.europa.eu/euro/html/counterfeiting.en.html>



⁵ <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/forgery-of-money-and-means-of-payment>



Half-yearly figures:

Period	H2 2016	H1 2017	H2 2017	H1 2018	H2 2018	H1 2019	H2 2019
Number of counterfeits	353,000	331,000	363,000	301,000	262,000	251,000	308,000

Breakdown by denomination for the second half of 2019:

Denomination	€5	€10	€20	€50	€100	€200	€500
Percentage of total	2.4%	13.5%	34.2%	36.5%	9.6%	1.4%	2.4%

In the second half of 2019:

- > The €20 and €50 notes continued to be the most counterfeited banknotes, jointly accounting for over 70% of all counterfeits.
- > Most counterfeits (96.4%) were found in euro area countries. The rest were found in non-euro area EU Member States (3.0%) and in other parts of the world (0.6%).



4. Questions for review

1. What are the two aspects of the 'blue-badged' development?
2. Explain the significance of the Greek maize case
3. Why was the 'blue-badged' milestone important to the PIF Convention?
4. How does the EU protect against counterfeiting of the euro?

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