



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 1

What is the Area of Freedom, Security and Justice?

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Reading Lecture 4

AFSJ and Criminal Justice & European Criminal Policy

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

- European criminal policy,
- legislative procedures with criminal law content,
- emergency brake procedure and
- opt in and opt out

Learning time – approximately 4 hours



		- in case of regulation as legal act, the ECL will intrude into the MS law without transposition		
combat against trafficking in persons, in particular women and children.	both into the substantive and procedural criminal law	- definition of these offences	Article 79 paragraph 2 d	any measure
combat against fraud (and protection of the financial interest of the EU)	both into the substantive and procedural criminal law	- definition of fraud and related offences - European Prosecutor's Office	Article 325 paragraph 4	any measure
combat against severe crimes 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	substantive criminal law	- these areas of crime are the following: 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 - directives are defining offences and sanctions	Article 83 paragraph 1 a	directive
enactment of rules and procedures for ensuring (mutual) recognition throughout the Union of all forms of judgments and judicial decisions	both into the substantive and procedural criminal law	- the details on mutual recognition of decisions will restrain the scope of the application of the MS Criminal Code as defined in the Code itself - if mutual recognition results in procedural obstacles of the domestic criminal procedure, the procedural code shall be amended - in case of regulation as legal act, the ECL will intrude into the MS law without transposition	Article 82 paragraph 1 a	any measure (e.g. decision, directive, or regulation)
facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters	into procedural criminal law and into the law of mutual cooperation	- if the tendency will be strengthened by Union law that such cooperation shall underlie the assimilation principle, the domestic procedural code shall be amended - in case of regulation as legal act, the ECL will	Article 82 paragraph 1 d	any measure (e.g. decision, directive, or regulation)

What do you think? What is the reason of minimum ruling?

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		intrude into the MS law without transposition		
minimum rules on mutual admissibility of evidence between MS	into procedural criminal law	the evidence law belongs to the procedural rules according to the domestic concept of criminal law, any European requirement or standards shall be introduced into criminal procedural code	Article 83 paragraph 2 a	directive
minimum rules on the rights of individuals in criminal procedure	into procedural criminal law	the legal status of the defendant, of the victim or the private party is regulated by domestic procedural code, if there will be minimum European rules and minimum requirements not contained by the domestic code, its amendment will be unavoidable	Article 83 paragraph 2 b	directive
minimum rules on the rights of victims of crime	into procedural criminal law	see above	Article 83 paragraph 2 c	directive
minimum rules on any other specific aspects of criminal procedure which the Council has identified in advance by a decision	into procedural criminal law		Article 83 paragraph 2 d	directive
release of norms on the initiation of criminal investigations by Eurojust particularly those relating to offences against the financial interests of the Union; on the coordination of investigations and prosecutions referred to; on the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction	into procedural criminal law	- if the Eurojust will get more concrete competences concerning domestic criminal procedures, the criminal procedural code is not to amend because of the release of a regulation (e.g. European Public Prosecutor) - in this future case such procedural rules as part of ECL will intrude into the domestic law without transposition, e.g. the legal sources of procedural law will be extended with European regulation(s)	Article 85	regulation
enactment of regulation on the collection, storage, processing, analysis and exchange of relevant information in the field of police cooperation	into police law and procedural criminal law		Article 87 paragraph 2 a	any measure (e.g. decision, directive or regulation)
may establish measures concerning common investigative techniques in	into police law and procedural criminal law	- if the future investigative techniques will be transformed into special	Article 87 paragraph 2 c	any measure (e.g.

Who are these individuals?



relation to the detection of serious forms of organised crime.		forms of cooperation, the same happened in case of controlled deliveries; today this form of special investigation is regulated by procedural rules		decision, directive or regulation)
may establish measures concerning operational cooperation between the (investigating) authorities of the MS	into police law and procedural criminal law	- if the operation of investigating authority of other MS will be recognised as an operation of the own authority of investigation	Article 87 paragraph 3, Article 89	any measure (e.g. decision, directive or regulation)
facilitate cooperation between judicial or equivalent authorities of the MS in relation to the enforcement of decisions	into the penal executional law	EUROPOL – what kind of agency is this?	Article 82 paragraph 1 d	any measure (e.g. decision, directive or regulation)
release of regulation on Europol activities (e.g. operation, field of action) and also on the coordination, organisation and implementation of investigative and operational action carried out jointly with the MS' competent authorities or in the context of joint investigative teams	into police law and procedural criminal law		Article 88	regulation
the regulation of the conditions and limitations under which the authorities of a MS may operate in the territory of another MS		- if the operation of investigating authority of other MS will be recognised as an operation of the own authority of investigation		any measure (e.g. decision, directive or regulation)
enactment of rules on crime prevention	other law field		Article 84	any measure



4. European Criminal Policy

Read the following paper!

Karsai, Krisztina: *European Criminal Policy*. FORUM: ACTA JURIDICA ET POLITICA, 9 (2). pp. 63-81. ISSN 2063-2525 (2019) <http://publicatio.bibl.u-szeged.hu/18921/>



5. POLICY PAPER ANALYSIS

Analyse the following paper!

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European Commission (2011): Towards and EU criminal policy: Ensuring the effective implementation of EU policies through criminal law. [Brussels, 20.9.2011, COM(2011) 573]

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0573:FIN:EN:PDF>

Answer the questions below.

1. Why is it appropriate to consider this publication a criminal policy document?
2. What is the added value created by European criminal law?
3. What were the shortcomings of the legal framework (criminal legislation)?
4. What were the innovations brought about by Lisbon in this regard?
5. What are the so-called "Euro-crimes"?
6. Explain the two-step approach in criminal law legislation.
7. How is the principle of legality ("legal certainty") to be understood in the scope of European criminal law?

You find the answer sheet here

<https://forms.gle/8wQw2EFfA9j3BhRG6>



6. Questions for review

1. What is the function of criminal policy at an EU level?
2. How can the EU's criminal policy influence national criminal policy?
3. What is the opt out possibility?
4. How can you characterize the cooperation between the MS before the Lisbon era?
5. Which articles entitle the EU to issue description or definition of offences?

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