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Division of Competences between Member States and the European Union in Criminal Procedural Law

1. INTRODUCTION AND SCOPE OF STUDY

With the entry into effect of the Lisbon Treaty (01 December 2009), it is primarily defined by the Treaty on the Functioning of the European Union (TFEU) in the reformed EU Treaty system what principles and rules are applicable to the division of competences between Member States and the European Union. The existence of these rules has a systemic significance: they obviously represent an "obligatory" element of the content regulation of the Treaties. At the same time, the Treaty text may and did receive additional meanings in the course of interpretation and application as integration developed, in connection with which doubts in Member States also arose.[1] For this reason, the competency regulation considered to be new aims for a more precise regulation if possible: this endeavour primarily stemmed from the argument for Member States' sovereignty and brings about the consequence that opportunities for judicial development of law related to competences – playing a significant role in integration – have been (or may be) restricted thereby. So for the Court of Justice of the European Union (CJEU), the provisions on competences of the TFEU have reduced the earlier margin of consideration. By contrast, it is not absolutely excluded either, that, as a result of more precise (?), more obvious (?) thematic limitations, only the focus of the CJEU's legal development activities (affecting competences) will change, and substantially any case can be elevated to a supranational level (to a shared or exclusive competence) by demonstrating a thematic connection, provided that further legislative conditions are complied with.

The 2016 jubilee congress of FIDE (Fédération Internationale pour le Droit Européen = International Federation for European Law) will be held in Budapest, including a special panel on the *"Division of Competences and Regulatory Powers between the EU and the Member States"*. The congress is to primarily apply an approach focussing on banking law, competition law, and European public law, but the issue of the division of competences between the EU and Member States has also become relevant in respect of the norms of criminal law (taken in the broad sense) as a result of legal developments in the course of the past 20-25 years. Practically, the process of the development and improvement of European criminal law started in the 1990s and brought about markedly novel and innovative ("revolutionary"[2]) solutions within the criminal jurisdiction systems of Member States as well as in their interactions. Therefore, criminal law, more specifically criminal procedural law is a justified topic worthwhile to examine, even in this special issue, and in connection with criminal procedural law this study is to examine how the issue of the division of competences can arise between the levels of Member States and the Union.

2. INTERPRETABILITY OF THE DIVISION OF COMPETENCES IN CRIMINAL PROCEDURAL LAW

Criminal procedural law plays a fundamental regulatory role in this branch of law within democratic criminal justice systems where the rule of law prevails: it defines the procedural framework of criminal prosecution; it restricts the enforcement of punitive claims by the state; and it also primarily serves to protect the rights of the defendant (and other private individuals). Laying down the procedural framework of criminal prosecution is traditionally the right and obligation of the domestic (national) legislator, as the question of criminalization (*ius puniendi*[3]) is also decided at state level, with respect to

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1 See in detail for instance László Blutman: *Az Európai Unió joga a gyakorlatban* [EU law in practice]. hvgorac, 2013. pp. 119-187; Craig, Paul–De Búrca, Gráinne: *EU Law, Text, Cases and Materials.* Oxford University Press, 2011. pp. 73-104.

2 Krisztina Karsai: *Alapelvi (r)evolúció az európai büntetőjogban* [(R)evolution of basic principles in European criminal law]. Jurisperitus, 2015.

3 In respect of domestic law, the following power layers of *ius puniendi* can be distinguished at a theoretical level: 1. value selection power / competence: the right to choose from values and interests extant in a social context, which of them should be protected by criminal law; 2. tool selection power/competence: the right to apply criminal law tools within the legal order (rather than tools in other branches of law) to protect the above values; 3. power/competence of definition: it represents the right to constitute the legal definition of crime, to set the limit between punishable and non-punishable conduct, to specify the pre-conditions of penalization, and to define punishments (what types of punishments are recognized by the legal order); 4. the power of criminal rigour: it represents the right to determine the degree of punishment, setting the application boundaries of theoretically unlimited punishment; 5. the right to establish criminal liability; 6. the right to administer punishment. For the results of the author's own research, see: Karsai (2015) pp. 17-18.

the (current) status of a given society. In connection with this, the international legal achievements of the 20th century – such as criminal liability based on international law, multilateral treaties stipulating the establishment of criminal liability, and setting up international criminal courts – are influencing factors to some extent, but they do not generate a rearrangement of competences. By contrast, when examining EU legal developments, it is a well-founded and demonstrable statement[4] that the current legal norm system of the EU has autonomous competences in drawing up criminal legal regulations as authorised by Member States. It also follows from this that, in connection with the division of legislative competences, it is expedient to discuss here legislative issues affecting the legal conditions of criminal procedural law. So, this study presents and briefly analyses those provisions of the TFEU by the authorisation of which the EU can create norms with criminal procedural content within its regular legislative procedure.

As regards competences of application of laws, it should be mentioned that prosecution to establish criminal liability is within the scope of competence of Member States; proposals – not at all fully developed – for setting up a European criminal court have been made only in the form of scientific theses,[5] so the division of competences between Member States and the EU in the area of the application of law cannot be defined for the time being. It is important to mention, however, that this cannot be considered as a future direction. The– probably very soon – establishment of the European Public Prosecutor's Office,[6] and endeavours to endow Europol with (increasingly) independent powers of investigation can be considered as directions of development which will rearrange competences in law enforcement. The difference is that the activities determined for the EU agencies mentioned will penetrate into the clearly specified competence areas of Member State authorities. And the direction of development to regulate and restrict the exercise of criminal jurisdiction,[7] and the European Investigation Order[8] do not primarily affect the issue of the division of competences between Member States and the EU, but can rather be interpreted in the interrelations of Member States.

The study intends to apply the most obvious system of criteria, showing how EU legal developments can penetrate into the "traditional" framework of criminal proceedings by the transformation of competences. The Hungarian framework of criminal procedural law is necessarily (and accordingly) used as a point of departure.

3. THEMATIC LIMITATIONS AND AUTHORIZING NORMS

3.1. LEGISLATION WITH SHARED COMPETENCES

Article 5 of the Treaty on European Union (TEU) includes the definition of conferral of competences and the legal grounds on which competences are specified in detail in the TFEU: "(1) The limits of Union competences shall be specified by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. (2) Under the principle of conferral, the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. (3) Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (...)." In contrast, TFEU rules specifying competences refer the EU policy relevant to our topic to a shared domain, termed as an area of freedom, security and justice. Pursuant to Article 2 of the TFEU, shared power means that "when the Treaties confer on the Union a competence shared with Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence."

The literature distinguishes between two types of shared competences,[9] namely contiguous ("irregular") and concurrent ("regular") shared competences. The policy of the area of freedom, security and justice falls within regular shared competences; meaning that in the area concerned, the regulatory competences (rights to take action) of the Union overlap with those of the Member State. The TFEU also sets up a clear "ranking" by stipulating that "the Member States shall exercise their competence to the extent that the Union has not exercised its competence." This competence is also subject to the principle of "pre-emption", where EU regulation, when adopted, occupies or "pre-empts" the scope of regulating the life conditions concerned from the Member State; and the Member State may exercise its competence to the extent allowed by the EU norm itself. Further provisions of the TFEU set out the legal bases specifically authorizing Union bodies to act.

4 KARSAI (2015) pp. 32-34.

5 DELMAS-MARTY, Mireille (ed.): *Corpus Juris der strafrechtlichen Regelungen zum Schutz der finanziellen Interessen der Europäischen Union.* Köln, 1998.; ABRAMI, Antonio (International Academy of Environmental Studies) – proposal to set up the International Criminal Court and the European Criminal Court (2010). An analysis thereof: PAPADOPOULOU, Danai: International/European Environmental Criminal Court. A comment on the proposal of the International Academy of Environmental Sciences. European Parliament 2011.

6 Cf. Katalin LIGETI: Toward a Prosecutor for the European Union: Volume 1 (Modern Studies in European Law) Beck/Hart, 2013.

7 Cf. Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. For an analysis, see e.g. SINN, Arndt (ed.): Jurisdiktionskonflikte bei grenzüberschreitender Kriminalität. Ein Rechtsvergleich zum Internationalen Strafrecht. V&R unipress, 2012.

8 Cf. Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters.

9 Cf. e.g BLUTMAN (2013) 122-125; KLAMERT, Marcus: *The Principle of Loyalty in the European Law.* 2014. Oxford, Studies in European Law (ed.: Craig, Paul – De Búrca, Gráinne). pp. 161-167.

3.2. ARTICLE 82 TFEU[10]

This article authorizes the EU to adopt measures (legislation) to regulate judicial cooperation in criminal matters for the approximation of laws and regulations. The topics set out in Article 82 (1) *a)* and *b)* can be closely related to the criminal procedural regulatory system taken in the traditional sense. The principle of mutual recognition is gaining ground in the regulatory system of cooperation in criminal matters, and it essentially aims to achieve that a legal product (decision) of a (criminal) procedure in a given Member State be "recognised" and used in the same manner in all other EU countries and for the same purpose for which it was made originally, meaning that it should fulfil the same function in the procedural coordinate system of another – host – country as in its own.[11] Such a system is held together by a real constructive trust of Member States in each other's jurisdiction: the principle of mutual trust is a declared basic principle to form an area of freedom, security and justice, which, however – and for the time being–is sometimesonly an illusion, rather than a real relationship of confidence between Member States. This is why well-grounded objections arise both on part of Member States and jurisprudence, referring to human rights deficits. Although each EU Member State is a signatory to the European Convention for the Protection of Human Rights, it is indicated by the activity and the high caseload before the ECtHR that not even minimum guarantees regulated by the Convention fully and always prevail in practice. The situation may be improved by the Charter of Fundamental Rights in effect since 1 December 2009; see further below.

Actually, this principle was first recognised by the framework decision on the European arrest warrant[12] in the form of a positive legal provision. It is generally characteristic of the process of the principle gaining ground that its direction is reversed; meaning that it is first applied to only certain types of decisions,[13] then the application of the principle is extended to more and more types of decisions. Therefore the introduction of general validity is the final destination of the process, with the "free circulation" of decisions in criminal cases in Europe. And the "free circulation" of decisions in criminal cases would mean that if a lawful decision was made in one Member State, it can (also) be enforced in all other Member States. The transnational prevalence of final decisions within the EU (*ne bis in idem* principle) is a culmination of the principle of mutual recognition.

As regards the competence to act in conflicts of jurisdiction under TFEU Article 82 (1) b), it can be stated that the avoidance of parallel criminal proceedings, the feasibility of procedural economy arises as a real objective in an all-European perspective. As a first step thereof, a so-called conciliation model[14] is already in effect, but in the long run, a system of criteria set out by law can be realised as a supra-national regulatory model (which state may act in case of a crime committed in several Member States[15]), or designation by an EU (?) authority (court) can come into effect as well. So, the authorisation is granted by Article 82; and it is also important to emphasize that not only directives, but EU regulations as well can be adopted in respect of these issues. It can also be important that in such cases, competences related to the institution and conducting of criminal proceedings would be rearranged as opposed to the "traditional" scheme, which can be manifested in domestic law in the end as an issue of jurisdiction and / or competence. If, however, a given Member State does not wish to open the Code of Criminal Procedure to procedures involving international elements, it can keep the regulation of conflicts of jurisdiction within the framework of international cooperation in criminal matters (by regulating restrictions on the jurisdiction of enforcement).[16]

TFEU Article 82 (2)[17] grants authorisation for the legislation of directives in subjects essential for criminal

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0 TFEU Article 82 (1) Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:
a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
b) prevent and settle conflicts of jurisdiction between Member States;
c) support the training of the judiciary and judicial staff;
d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

1 Cf. Krisztina KARSAI: Article 82 TFEU In: András OSZTOVITS (ed.): *Az Európai Unió működéséről szóló szerződés magyarázata* [Commentary on the Treaty on the Functioning of the European Union]. Complex, 2011. pp. 779-780.

2 Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

3 Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties; Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders; Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union; Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions; Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

14 Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. Critical views in GEBBIE, George C.: Conflict of European Jurisdiction – a matter of concurrence. New Journal of European Criminal Law 2009. special edition. pp. 11-15.

15 SINN (2012).

16 For details see Péter M. NYITRAI: *Nemzetközi és európai büntetőjog* [International and European criminal law]. Osiris, 2006.; Krisztina KARSAI–Katalin LIGETI: *Magyar alkotmányosság a bűnügyi jogsegélyjog útvesztőiben* [Hungarian constitutionality in the maze of legislation on legal assistance in criminal matters]. Magyar Jog 2008/6 pp. 399-408.

17 (2) To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern: *a)* mutual admissibility of evidence between Member States; *b)* the rights of individuals in criminal

proceedings. Thus, regulatory minimums can be established in respect of evidence and the rights of the participants in criminal proceedings (the defendant, the aggrieved, etc.). The addressee of the regulation by directive is the Member State; such directive includes the objective to be achieved, which objective can be realised by the Member State at its own discretion, by drawing on its own means, through its legislation to integrate such directive. Nevertheless, it is important to see that directives providing minimum regulation and facilitating mutual recognition – in this EU policy area – contain rather detailed, many times technical and professional regulation, providing scope for action to Member States only in specific partial issues. For this reason, the Union level will be conclusive in respect of the definition of regulatory content; Member State legislation may not define derogations in substantial issues. In the event that directives are not or not adequately transposed, Member States can expect infringement proceedings in addition to the fact that in certain cases, the directive can be used as a direct framework of reference to private individuals – even in criminal proceedings. In my opinion, these "rearrangements" of legislative competences can bring about particularly significant changes for two reasons. On the one hand, if (for instance) procedural competences are defined by the EU legislator, in an extreme case these can be called to account with immediate effect in domestic criminal proceedings if they are not (properly) transposed. On the other hand, EU legislation on these provisions of criminal proceedings also allows for the application and consideration of the Charter of Fundamental Rights. Pursuant to Article 51(1) of the Charter, the provisions of the Charter are addressed to the Member States to the extent that they implement EU legislation, including the application of harmonised legal regulations, so for instance if regulatory content transposed from a directive is applied.[18] "Rearrangements" have a potential to influence the application of law; however, it is a question of fact that prosecutors and judges of the Member States acting in criminal cases must be perfectly aware of the consequences of EU legislation in terms of sources of law, the study of statutes, and legal protection, requiring special preparation.

In respect of the exercise of EU competencies, it is also necessary to mention the provision set out in Article 82(3) which contains the so-called emergency brake procedure. A exception for Member States, the emergency brake procedur provides opportunities for them to raise objections related t the fundamental issues of their criminal jurisdiction and t initiate further negotiations particularly in this respect befor a compulsory legislative act is adopted. Adoption of a legisla tive act can even fail, as the case may be, due to controversie in such central issues; however, the difference should not b underestimated that while earlier on, in the so-called thir pillar, in case of the obligation of unanimous decision, veto b a Member State could be enforced in case of any type c objection, today, legislation can only be blocked in issue of fundamental importance, mentioned above.

3.3. ARTICLES 85-89 TFEU –SUMMARY TABLE

Articles 85-89 TFEU also contain a number o provisions closely related to the regulation of crimina proceedings in the Hungarian understanding as wel these cannot be analysed in depth in this study fo reasons of scope. Therefore a summary is publishe here, which categorises, according to the Hungaria classification, topics pertaining to the regulation o criminal procedural law. The table[19] displays the law o international criminal cooperation as a separate category in a broad sense, it forms part of criminal procedura law, but state perceptions in this respect are not uniform In addition, other thematic competences associate with criminal jurisdiction are also separately indicated as in this sphere, too, a specific regulatory content ca retroact even on criminal procedural law taken i a narrow sense. The table for overview also makes mentio of topics where there is already a draft directive or a adopted one which is not yet transposed into national law or the given direction of development has already appeare in the policy document. Furthermore, some scientifi forecasts are also included in this table, indicating th subject of accepted EU legal sources. The summar examines the totality of the criminal law subsystem, bu procedural law represents only some part of the system o norms regulating it.

procedure; c) the rights of victims of crime; *d)* any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament. Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

18 Cf. C-617/10 Åklagaren v Hans Åkerberg Fransson (26 February 2013)

19 For details see Karsai (2015) pp. 32-34.

	The Hungarian system of criminal law as affected by European criminal law competences				
TFEU	**TFEU competence**	**Legal area**	**Current achievements**	**Expected or hypothetic developments in the future**	**Type of legal act**
Art.79 (2) *d)*	combat against trafficking in human beings, particularly women and children	substantive criminal law	definition of the criminal act and sanctions of trafficking in human beings		in any legal source
Art. 82 (1) *a)*	rules securing the principle of mutual recognition	substantive and ***procedural criminal law, law of enforcement of criminal sanctions***	European arrest warrant, transfer of criminal proceedings, fines etc.; European Investigation Order	re-regulation of confiscation, European criminal record	in any legal source
Art. 82 (1) *b)*	prevention and settlement of conflicts of jurisdiction	substantive and ***procedural criminal law***	rules of conciliation for conflicts of jurisdiction	regulatory or judiciary relief of collision of jurisdictions	in any legal source
Art. 82 (1) *c)*	training of specialists	not criminal law		transformation of the European Police College	in any legal source
Art. 82 (1) *d)*	facilitation of cooperation between authorities	***procedural criminal law,*** law of international cooperation in criminal affairs	European Investigation Order; introduction of European forms	transformation of Eurojust	in any legal source
Art.82 (2) *a)*	mutual admissibility of evidence by approximation of laws through regulatory minimums	***procedural criminal law***	European Investigation Order; rules on forensic experts	rules of evidence for confiscation	in a directive
Art. 82 (2) *b)*	the rights of individuals in criminal procedure, by approximation of laws through regulatory minimums	***procedural criminal law***	right to translation and interpretation, right to information, communication rights, recourse to legal aid by an attorney-at-law; presumption of innocence	procedural protection of under-age perpetrators	in a directive
Art. 82 (2) *c)*	the rights of victims of crime, by approximation of laws through regulatory minimums	***procedural criminal law***	definition of rights of the aggrieved		in a directive
Art. 82 (2) *d)*	any other regulatory aspects of criminal procedure	***procedural criminal law***			in a directive
Art. 83 (2)	definition of criminal offences and sanctions in case of certain crimes by approximation of laws through regulatory minimums	substantive criminal law	sexual exploitation of children, criminal law treatment of abuse of dominant market position, intervention against attacks against information systems	protection by criminal law of the Union's financial interests, combatting drug trafficking, counterfeiting, confiscation	in a directive

	The Hungarian system of criminal law as affected by European criminal law competences				
TFEU	**TFEU competence**	**Legal area**	**Current achievements**	**Expected or hypothetic developments in the future**	**Type of legal act**
Art. 83 (2)	the same, if indispensable for the effective implementation of an EU policy in an area subject to measures of harmonisation	substantive criminal law	criminal prosecution of market manipulation		in a directive
Art. 84	crime prevention	administrative law	EU support systems for conducting crime prevention projects		in any legal source
Art.85	regulation of the role of Eurojust in Member States' criminal proceedings	***procedural criminal law,*** law of international cooperation in criminal affairs	opportunities for consultation and assistance in coordination	authorisation of Eurojust to participate in Member State criminal proceedings	in a regulation
Art. 86	establishment of the European Public Prosecutor's Office and the definition of its role in national criminal proceedings	***procedural criminal law*** (substantive law as well)		investigation and/or supervision of investigation by the European Public Prosecutor's Office	in a regulation
Art. 87 (2)	police cooperation	***procedural criminal law,*** legislation on police operations	certain EU investigation techniques have changed into forms of cooperation stipulated by internal regulations (e.g. checked consignments) European database of traffic offences	transformation of further tools	in any legal source
Art. 87 (3)	definition of operative police cooperation	***procedural criminal law,*** legislation on police operations	restricted pursuant to the Schengen Convention	new regulation of data exchange and procedural acts	in any legal source
Art.88 (2)	regulation of the role of Europol to strengthen cooperation; operative actions completed by Europol staff	***procedural criminal law,*** legislation on police operations	assistance in analysis and coordination	Europol officers in Member State territories, granted the authorisation to act	regulation
Art.89	carrying out a procedural act in the territory of another Member State	***procedural criminal law,*** legislation on police operations	restricted pursuant to the Schengen Convention	general regulation, lifting restrictions; regulatory stipulation of applicable law	special legislative procedure, but any legal source

3.4. SUI GENERIS COMPETENCE – TFEU ARTICLE 325 (4) -

TFEU Article 325 (4)[20] establishes competences for legislation and taking action in the fight against fraud; however, it is important to emphasise that this is about an independent competence, rather than the further breakdown of a shared competence.[21] This provision is of special importance as regards criminal procedural legislation, as it authorises the EU legislator ("to adopt the necessary measures"), to issue even criminal procedural provisions[22] to establish the European Public Prosecutor's Office, at the same time providing the opportunity for (partially) conducting independent EU-level criminal proceedings[23]. It is also important to point out that in terms of sources of law (in the regulatory sense), this provision does not represent a restriction on exercising legislative competence: EU legislators are entitled to issue any kind of legal act in this respect, even a regulation not requiring transposition by Member States, which is similar to Member States' laws in terms of legal impact.

4. CLOSING REMARKS

The currently effective system of EU legal authorisations has endowed EU legislators with clear legislative competences in various subjects, with some competences involving the (partial) transfer of the Member State's legislative competence. As regards the criminal procedural regulatory system, thematic authorisations are quite broad; moreover, the EU acts allowed to be issued are not only directives but regulations as well in most cases. Exercise of the EU legislative competence postulates majority decision making in a regular legislative procedure, and Member States' interests are allowed to be enforced directly in respect of certain subjects only (a so-called emergency brake procedure). Accordingly, the general restrictions on EU legislation, such as the principles of subsidiarity and proportionality, prevail in these cases as well, and the considerations serving as a basis for their application are transformed, many times, from a special Member State interest; still, it is clear that the EU policies of the area of freedom, security and justice are gaining ground considerably. Thereby legal developments of the past 20 years have been demonstrated by codification both in European criminal law and European criminal procedural law.

20 TFEU Article 325 (4) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices, and agencies.

21 HECKER, Bernd: *Europäisches Strafrecht,* 4th edition, Springer, 2012. p. 151.

22 See the draft directive on the criminal law protection of the financial interests of the European Union. COM (2012) 363. Commission analysis of the document: Commission Staff Working Document SWD (2012) 195.

23 See Andrea TÖRŐ: The European Public Prosecutor. In: *Profectus in Litteris II.*, Lícium-Art Kft., Debrecen, 2010. pp. 327-186; András CSÚRI: *Naming and shaping. The changing structure of actors involved in the protection of EU finances.* eucrim 2012/2 pp. 79-83; Katalin LIGETI: The European Public Prosecutor's Office: Which Model? In: (ed.: Klip, André) *Substantive Criminal Law of the European Union.* Maklu, 2011. pp. 51-67.