

Seminar 8: Substantive EU criminal law

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Improving Judicial Cooperation in Criminal Matters in the area of Freedom, Security and Justice,
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Special part - Eurocrimes

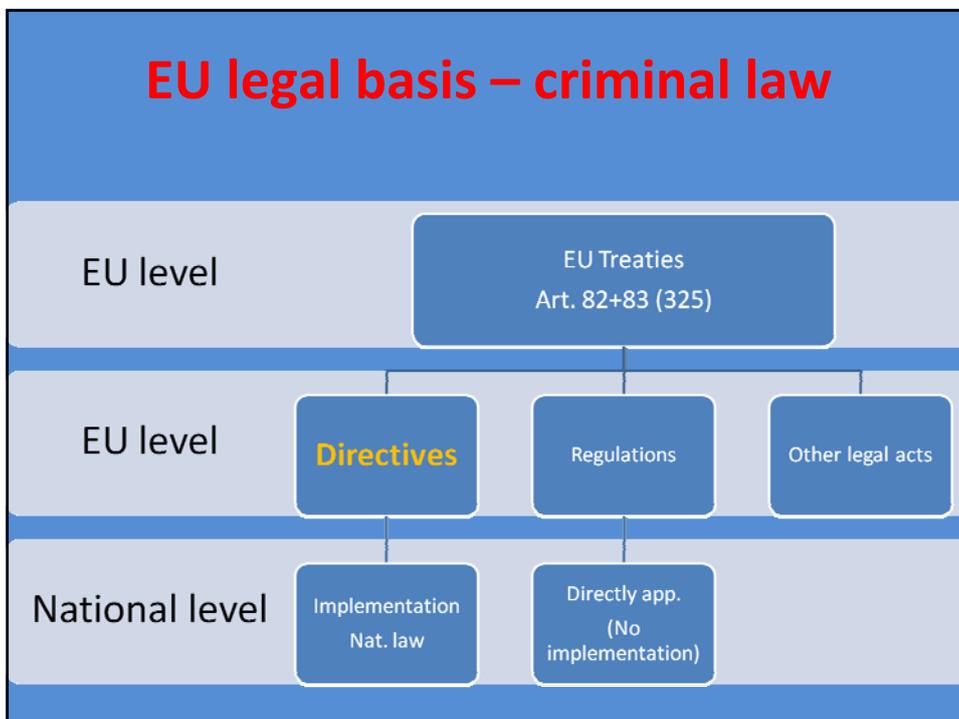
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Special part - Eurocrimes

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EU legal basis – criminal law



Instruments – competence

- Competence for instruments on substantial criminal law (not procedural, for example EAW).
- No supranational criminal law provisions – yet
 - No regulations with directly applicable criminal provision – national implementing measures necessary
 - However, art. 325 TFEU (financial interest of the EU) and art. 33 TFEU (customs).
- Directives
 - Art. 83(1) TFEU
 - Limited to certain kinds of crimes (but extension possible)
 - Art. 83(2) TFEU
 - Annex competence (every field of EU regulation)
 - Proposal for DIR on criminal sanctions for insider dealing and market manipulation (COM 654 (2011) Final).

Eurocrimes. What is that?

- Provisions on EU fraud + TFEU art. 83
- Article 83(1)
- 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.
- 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.
- 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. It shall act unanimously after obtaining the consent of the European Parliament.

DIR sexual abuse of children

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (a) 'child' means any person below the age of 18 years;
- (b) 'age of sexual consent' means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;

Article 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 6 is punishable.
2. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 1 year.

Competence (NB! Art. 83(2)) – Special character of criminal law

- German Federal Constitutional Court, judgment of the Second Senate of 30 June 2009
- 253 (1) As regards the preconditions of criminal liability as well as the concepts of a fair and appropriate trial, the administration of criminal law depends on **cultural processes** of previous understanding that are **historically grown** and also determined by language, and on the alternatives which emerge in the process of deliberation and which move the respective **public opinion** ...
- The penalisation of social behaviour can, however, only to a limited extent be normatively derived from **values and moral premises** that are shared Europe-wide. Instead, the decision on punishable behaviour, on the rank of legal interests and the sense and the measure of the threat of punishment, is to a particular extent left to the democratic decision-making process..."

Incarceration rates

	1979/80	2007/08
U.S.A.	230	756
U.S.S.R./Rusland	660	629
Baltic countries		200-300
Polen	300	221
Spain	37	160
England and Wales	85	153
Canada	100	116
Netherland	23	100
Germany	82	89
Sweden	55	74
Norway	44	69
Finland	106	64
Danmark	63	63 (2010:71)
India		33

DIR Proposal financial interests (COM(2012)363/2)

Article 8

Imprisonment thresholds

1. Member States shall take the necessary measures to ensure that criminal offences as referred to in Articles 3 and 4, paragraphs 1 and 4, involving an advantage or damage of at least EUR 100,000 shall be punishable by

- (a) a minimum penalty of at least 6 months imprisonment ;
- (b) a maximum penalty of at least 5 years of imprisonment.

Member States shall take the necessary measures to ensure that criminal offences as referred to in Article 4, paragraphs 2 and 3, involving an advantage or damage of at least EUR 30,000 shall be punishable by:

- (a) a minimum penalty of at least 6 months imprisonment;
- (b) a maximum penalty of at least 5 years of imprisonment.



Thank you
for your
attention!