

EU substantive criminal law



Funded by European Union's
Justice Programme (2021-2027)



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LIETUVOS
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Eurocrimes

Particularly serious crimes with a cross-border dimension (Art. 83 TFEU)

- 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
- organised crime

Council may adopt a decision identifying other areas of crime (must act unanimously + consent of the European Parliament).

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Embedded in national criminal law

- **Criminal code - General part**

- jurisdiction
- statute of limitations
- criminal intention/negligence
- attempt/preparation
- participation/incitement/aiding/abetting
- exemption from criminal responsibility
- penalties and sentencing

At EU level, no approximation of the general part of the national criminal code

Criminal code

- **Criminal code – Specific part**

- Crimes against humanity and war crimes
- Crimes against life, bodily integrity and health
- Crimes against personal freedom
- Crimes against sexual freedom and sexual offences
- Crimes against children and family law
- Crimes against traffic regulations
- Environmental crimes
- Crimes against propertyetc

At EU level, targeted approximation of material elements of criminal offences

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Eurocrimes

- Approximation of **elements of criminal offence** (minimum harmonisation)

- approximation of objective elements of an offence

- No approximation of the **subjective elements of crime**

- participation, aiding, abetting, attempt
- *mens rea* (intent, negligence – but standards of “due diligence” may be described in EU law)
- except from the requirement of criminalisation!

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Common features of substantive criminal law instruments

- Approximation of
 - **Penalty level (minimum-maximum regulation)**
 - **Legal persons (sanctions – not criminal sanctions)**
 - **Sometimes also...**
 - confiscation
 - jurisdiction
- 'Lisbonisation' - replacement of Framework Decisions
 - ➡ Still largely depended on national criminal law
 - ➡ Diversity on EU level, coherence on national level

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EU substantive criminal law instruments adopted

- | | |
|--|--|
| <ul style="list-style-type: none"> • Article 83 (1) TFEU <ul style="list-style-type: none"> • Directive 2011/36/EU on preventing and combating trafficking in human beings; • Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children; • Directive 2013/40/EU on attacks against information systems; • Directive 2014/42/EU on freezing and confiscation; • Directive 2014/62/EU on the protection of the euro; • Directive (EU) 2017/541 on combating terrorism; • Directive (EU) 2018/1673 on combating money laundering. | <ul style="list-style-type: none"> • Article 83 (2) TFEU <ul style="list-style-type: none"> • Directive 2014/57/EU on criminal sanctions for market abuse; • Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests (PIF). |
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Forthcoming proposal: amendment of the Directive on Environmental crime

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Common features of substantive criminal law instruments

- Penalty level (minimum-maximum regulation)
- Legal persons (sanctions – not criminal sanctions)
- Sometimes also...
 - **confiscation**
 - **jurisdiction**
 - **replacement of Framework Decisions** – ‘Lisbonisation’

Instruments adopted

Directive on the protection of the euro and other currencies against counterfeiting
PIF Convention - Directive on the financial interests of EU
Directive on Trafficking in Human Beings
Directive on Sexual Exploitation of Children
Directive on Cybercrime
Directive on Combatting Terrorism
Directive on Environmental crime
Directive on criminal sanctions for market abuse
Framework decision on Non-Cash Means of Payment
Framework decision on Money Laundering
Etc.

➔ Still largely depended on national criminal law

➔ Diversity on EU level, coherence on national level

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For an illustration of the EU's action in substantive criminal law, check out our case study on ‘Combating child pornography’.

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