

Introduction to the PIF Directive

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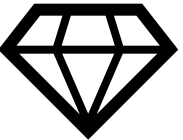
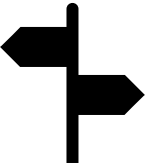
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CONTENT

1. Introduction into the Topic
 - Road to the Directive
2. What is this Directive?
 - Aims, structure
3. Issues of Implementation
 - Components
4. Model Scenarios



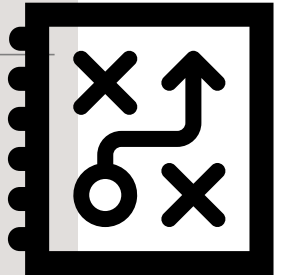
1. ROAD TO THE PIF DIRECTIVE

Protection of the financial interests of the EC / EU

- a) Treaty on European Union (1992) Article K.3. - legal basis for a criminal law convention
- b) PIF - Convention (1995) - criminal law content (minimum definitions and sanctions of fraud)
- c) Council Regulation (EC, Euratom) No 2988/95 - administrative measures, irregularities

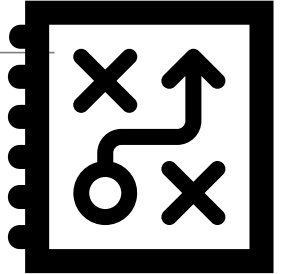
Reality:

- large scale VAT frauds - threats to the common VAT system; money laundering and corruption
- diverging national rules; different level of protection



ROAD TO THE PIF DIRECTIVE

- PIF Convention - struggled application and ,too' soft instrument
- Re-constructing the EU with the Lisbon Treaty (2007 / 2009)
 - *abolishment of the pillar system;*
 - *Charter of Fundamental Rights of the EU;*
 - *appearance of the European Public Prosecutor's Office (and enhanced cooperation)*
- Replacement of the PIF Convention
- MAIN GOAL: abolishing divergences AND designing substantive legal framework for future EPPO



RULING IN A DIRECTIVE - ADDED VALUE

NATIONAL LEGISLATURE

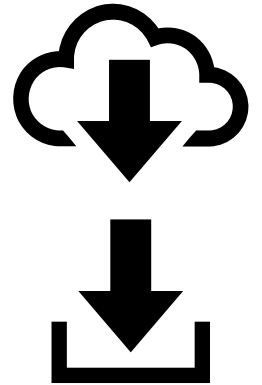
- obligation to implement (criminal code, criminal procedural law, law of international cooperation, eventually financial law etc.)

NATIONAL JUDICIARY

- indirect effect: obligation for complying interpretation
- Charter of Fundamental Rights of the EU

MEMBER STATE AS ADRESSEE

- in case of non compliance: infringement procedure against the MS
- under certain circumstances: direct effect in favour of the individual



2. THE PIF DIRECTIVE

Financial interests of the EU -

Article 2 Section 1 a)

Union's financial interests' means ***all revenues, expenditure and assets*** covered by, acquired through, or due to:

- (i) the Union budget;
- (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets ***directly or indirectly managed and monitored by them.***

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

AIMS & APPLICATION

AIMS

abolishing divergences AND designing substantive legal framework for future EPPO

- to counter fraud & other illegal activities affecting financial interests, as required by Art. 325 TFEU
- to reach the necessary level of deterrence



APPLICATION

- not being applicable to two countries (Denmark and Ireland)
- Ireland has notified its intention of taking part in the application of the PIF Directive
- Denmark will continue to be bound by the PIF Convention



APPLICATION & EPPO REGULATION



STRUCTURE OF THE PIF DIRECTIVE

Article 1 - subject matter

Article 2 - definitions and scope

Article 3 - offence of fraud

Article 4 - other offences (money laundering, corruption, misappropriation)

Article 5 - inchoate offences

Article 6 - liability of legal persons

Article 7 - sanctions (natural persons)

Article 8 - aggravating circumstances

Article 9 - sanctions (legal persons)

Article 10 - freezing and confiscation

Article 11 - jurisdiction

Article 12 - limitation period

Article 13 - recovery

STATUTES

GENERAL PART ISSUES

SANCTIONS

STATUTES

SANCTIONS + GP

DINAMIC PART /

PROCEDURES

PIF Directive - Strengths

- definition of offences - EU-wide harmonisation / ,minimum'-elements of crimes related to financial interests
- threshold for sanctions - minimum penalties
- other criminal law provisions - limitation periods, attempt etc.



PIF Directive - Weaknesses

- Identical protection is impossible
 - minimum ruling + national implementation
 - national legal doctrines; national legal practice & culture
- Risk factors in procedural law
 - forum shopping due to not identical protection
- Risk factors in substantive law
 - large discretion of the MS minimum rules
 - restrictions of the material scope of application of the statutes

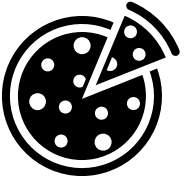
➤ Risk factors in substantive law = minimum rules

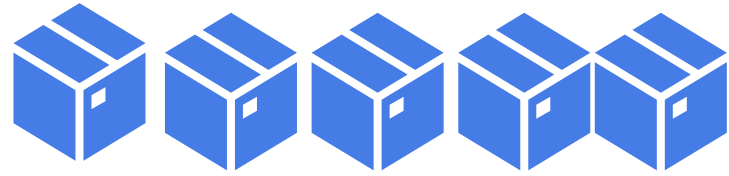
different doctrine-based national solutions

- 1) accessory character of the participation
- 2) stages of perpetration
- 3) sanctionability of legal persons
- 4) limits of criminal responsibility
etc.

PIF Directive Article 5 (1) Member States shall take the necessary measures to ensure that **inciting, and aiding and abetting** the commission of any of the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.

Article 5, (2) Member States shall take the necessary measures to ensure that an **attempt to commit** any of the criminal offences referred to in Article 3 and Article 4(3) is punishable as a criminal offence.

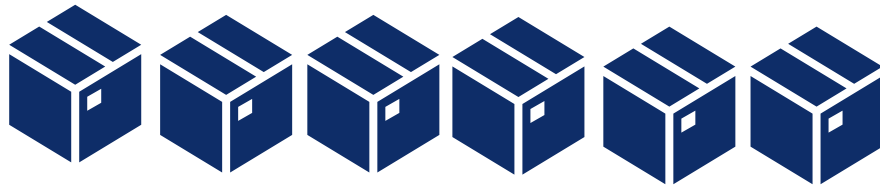
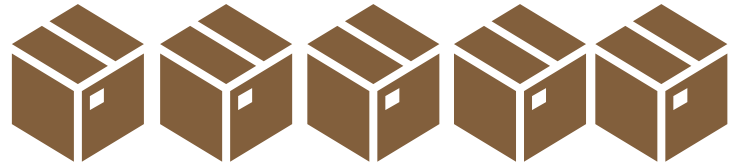




minimum elements of crime

DIRECTIVE

IMPLEMENTATION



additional elements =
narrowing of the
criminal responsibility



only some of the
elements implemented =
extent of the criminal
responsibility is broader



Art 83, 83 TFEU

- 1) elements of crime – not numeric approach (but threshold requirement)
- 2) sanctions – numeric approach

➤ Risk factors in substantive law = minimum rules

Fraud - less damage / less advantage

Article 7 (4) Where a criminal offence referred to in point (a), (b) or (c) of Article 3(2) or in Article 4 involves **damage of less than EUR 10 000 or an advantage of less than EUR 10 000**, Member States may provide for sanctions **other than criminal sanctions**.



- *some MS introduce administrative (regulatory) responsibility*
- *forum shopping - struggles in cooperation*

VAT fraud

Article 2, (2) In respect of revenue arising from VAT own resources, this Directive shall apply **only in cases of serious offences against the common VAT system**. For the purposes of this Directive, offences against the common VAT system shall be considered to be serious where the intentional acts or omissions defined in point (d) of Article 3(2) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10 000 000.

- *different levels of VAT percentage within the MS*
- *relevance of self reporting*
- *not applicable when only one MS is affected*



➤ Risk factors in substantive law = restrictions of the material scope of application

Misappropriation



Article 4, (3) Member States shall take the necessary measures to ensure that misappropriation, when committed intentionally, constitutes a criminal offence. For the purposes of this Directive, ‘misappropriation’ means the **action of a public official** who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests.

- *such offences are often not limited to public officials (trust!)*

Public officials



For the purposes of this Directive, ‘public official’ means:

...

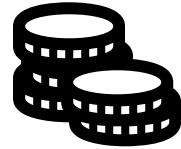
(b) any other person assigned and exercising a public service **function** involving the management of or decisions concerning the Union's financial interests in Member States or third countries

- *private persons, civil organisations?*



➤ Risk factors in substantive law = restrictions of the material scope of application

Money laundering v tax savings



[The definition of money laundering in this directive is not exactly the same as the definition in the Anti Money Laundering Directive 2015/849.]

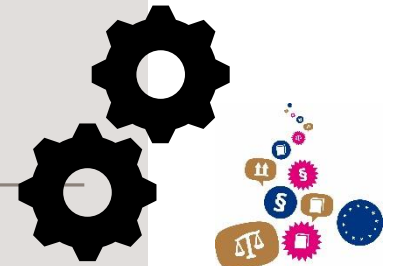
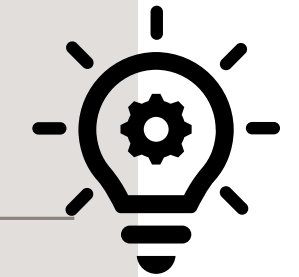
- *self-laundering*

4. HOW DOES IT WORK? Model Scenarios

- the directive has been implemented in every MS

– EPPO

–non-cooperating MS still exist within the EPPO regime



1

- National criminal law procedure
- Personal presence
- PIF offence
- National jurisdiction
- [EIO]

SUBSTANTIVE CRIMINAL LAW

- 1) criminal code has been changed - temporal scope of the criminal code (if relevant)
- 2) the statutes of the offences are harmonised
 - A) minimum-ruling
 - B) indirect effect (obligation for an interpretation which complies the directive)

PROCEDURAL CRIMINAL LAW

- 3) before EPPO: in every MS own CP
- 4) when EPPO starts:
 - A) non-cooperating MS (within EPPO regime) this is the only procedure, own CP
 - B) EPPO-MS - see Model Scenario No.4
- 5) Instruments of mutual recognition - catalogue offence

European Investigation Order - in such case the execution cannot be refused

- 6) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

- 7) CFR belongs to the reference framework (judges!!!)

2

- National criminal law procedure
- In absentia
- PIF offence
- National jurisdiction
- [EAW, EIO, ESO]

SUBSTANTIVE CRIMINAL LAW

- 1) criminal code has been changed - temporal scope of the criminal code (if relevant)
- 2) the statutes of the offences are harmonised
 - A) minimum-ruling
 - B) indirect effect (obligation for an interpretation which complies the directive)

PROCEDURAL CRIMINAL LAW

- 3) before EPPO: in every MS, own CP
- 4) when EPPO starts:
 - A) non-cooperating MS (within EPPO regime) this is the only procedure, own CP
 - B) EPPO-MS - see Model Scenario No. 4

5) Instruments of MR - catalogue offence

EAW no double criminality ...

ESO if the defendant is in another MS; no double criminality...

EIO refusal is forbidden

6) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

- 7) CFR belongs to the reference framework (judges!!!)

3

- MS criminal law procedure
- PIF offence
- Incoming requests

PROCEDURAL CRIMINAL LAW

1) Instruments of mutual recognition - catalogue offence

European Investigation Order - in such case the execution cannot be refused

European Arrest Warrant - execution is (almost) automatic

European Supervision Order - in case of consent

2) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

3) CFR belongs to the reference framework (judges!!!)

4

- investigative procedure by EPPO
- EPPO-MS
- PIF offence

PROCEDURAL CRIMINAL LAW

- 1) EPPO MS - regulation
- 2) *national authorities cooperate - EAW, ESO*
- 3) *EIO will not be needed*
- 4) *national judiciary will perform trial phase*
- 5) indirect effect of framework decisions and directives (obligation for an interpretation which complies with the EU-norm)

FUNDAMENTAL RIGHTS

- 6) CFR belongs to the reference framework (judges!!!)

5 -1

- investigative procedure by EPPO
- non-EPPO-MS
- PIF offence

PROCEDURAL CRIMINAL LAW

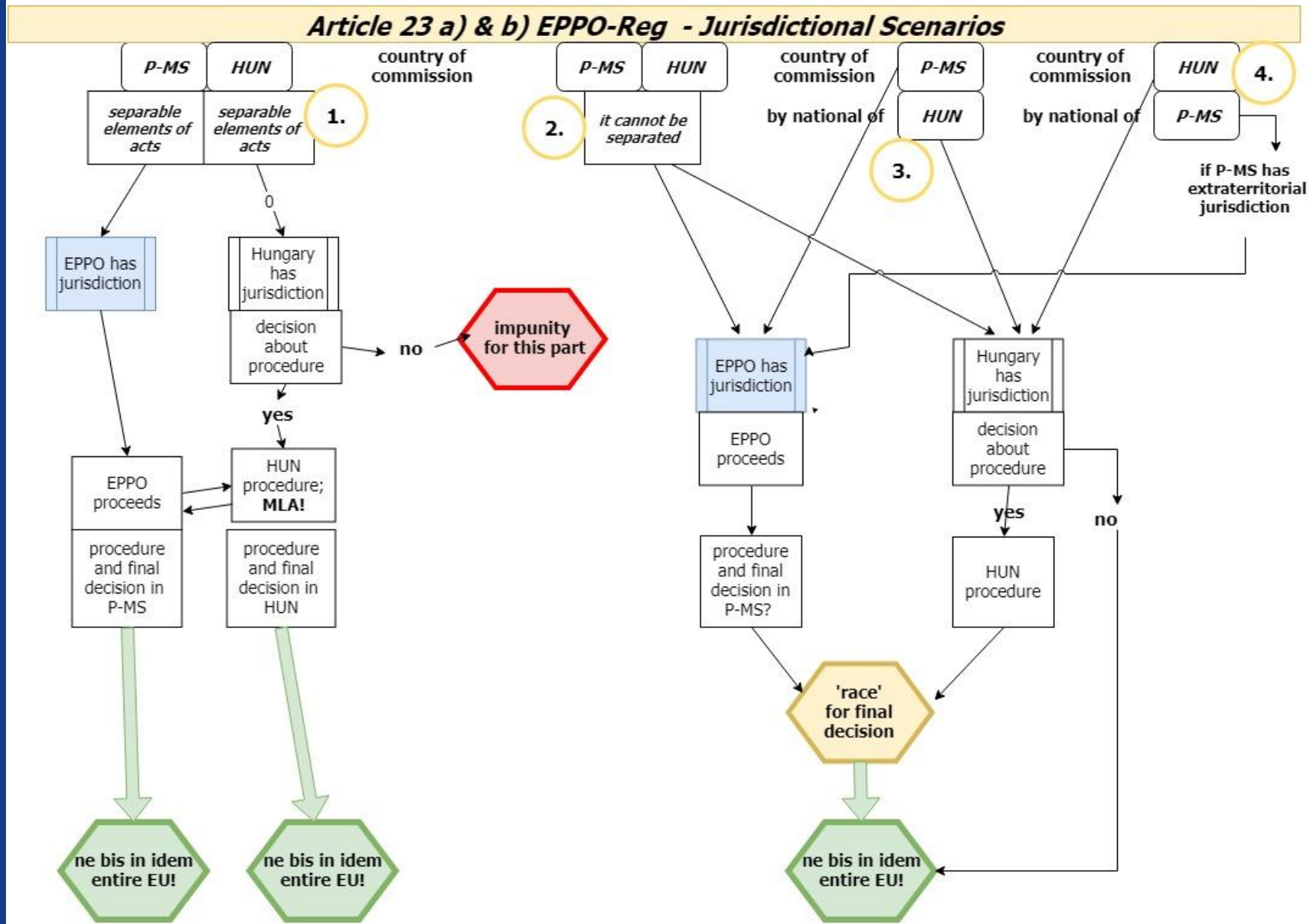
- 1) possibility of overlapping factual jurisdiction (see the graph)
- 2) *national authorities can cooperate - EAW, ESO, EIO*
- 3) *run for ne bis in idem = competition for final decision*
- 4) indirect effect of framework decisions and directives (obligation for an interpretation which complies the EU-norm)

FUNDAMENTAL RIGHTS

- 6) CFR belongs to the reference framework (judges!!!)

5 - 2

- investigative procedure by EPPO
- non-EPPO-MS
- PIF offence



Selected Bibliography & Further Readings

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Many thanks for
your attention.

Q&A

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