The protection of the financial interests of the EU

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Latvian Judicial Training Centre-LJTC

Judge Andrea Venegoni

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• EU budget

Revenues

Expenditures

Definition of EU financial interests: reg 883/2013 and PFI directive
Two levels of protection

Administrative side: reg 2185/96, 2988/95, OLAF

Criminal side: EU criminal law
In the 70s

• Criminal law does not belong to the competences of the European Community, but to competences of each Member State
First evolution

• Need for protection of certain European interests
• Possibility for the Community to request the MS to provide sanctions for the violations of the Community law
• CoJ decision 21.9.1989 in case C-68/88 (Greek mais): the MS must provide sanctions for the violations of the Community law
• The sanctions must be «effective, proportionate and dissuasive»
Maastricht Treaty

• Establishment of the Third Pillar on the judicial cooperation, also in criminal law
• Possible harmonisation of the national substantive criminal law to ensure the judicial cooperation, by mean of Conventions, Common actions, Common positions and later Framework Decisions
Example of harmonisation

- Extension of the harmonisation: criminal offences, but also at least range of sanctions
Legal issues about the Third Pillar instruments

• Interpretation of the national law in conformity with the FD even when they are not implemented
• Pupino case
• Proceeds of crime
Further step

• CoJ decision 13.9.2005 in case C-176/03 on environmental pollution
• Possibility of a EU intervention also in the First Pillar
• Annullemnt of a Council Framework decision as in that matter the power of initiative falls into the Commission’s competence as one of the EC policies
• Paragraph 47-48
• In principle, the criminal law and the procedural criminal law do not fall into the Community’s competence
• However, when the application of effective, proportionate and dissuasive criminal sanctions from the MS is necessary to fight against serious environmental violations, the EC may undertake actions with respect to the MS criminal law when it is necessary to ensure the full effectiveness of the EC environmental provisions
The Lisbon Treaty

• Single legal framework
• No pillars anymore
• Article 83 paragraph 1 TFEU
• Article 83 paragraph 2 TFEU
• Article 85 and 86 TFEU
• Article 325 TFEU
Article 83 para 1

- «autonomous» competence of the EU in criminal law
- Not necessarily linked to the judicial cooperation
- Implementation of the Stockholm program
- List of serious cross border crimes
- Possibility of extension to other serious cross border crimes
- Legal instrument: directive
Article 83 para 2

• «ancillary» competence of the EU in criminal law to ensure the effectiveness of the Community provisions in non-criminal area, which have been subject to harmonisation
• Competence linked to the principle of the CoJ decision of 13.9.2005 in case C-176/03 (former First Pillar)
• In the environmental sector: directive 2008/99/CE
• Legal instrument: directive
Article 85

• New provision for Eurojust
• Coordination and cooperation in criminal cases
• New FD on Eurojust 2008
• New Eurojust regulation (2018?)
Article 86

- Provision on the establishment of the EPPO
- Area of competence: crimes affecting the EU financial interests
- Possible extension at a later stage to other serious cross border cases
- Structure: Commission’s proposal in Spring 2013; regulation 1939/2017 of October 2017
- Legal instrument: regulation
Protection of the EU financial interests

- Area of special interest for the creation of a common legal European area of liberty, security and justice
- Article 280 EC Treaty: no intervention in the national criminal laws
- OLAF and specific legislation (reg. 1073/99, 2185/96)
- Article 325 TFEU: the restriction of article 280 does not exist anymore
- PIF Directive n. 1371/2017 on substantive criminal law
- Legal instrument: no specific provision; theoretically a regulation is possible